

In the High Court of Judicature at Madras

Dated : 05.2.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal Nos.314 to 316 of 2019 &
CMP.Nos.2969, 2972, 2974, 2975, 2977 and 2979 of 2019

Mr.Sivaprakasam Nadessan ...Appellant in WA/Petitioner
No.314 of 2019

A.Maran ...Appellant in WA
No.315 of 2019

V.Moorthy ...Appellant in WA
No.316 of 2019

Vs

1.The Government of Puducherry,
rep.by the Chief Secretary to
Government, Puducherry-4.

2.The Deputy Commissioner (Excise),
office of the Government of
Puducherry, Puducherry-5.

3.The Deputy Commissioner (Excise),
Excise Department, Karaikal-609602. ...Respondents in
all the WAs

APPEALS under Clause 15 of the Letters Patent against the
common order dated 23.1.2019 in W.P.Nos.17932 to 17934 of 2018.

PYRAYER in Wps No.17932 to 17934 of 2018 : Writ of
certiorarified mandamus Calling for the records of the 3rd
respondents in relation to the Notification bearing Ref.
No.5531/DCE/ C2/ 2018-2019 dated 9.7.18 and quash the same as
being completely illegal and arbitrary in as much as they have
sought to conduct re-auction after the completion of a
successful bid and consequently direct the respondents to issue
a final confirmation order in favour of the petitioner
permitting him to run the Arrack Shop No.3-Oduthurai of Karaikal

Municipality; the Arrack Shop No.5-sorakudy of Thirunallar commune panchayat; and the Arrack Shop. 4 - Kulakudy of Nedungadu Commune Panchayat from 01.07.2018 to 30.06.2019.

For Appellants : Mr.AR.L.Sundaresan, SC assisted by
Mr.R.Parthasarathy & Mr.Madhan Babu

For Respondents : Mr.J.Kumaran, AGP (Puducherry)

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM, J)

These appeals are filed by the writ petitioners - appellants challenging the common order dated 23.1.2019 passed by the learned Single Judge in W.P.Nos.17932 to 17934 of 2018.

2. In the said writ petitions, the appellants sought for issuance of Writs of Certiorarified Mandamus to quash the proceedings of the third respondent dated 09.7.2018 as being completely illegal and arbitrary in as much as they sought to conduct re-auction after the completion of a successful bid and consequently direct the respondents to issue a final confirmation order in favour of the appellants permitting them to run arrack shops respectively at (i) No.3, Oduthurai of Karaikal Municipality; (ii) No.4, Kulakudy of Nedungadu Commune Panchayat; and (iii) No.5, Sorakudy of Thirunallar Commune Panchayat, from 01.7.2018 to 30.6.2019.

3. W.A.No.314 of 2019 is taken as a lead case and it would suffice to refer to the facts in that case.

4. The appellant, in pursuance of the Gazette Notification dated 04.6.2018, participated in the auction for an arrack shop. The Notification stipulated the upset price and the date of e-auction was fixed on 19.6.2018 and 20.6.2018. It appears that on 19.6.2018, there were no bidders. Consequently, the e-auction was adjourned to 22.6.2018 and the upset price already fixed was reduced by 5%. It also appears that even on 22.6.2018, there was no bidder and that the third e-auction notification was issued on 22.6.2018 fixing the date of auction as 26.6.2018 and the upset price was reduced by 10% than what was fixed in the Notification dated 04.6.2018.

5. The appellant - Thiru Sivaprakasam Nadessan participated in the said auction by quoting Rs.3,40,798/- as against the monthly upset price as the Notification provided for an action both for 12 months' upset price and monthly upset price. The appellant chose the second option and bid at the auction on

monthly basis. The offer made by the appellant appears to have been to the satisfaction of the Deputy Commissioner (Excise), who, by proceedings dated 28.6.2018, issued a provisional confirmation order.

6. It is not in dispute that in terms of the relevant Rules as well as the conditions of auction, though the Deputy Commissioner (Excise) is the concerned Authority, who has to accept the bid provisionally, the acceptance of the bid shall be by the Government and condition Nos.9 and 10 say so specifically, which read as follows :

"9. The Deputy Commissioner may reject any bid offered for any reason to be recorded in writing.

9(a). Single bid will be accepted for all arrack/toddy shop by the Deputy Commissioner (Excise) depending upon the situation.

10. The acceptance of a bid by the officer conducting the sale shall be subject to confirmation by the Government. The order of confirmation or refusal to confirm shall be communicated to the person concerned within a reasonable time."

