

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2019

PRONOUNCED ON : 25.06.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.6066 of 2019 and
W.M.P.No.6889 of 2019

Chinna Ponnu

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Petitioner

Vs

Executive Officer,
Selection Grade Town Panchayat,
Palacode,
Dharmapuri District.

...

Respondent

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the respondent to renew the petitioner's contract for maintenance of public lavatory at Palacode Bus stand,, Palacode, Dharmapuri District for the remaining period of 2019-2020 in consonance of Clause No.10 of the general terms and conditions of tender notification dated 20.01.2017 Ref.No.Na.Ka.50/2017/A1 by considering the representation dated 04.02.2019 submitted by the petitioner.

For petitioner : Mr.R.Ramesh Raja
For Respondent : Mr.D.Suriyanarayanan,
Additional Government Pleader

ORDER

Seeking a direction to the respondent to renew the petitioner's contract for maintenance of public lavatory at Palacode Bus stand, Palacode, Dharmapuri District, for the remaining period of 2019-2020 in consonance of Clause No.10 of the general terms and conditions of tender notification dated 20.01.2017 Ref.No.Na.Ka.50/2017/A1 by considering the representation dated 04.02.2019 submitted by the petitioner, the petitioner is before this Court with this writ petition.

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

3.The writ petitioner is the successful bidder for the tender floated by the respondent for the maintenance of public lavatory located at Palacode bus stand, Palacode for the year 2017-18. As per the tender condition, the contract is renewable for subsequent year on 5% enhancement on the existing tender amount. This option of seeking enhancement is for two years

provided, the bidder can exercise the option on or before 31st December of the year.

4.The petitioner contents that she participated in the tender as per the notification dated 20/01/2017. She was declared as the successful bidder and awarded the contract of maintaining the public lavatory located at Palacode bus stand, Palacode, for the period from 01/04/2017 to 31/03/2018. The contract was renewed for a further period of one year after payment of enhanced lease amount. The said lease period was from 01/04/2018 to 31/03/2019. For the second extension, she should exercise the option on or before 31/12/2018. However, due to water scarcity from the month of June 2018, she found it difficult to maintain the lavatory located at Palacode bus stand, Palacode. So, she requested the respondent to solve the water problem. But, the respondent failed to provide adequate water. Hence, the petitioner was forced to purchase water from the private vendors and meet the demand. While so, as per clause 10 of the tender condition, when the respondent issued notice dated 22/12/2018 to pay the enhanced lease amount and get the lease renewed for further period of one year starting from 01/04/2019, she has submitted a detailed representation expressing her difficulty in paying the lease amount on or before 31/12/2018, in view of water scarcity and requested to extend the lease without demanding money and also to arrange for water.

5.The respondent has filed a counter affidavit wherein, it is stated that, as per the tender conditions, the petitioner has to make own arrangement for water and the respondent is not obliged to supply water. Further, for extension of lease for the second term, request for extension along with payment ought to be made on or before 31/12/2018. Having failed to make payment, the respondent has no other option but to call for fresh tender. The allegation that the petitioner incurred loss in the previous year, so, she should be given extension of lease for further period of one year without demanding any lease amount, is contrary to law.

6.The documents furnished by the petitioner indicate that she was the highest bidder quoting Rs.9,51,000/- for maintenance of lavatory at Palacode Bus stand for the year 2017-18. She has opted for extension for further period of one year as per clause 10 of the tender condition and got the lease extended till 31/03/2019 on payment of enhanced lease amount of Rs.9,98,550/-. In her representation, dated 04/02/2019, the petitioner has requested the respondent to extend the lease taking note of the alleged loss she incurred due to water scarcity.

7. Under Clause 10 of the tender, extension of lease is subject to the condition that the existing lessee should agree to enhance the existing lease amount by 5% and pay the same on or before 31/12/2018. Admittedly, in this case, the petitioner who is entitled to get lease extended for the accounting year 2019-2020 has not opted for extension within the time prescribed. Even now, in her representation dated 04/02/2019, which is *per se* beyond the time limit prescribed under clause 10, the petitioner has not come forward to enhance the lease amount by 5% which is pre condition for extension.

