

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.17932 to 17934 of 2018
and W.M.P.Nos.21232 to 21237,
30963, 30970 and 30971 of 2018

Sivaprakasam Nadessan .. Petitioner in W.P.No.17932/18

V.Moorthy .. Petitioner in W.P.No.17933/18

A.Maran .. Petitioner in W.P.No.17934/18

Vs.

1. Government of Puducherry
rep. by the Chief Secretary to Government,
Puducherry-605 004.
2. Deputy Commissioner (Excise),
Office of the Government of Puducherry-605 005.
3. The Deputy Commissioner (Excise),
Excise Department,
Karaikal-609 602. ... Respondents in all W.Ps

* * *

PRAYER : Writ Petitions filed under under Article 226 of the Constitution seeking to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent in relation to the notification bearing Ref.No.5531/DCE/C2/2018-2019, dated 09.07.2018, 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 petitioners permitting them 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 No.4-Kulakudy of Nedungadu Commune Panchayat ; from 01.07.2018 to 30.06.2019.

* * *

For Petitioner in : Mr.Madhan Babu
all these W.Ps

For Respondents : Mr.A.Gandhiraj,
in all these W.Ps GovernmentPleader
(Pondicherry)
assisted by Mr.D.Ravichander,
AdditionalGovernmentPleader (Pondy)

C O M M O N O R D E R

Challenge is laid in these writ petitions to the notification...s issued by the third respondent to conduct re-auction of arrack shops for the period from 01.07.2018 to 30.06.2019. The further prayer is to direct the respondents to issue a final confirmation order in favour of the petitioner to run the shops for the said period.

2. The background facts, as projected by the petitioner in W.P.No.17932 of 2018, are as follows :

(i) On 04.06.2018, the Government of Puducherry issued a notice of sale of arrack and toddy shop licences for the period from 01.07.2018 to 30.06.2019 with certain terms and conditions. The petitioner submitted his bid for one of the shops, i.e., Shop No.3, Oduthurai of Karaikal Municipality. The monthly upset price was fixed at Rs.3,73,183/-.

(ii) Originally, the date for the auction of arrack and toddy shops was fixed on 19.06.2018 and 20.06.2018 respectively. Since there were no bidders for some shops, the second respondent issued notification dated 22.06.2018 reducing the upset price by 10% for the shops, where no bid was filed and scheduled the auction on 26.06.2018. Accordingly, the upset price came down to Rs.3,36,798/-. In the auction held as scheduled on 26.06.2018, the petitioner was declared as successful bidder, having made bid for a sum of Rs.3,40,798/-.

(iii) Pursuant to the opening of bid, the petitioner was issued with the confirmation letter dated 28.06.2018 by the third respondent permitting him to run the arrack shop from 01.07.2018 with certain terms and conditions. By virtue of the said order, a Bank Guarantee, a lease agreement, a mortgage agreement, etc. were sought to be furnished by the petitioner. When the petitioner was taking steps for furnishing the said documents, the third respondent asked him to return the confirmation order dated 28.06.2018 under the premise of carrying out certain corrections of typographical errors. The petitioner, thus, handed over the order to the third respondent and was awaiting for the issuance of the corrected order copy. But there is no response from the third respondent. Hence, the

petitioner sent a letter dated 30.06.2018 seeking permission to commence the business from 01.07.2018 and sought revised confirmation order.

(iv) While so, the respondents issued the impugned notification for conducting re-auction of the arrack shop. Hence, he is before this Court in W.P.No.17932 of 2018 with the aforesaid prayer.

3. The petitioner in W.P.No.17933 of 2018 participated in the same tender for another arrack shop, i.e., Shop No.5 in Sorakudy, Thirunallar. Though he became the successful bidder, without issuing him any confirmation order, the respondents sought to issue the impugned notification for re-auction. Hence, he filed the said writ petition.

4. Similarly, the petitioner in W.P.No.17934 of 2018 is the successful bidder for the arrack Shop No.4 in Kulakudy, Nedungadu, but the respondents issued impugned re-auction notification. Hence, he is before this Court with the said writ petition.

5. Refuting the allegations of the petitioners a common counter-affidavit is filed by the respondents. It is claimed by the respondents that originally the auction for arrack as well as toddy shops were conducted on 19.06.2018, pursuant to the notification dated 04.06.2018, however, based on the request of some of the bidders, on 22.06.2018 auction was conducted for both arrack and toddy shops, after reducing the upset price by 5%. The respondents submitted that out of 25 arrack shops and 26 toddy shops, bids were received for 18 arrack and 19 toddy shops from the registered participants and the bid amount went upto 130% above the upset price. Again by reducing 5% upset price, auctions were held for 6 arrack shops and 8 toddy shops on 26.06.2018, in which, the respondents had received bids for four arrack shops and one toddy shop. All the successful bidders have been issued with the provisional orders, subject to the conditions of the notification dated 04.06.2018. The tender proceedings were forwarded to the Government for approval. It is claimed by the respondents in the counter that the order issued to the petitioner in W.P.No.17932 of 2018 is only an provisional order and it is not a confirmation order and the other petitioners have not been issued with any order. Since the entire process is being conducted in accordance with law, the respondents sought dismissal of these writ petitions.

6. Learned counsel for the petitioner submitted that the respondents having revised the upset price inducing the petitioners to participate in the bid, now cannot claim that the price quoted by the petitioner is low. It is his submission that the third respondent without even recalling or cancelling

the confirmation order issued to one of the petitioners, had chosen to issue the impugned notification as per the directions issued by the second respondent, which is against the very tender conditions. He contended that though the State/respondents have power to choose its course of action in relation to the contract and tender, those actions should be fair and within the four corners of law. It is his further submission that having chosen to minimize the upset price inducing the petitioner to bid and having issued the confirmation order, the respondents are estopped from re-auctioning the same shops and the impugned auction of the respondents is liable to be interfered with for violation of the constitutional rights conferred on the petitioners as well as the principles governing the field.