7. After the issuance of the provisional confirmation order dated 28.6.2018, the appellant submitted a representation dated 30.6.2018 requesting for issuance of a confirmation order. This representation was taken note of and by the time the file was placed before the Government, the Deputy Commissioner (Excise), by memorandum dated 09.7.2018, informed the appellant that the offer made by the appellant was not accepted/ confirmed by the Government causing that the said bid offered in respect of arrack shop No.3, Oduthurai of Karaikal Municipality seemed to be very minimal and that the Government decided to conduct re-auction in respect of the said arrack shop in due course. The appellant was further informed that the highest bid offered by the appellant was refused as per the conditions of sale laid down in paragraph 9 and 10 of the Gazette Notification dated 04.6.2018. This memorandum dated 09.7.2018 was impugned in the writ petition.

8. The learned Single Judge, by the impugned order, dismissed the writ petition referring to paragraphs 9 and 10 of the Notification and that the only Authority to confirm the bid is the Government, which, in their opinion, did not do so for the reasons stated in the impugned order.

9. Mr.AR.L.Sundaresan, learned Senior Counsel, assisted by Mr.Madhan Babu, learned counsel on record for the appellants,

has contended that the reasons assigned in the memorandum, which was impugned in the writ petition, was wholly unsustainable since the Government themselves reduced the upset price not once but twice and that the appellant had offered a bid amount, which is Rs.4,000/- more than the upset price fixed in the Notification dated 22.6.2018. Therefore, it cannot be a case where the Government was of the view that a very minimal bid amount was received in respect of the shop in question.

10. It is the further contention of the learned Senior Counsel that nowhere in the counter affidavit, the respondents alleged cartelization, owing to which, the highest bid amount was not received. But, for the first time, during the course of arguments in the writ petitions, the learned Government Pleader raised such a contention and the same was noted by the learned Single Judge in paragraph 7 of the impugned order.

11. The learned Senior Counsel has relied upon the decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Bandeep Singh [reported in 2016 (1) SCC 724] wherein it was held that every decision of an administrative or executive nature must be a composite and self sustaining one, in that, it should contain all the reasons, which prevailed on the official taking the decision to arrive at his conclusion and that the Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. In the said decision, a celebrated judgment of the Hon'ble Supreme Court in the case of Mohinder Singh Gill Vs. Chief Election Commissioner New Delhi [reported in 1978 SCR (3) 272] was referred to.

12. It is the further submission of the learned Senior Counsel that if the reasons assigned in the memorandum, which is impugned in the writ petition, are tested, they are absolutely unsustainable. He has also relied upon the decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Yoginder Sharma Onkar Rai [reported in 1996 (6) SCC 173] to support his contention that there is a loss of revenue to the exchequer on account of repeated re-auction as there has been no payment in such cases to the Government for all these period and that the period lost cannot be compensated.

13. Mr.J.Kumaran, learned Additional Government Pleader accepting notice for the respondents has reiterated the stand taken by the learned Single Judge in the writ petitions. He would submit that the order passed by the Deputy Commissioner (Excise) in one of the cases namely the offer made by the said Mr.Sivaprakasam Nadessan was provisionally confirmed whereas in the other two cases, no such order was issued.

14. In any event, it is submitted by the learned Additional Government Pleader that it is for the Competent Authority to confirm the auction, that the Government thought fit to conduct a re-auction and that there was no error in the memoranda, which were impugned in the writ petitions and that the learned Single Judge rightly dismissed the writ petitions.

15. We have elaborately heard the learned counsel for the parties.

16. The first aspect, which we would like to deal with, is with regard to the plea of cartelization, which was raised by the respondents before the learned Single Judge. It is true that such an allegation was not made in the memoranda impugned in the writ petitions nor in the counter affidavits and it appears that for the first time, the learned Government Pleader (Puducherry) raised such a contention before the learned Single Judge during the course of arguments. The learned Single Judge noted the contentions in paragraph 7 of the impugned common order. However, we find that the learned Single Judge did not dismiss the writ petitions on such plea though there was an observation in paragraph 12 of the impugned common order that formation of syndicate causing revenue loss to the Government cannot be weighed lightly. Therefore, the learned Single Judge did not dismiss the plea raised by the appellants on the ground of cartelization though arguments were advanced by the learned Government Pleader. Thus, we are of the view that on that ground, the common order passed in the writ petitions cannot be faulted.