8. The respondent herein through notice dated 22/12/2018 (wrongly shown as 22/12/2017 though the date is rightly mentioned as 22/12/2018 below the signature of the respondent) has demanded the petitioner to pay a sum of Rs.12,61,674/- as lease amount for the accounting year 2019-20 payable on or before 31/12/2018. This demand is made as per Clause 10 of the tender. This Court finds no error or illegality in it. Therefore, the petitioner cannot seek for extension of lease without payment of the enhanced lease amount since, she incurred loss in the last year due to water scarcity.

9.The tender condition Clause 31 clearly states that, the lessee has to maintain the premises clean and tidy, at their own cost. While so, the reasons stated by the petitioner in her representation seeking extension is untenable and not in consonance to the conditions mentioned in Clause 10 of the tender.

10.In view of the above discussions, it is held that the petitioner cannot seek for the partial enforcement of Clause 10 of the tender condition. The privilege of extension of lease period is subject to payment of enhanced lease amount. If the petitioner opts to exercise the right under Clause 10 of the tender, she has to pay the enhanced lease amount demanded as per the said Clause. Citing loss in the previous year due to water scarcity cannot be a reason for refusal to pay the enhanced lease amount.

11.In fine, the respondent is at liberty to proceed with the tender process, if already commenced. In case, the respondent has not so far commenced the tender process, he may consider extension of lease in favour of the petitioner for the year 2019-2020. This is subject to the compliance of other tender conditions and only if the petitioner makes request within 15 days from today along with the lease amount demanded under the notice dated 22/12/2018.

12. With the above directions, the writ petition is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

25.06.2019

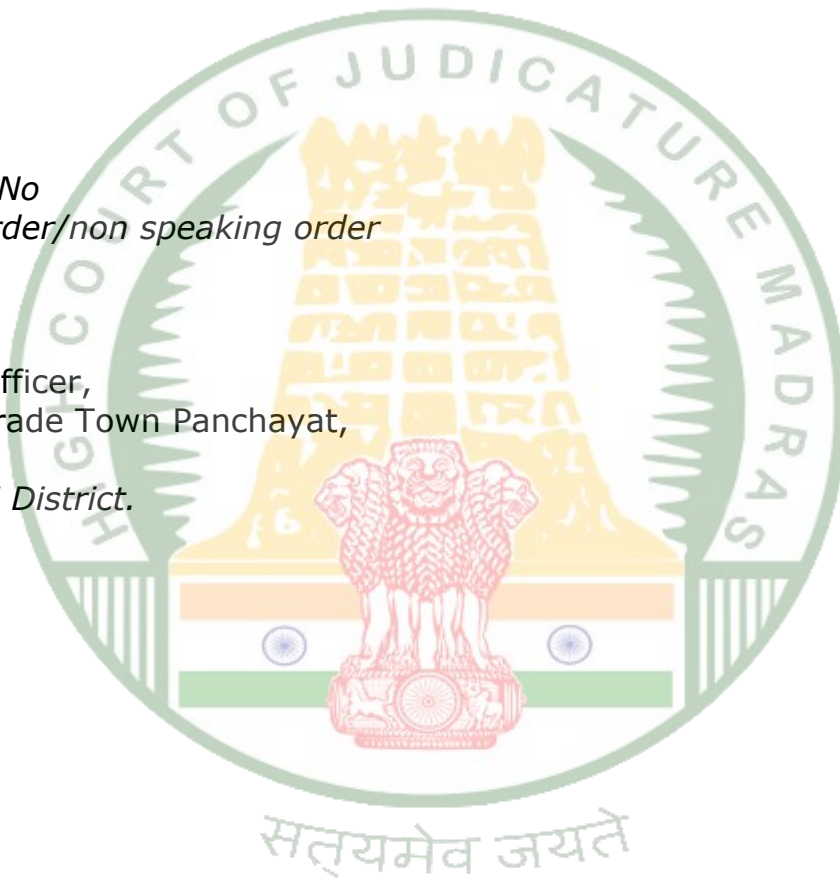
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Index: Yes/No

Speaking order/non speaking order

To

Executive Officer,
Selection Grade Town Panchayat,
Palacode,
Dharmapuri District.



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G.JAYACHANDRAN.J.,

jbm



Pre delivery Order made in
W.P.No.6066 of 2019

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25.06.2019