



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.6777 of 2019

and

W.M.P (MD) .Nos.5420 and 5421 of 2019

M.Kuthalingam

... Petitioner

Vs

1. The Director of Town Panchayat
Directorate of Town Panchayats,
4th Floor, Kuralagam Buildings,
Chennai-108.
2. The District Collector,
Tirunelveli District,
Tirunelveli.
3. The Assistant Director of Town Panchayats,
Tirunelveli District,
Tirunelveli.
4. Courtallam Special Grade Town Panchayat,
rep., by its Executive Officer,
Courtallam, Tirunelveli District.

5.Sethuramalingam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice dated 07.03.2019 in Na.Ka.No.50/2019/A1 issued by the fourth respondent quash the same and direct the fourth respondent to conduct re-auction for item No.1 in RE-Auction Notice dated 01.03.2019 issued by the fourth respondent in Na.Ka.No.50/2019/A1 for issuance of License to collect Car Parking Fee at Five Falls forthwith.

For Petitioner : Mr.M.Saravanan

For R1 to R4 : Mr.M.Rajarajan

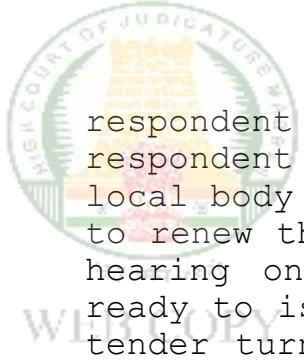
Government Advocate

For R5 : Mr.ARL.Sundaresan

Senior Counsel for Mr.S.Srinivasaraghavan

ORDER

The writ petition pertains to issuance of license to collect car parking fee at five falls in Courtallam. The fourth respondent issued the auction/tender notification dated 14.02.2019 inviting tenders from the willing participants. The writ petitioner herein, namely, M.Kuthalingam was one of the tenderers. The fifth



respondent viz., Sethuramalingam was also a tenderer. The fifth respondent herein filed W.P(MD).No.4686 of 2019 for forbearing the local body from conducting any public auction and for directing them to renew the lease in his favour. When the matter was taken up for hearing on 14.03.2019, it was submitted that the local body was ready to issue license in favour of the said Sethuramalingam as his tender turned out to be a highest. Recording the said submission, W.P(MD).No.4686 of 2019 was closed. Thereafter, Thiru.M.Kuthalingam has filed the present writ petition questioning the notice dated 07.03.2019 and for directing the local body to conduct re-auction.

2. The learned counsel appearing for the writ petitioner herein pointedly argued that the tender process was not conducted in a transparent manner. He submitted that the auction date was fixed on 01.03.2019. On the said date, the Executive Officer announced that the upset price will be at Rs.50,00,000/- (Rupees Fifty Lakhs only). Since nobody was willing to match the said offer, it was reduced to Rs.40,00,000/- (Rupees Forty Lakhs only). Even then, offers were not forthcoming. Therefore, the Executive Officer adjourned the proceedings to 08.03.2019. This was duly published in the Media also. On 08.03.2019, a notification was issued to the effect that on account of the pendency of O.S.No.103 of 2019 on the file of the Principal Subordinate Court, Thenkasi and on account of the administrative grounds, auction stood again adjourned. It is this notice dated 07.03.2019 adjourning the proceedings. That is assailed in this writ petition.

3. The learned counsel appearing for the writ petitioner also stated that the petitioner herein is ready to offer a sum of Rs.40,00,000/- to take the license.

4. I am not persuaded by the submissions of the learned counsel appearing for the petitioner. As rightly pointed out by the learned Senior Counsel appearing for the fifth respondent, notice dated 14.02.2019 was very clear. The authority proposed to hold to tender-cum-auction. After the auction is concluded, the tenders are to be opened and based on the highest sum quoted, the license would be issued. In this case, due to certain reasons, the authority had adjourned the auction proceedings to 08.03.2019. Again another notice was issued on 07.03.2019 indicating the adjournment of the proceedings without specifying the next date. But, the fact remains that the tender will have to be opened only after the auction is over. That is the clear purport of the notification dated 14.02.2019. In this case, the writ petitioner had consented for opening the tenders. The writ petitioner in paragraph No.4 of the affidavit filed in support of the writ petition has asserted that he had quoted the highest bid at Rs.35,35,355/- (Rupees Thirty Five Lakhs Thirty Five Thousand Three Hundred and Fifty Five only). As records would indicate this is not a correct statement. The fifth respondent/Sethuramalingam had tendered a sum of Rs.36,50,655/- (Rupees Thirty Six Lakhs Fifty Thousand Six Hundred and Fifty Five only). Admittedly, the proceedings had taken place in the presence



of the writ petitioner. Therefore, I fail to understand as to how the writ petitioner could make a statement that his tender amount was the highest. It is not correct. The fifth respondent/Sethuramalingam's tender was the highest.

5. The learned counsel appearing for the writ petitioner would claim that the fifth respondent/Sethuramalingam's tender documents were subsequently cooked up. But then in the affidavit filed in support of the writ petition, the writ petitioner has not mentioned what was the tender made by the fifth respondent. Therefore, I reject this argument.

6. As rightly pointed out by the learned Senior Counsel appearing for the private respondent, even though the proceedings were adjourned from 01.03.2019 to 08.03.2019 on account of the civil proceedings pending before the Principal Subordinate Court, the authority could not hold any auction on the said date also. At the same time, since the earlier licence period was going to expire shortly, they had to take a call in the matter. Therefore, the fourth respondent decided to go by the highest tender and hence, issued the license in favour of the fifth respondent. The tender notice dated 14.02.2019 had spelt out the sequence of events to be adopted. First the auction must be held that should be followed by the opening of tender. In this case, auction proceedings were actually conducted on 01.03.2019. In view of the stand taken by the fourth respondent, none of the participants made any bid. On 01.03.2019, the authority erred in adjourning the proceedings. In fact, such an adjournment ought not to have been made at all. When the authorities issued a notification in the matter of awarding license, they must strictly adhere to the procedure set out in the notification. Therefore, I hold that the authority is to be faulted for causing confusion by adjourning the matter. The authority categorically asserts before me that the fifth respondent's tender was higher than the writ petitioner. Therefore, I find no merit in the writ petition and the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

sd/

Assistant Registrar(CS-IIII)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Director of Town Panchayat
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4th Floor, Kuralagam Buildings,
Chennai-108.



2. The District Collector,
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Tirunelveli.

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4. Courtallam Special Grade Town Panchayat,
rep., by its Executive Officer,
Courtallam, Tirunelveli District.

+1 CC to Mr.R.SUBRAMANIAN, Advocate (SR-57616[F] dated 29/03/2019)

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-57711[F] dated
29/03/2019)

+1 CC to SPL GP (SR-57913[F] dated 29/03/2019)

W.P. (MD) No. 6777 of 2019

28.03.2019

RMK

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