17. Next, we move on to consider the other argument of the learned Senior Counsel that the reasons assigned in the memoranda impugned in the writ petitions are wholly unsustainable. Admittedly, condition Nos.9 and 10 of the Gazette Notification are clear and lucid. Condition No.9 states that the Deputy Commissioner may reject any bid offered for any reason to be recorded in writing. Condition No.9(a) states that a single bid will be accepted for all arrack/toddy shops by the Deputy Commissioner (Excise) depending upon the situation. Condition No.10 states that the acceptance of a bid by the officer conducting the sale shall be subject to confirmation by the Government and the order of confirmation or refusal to confirm shall be communicated to the person concerned within a reasonable time.

18. Thus, in terms of condition No.9, the Deputy Commissioner (Excise) is entitled to reject any bid or offer for any reason to be recorded in writing. In the case of Sivaprakasam Nadessan, the Deputy Commissioner (Excise) opined that the offer made by the appellant was provisionally confirmed

on 22.6.2018. However, in the other two cases, no such provisional order of confirmation was issued. When the matter was placed before the Government, which is the Competent Authority either to confirm or reject or refuse to confirm, a decision has been taken not to confirm/ accept the offer made by the appellant, as the amount offered was very minimal.

19. It may be true that twice, re-auction was conducted and that there was a reduction of the upset price by 10% as notified in the Notification dated 22.6.2018. Merely because there has been a reduction in the upset price, it cannot be stated that the Government cannot take a decision in the interests of Revenue. It has not been disputed by the appellant that no vested right accrues in his favour merely on account of a participation in the auction. Furthermore, the provisional confirmation order issued in favour of the appellant does not confer any right, as the provisional confirmation order has to be confirmed by the Government. Therefore, to state that there is arbitrariness in the decision and that the decision is sought to be sustained by the respondents on other grounds are all arguments only to be rejected.

20. So far as the decision in the case of Bandeep Singh is concerned, the auction notice issued by the Managing Director of Punjab State Leather Development Corporation Limited was for auctioning several properties and interested persons were required to deposit a sum of Rs.2 lakhs as earnest money. The two respondents therein (writ petitioners) deposited earnest money together with 25% of the auction bids, which, admittedly, were only marginally above the reserve price. In the said case, there appears to be a complaint given by the third party. The Managing Director found that the offers given by the respondents therein (writ petitioners) were higher than the reserve price and forwarded the offers to the Government for its approval through the Director of Industries and Commerce. But, the bids were not accepted as they were marginally higher than the reserve price. The correctness of the decision by the High Court was tested by the Hon'ble Supreme Court wherein it was pointed out that the order refusing to accept the bid has to be a composite and self sustaining one and that the reasons cannot be added to support the order in the form of a counter affidavit. Before the Hon'ble Supreme Court, the plea of cartelization was strenuously canvassed, for which, the Hon'ble Supreme Court pointed out that it was not a reason for refusing to accept the offer. After taking a decision on the factual aspect on the above lines, in paragraph 8 of the judgment, the Hon'ble Supreme Court pointed out the general principles, which would be of relevance to the case on hand. It will be beneficial to refer to the said paragraph, which reads thus :

"In the impugned judgment, the High Court has rightly concluded that no sustainable justification and rationalization was recorded in writing at the relevant time for ordering the re-auction of only the two subject properties. However, we should not be understood to have opined that the Government is bound in every case to accept the highest bid above the reserve price. Needless to say, the presence of cartelization or "pooling" could be a reason for the cancellation of an auction process. In addition, a challenge on the ground that the property has fetched too low a bid when compared to the prevailing market price, would also be valid and permissible provided this approach has been uniformly adhered to. In the case at hand, however, while the latter was ostensibly the reason behind the decision for conducting a fresh auction, no evidence has been placed on the record to support this contention. The highest bids, marginally above the reserve price, have been accepted in the self-same auction. The factual scenario before us is clearly within the mischief which was frowned upon in Mohinder Singh Gill. We, therefore, uphold the impugned judgment for all the reasons contained therein. The assailed action of the Appellant is not substantiated in the noting, which ought at least to have been conveyed to the respondents."

21. As pointed out by the Hon'ble Supreme Court, there cannot be a universal rule that the Government is bound, in every case, to accept the highest bid above the reserve price and if there is cartelization or pooling, it would be a valid reason for cancellation of the auction process. It was also pointed out that a challenge on the ground that the property has fetched too low a bid, when compared to the prevailing market price, would also be valid and permissible provided this approach has been uniformly adhered to.