7. Relying on the provisions of the Pondicherry Excise Act, 1970 and the Pondicherry Excise Rules, 1970 (in short, "the Rules"), more particularly, Rule 154 and 155 of the Rules, learned Government Pleader (Puducherry) contended that the respondents have exercised the powers conferred upon them to reduce revenue loss and to generate income to the exchequer and there is no violation of any statutory rules and procedures. It is his submission that though the bidding prices of the shops, that were given in the tender, are between 30% and 133% above the upset price, the petitioners herein and some other people formed a syndicate persuading others to bid low amount causing revenue loss to the Government. Hence, the learned Government Pleader contended that these petitions filed with ill-motive are liable to be dismissed.

8. This Court considered the rival submissions of either side and perused the materials available on record.

9. The facts are not in dispute. Admittedly, the petitioners participated in the tender and declared as successful bidders. In fact, one of the petitioners was issued with a provisional order granting permission to run the arrack shop. However, when the files are placed before the Government in accordance with Rule 155 of the Rules, the Government directed to conduct re-auction. Hence, the impugned notifications were issued.

10. At this juncture, it is to be stated that Rule 154 of the Rules confers power on the Deputy Commissioner to postpone and reject the auction, by recording reasons in writing for doing so. Rule 155 mandates that the provisional acceptance by the Deputy Commissioner shall be submitted to the Government through the Commissioner for confirmation and the Government shall confirm or refuse to confirm the action of the Deputy Commissioner. The said provisions have suitably been incorporated in the notification in paragraphs 9 and 10

respectively and based on the same the impugned action has been taken by the respondents. The petitioners have not laid any challenge to the said provisions. Hence, they cannot question the impugned notifications.

11. Further, it is clearly stated in the impugned notifications that the bid amounts of the petitioners seem to be very minimal and hence, the Government decided to conduct re-auction. The same cannot be given any different colour by the petitioners.

12. When the other shops brought under the tender process fetched between 30% and 133% above the upset price, the argument of the learned Government Pleader (Puducherry) that the petitioners and some other people formed a syndicate persuading others to bid low amount and thus, caused revenue loss to the Government cannot be weighed lightly.

13. A reading of the judgments relied on by the learned counsel for the petitioner in F.C.I. V. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71 and State of Punjab V. Bandeep Singh and others, (2016) 1 SCC 724, would go to show that they are factually distinguishable from the facts of the case on hand. Hence, those judgments are of no use to the petitioners.

14. It is not the case of the petitioners that they are barred from participating the re-auction. In such a scenario, even now it is open to the petitioners to participate in the re-auction and submit their bids.

15. With the above directions, these Writ petitions are dismissed as devoid of merits. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

सत्यमेव जयते Assistant Registrar(CS III)

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Sub Assistant Registrar

To

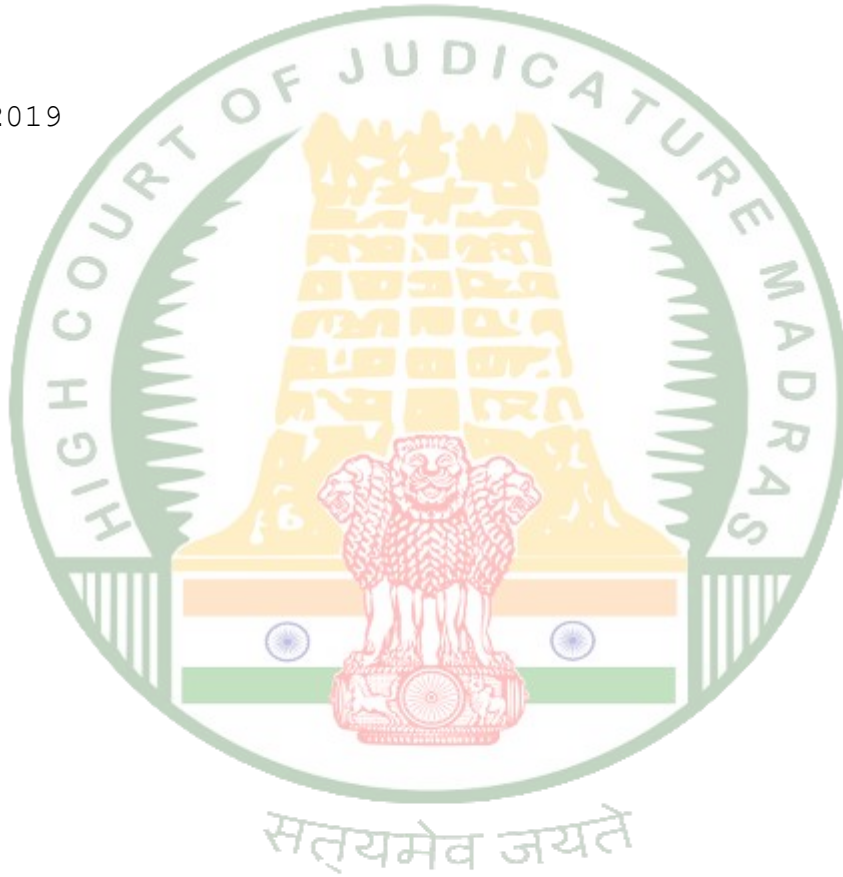
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Karaikal-609 602.

+3 ccs to M/s.R.Parthasarathy Advocate sr 4865
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W.P.Nos.17932 to 17934 of 2018

gsp25/01/2019



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