22. Coming to the facts of the case on hand, we find that when the respondents' specific contention in the counter was that the other shops, which were put to auction, fetched between 30% and 133% above the upset price, the Government adopted a uniform approach. The reasons assigned by the respondents stating that the bid offered was very minimal and comparatively

low would be a valid ground for cancelling the auction and ordering for re-auction. Therefore, the decisions relied upon by the appellant, in fact, are supporting the case of the respondents.

23. In the decision in the case of Yoginder Sharma Onkar Rai, it was pointed out that loss to the State Exchequer is a factor, which had to be taken into account in genuine cases, that finality of auctions must also be recognised to be in the interests of the exchequer and that if auctions are set aside and re-auctions ordered on less than satisfactory material, the loss of the exchequer would be far greater. We are of the considered view that this decision would be of no assistance to the case of the appellant because the reason for not confirming the offer given by the appellant was on the ground that it was minimal and too low.

24. Therefore, there can be no gainsaying that the Government was bound to accept the offer merely because, on two earlier occasions, the Department had to reduce the upset price. In our considered view, it is the respondents, who will have to take a decision as to what would be the bid amount, which has to be accepted in the interests of the Revenue. Admittedly, we find that there is no arbitrariness in the decision making process, which alone can be tested in a writ petition under Article 226 of The Constitution of India. Furthermore, there is no allegation of mala fide made by the appellant against any of the officials. Thus, we fully subscribe to the view taken by the learned Single Judge.

25. Accordingly, the writ appeals fail and are accordingly dismissed. No costs. Consequently, the connected CMPs are also dismissed.

Sd/-

Assistant Registrar (CCCC)

//True copy//

Sub Assistant Registrar

Rs

To

- 1.The Chief Secretary to Government of Puducherry, Puducherry-4.
- 2.The Deputy Commissioner (Excise), Office of the Government of Puducherry, Puducherry-5.

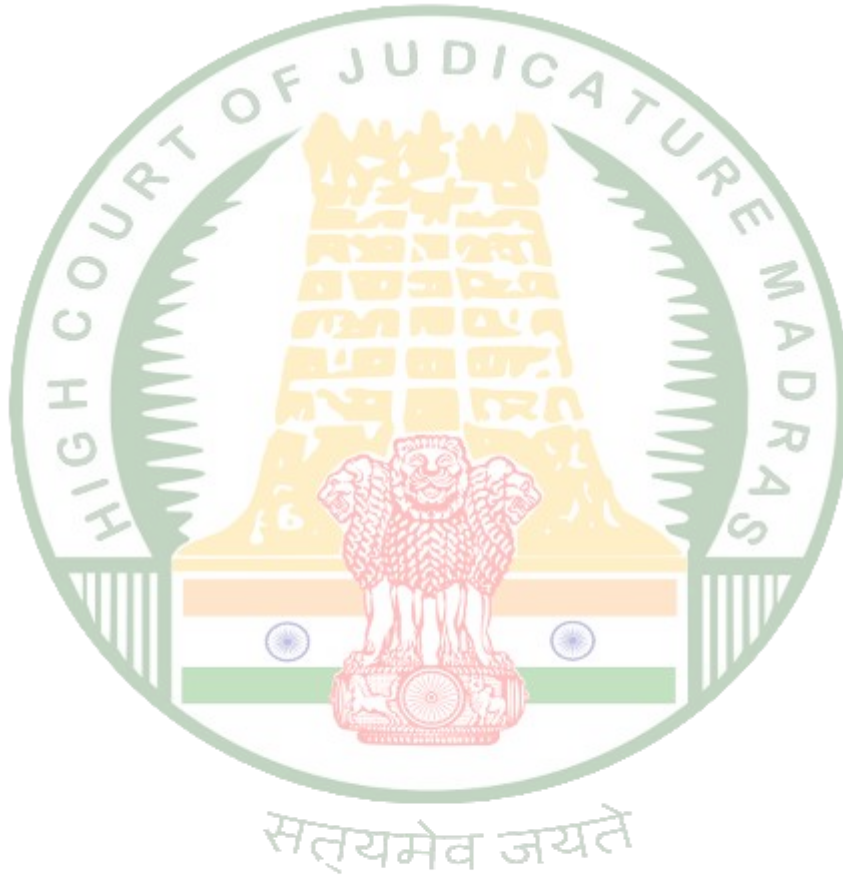
3.The Deputy Commissioner (Excise), Excise Department,
Karaikal-609602.

+3ccs to Mr.R.Parthasarathy, Advocate SR.No.9614

+1cc to Government Pleader(P) SR.No.9968

WA.No.314 of 2019
etc. cases

RV(CO)
GMY(01/03/2019)



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