

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.11576 of 2020
and

W.M.P.Nos.14179, 14182 & 14185 of 2020

A.MaruthuPandiyan

... Petitioner

Vs.

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
Represented by its Chairman,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 3.The Superintending Engineer,
Chennai Metropolitan Development Authority,
Constructions Wing,
Tower II, 9th Floor,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

4.N.Karthik

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in respect of allotment order made in favor of the 4th Respondent in his communication in Lr.No.SE-I/CW/PAIV/1224/2018 dated 04.08.2020 and to quash the same and further direct the Respondents 1 to 3 to conduct the Public Auction for the petitioner to bid for the outright purchase for the godown in shop No.VN-124 situated at Koyambedu Wholesale Market Complex, Koyambedu, Chennai - 600 107, as per the Tender Document dated 28.11.2019 uploaded by the 2nd Respondent.

For Petitioner : Mr.M.Raja Sekhar

For R1 to R3 : Mr.P.H.Arvinth Pandian
Additional Advocate General
assisted by Mr.Karthik Rajan,
Standing Counsel (CMDA)

For R4 : Mr.B.L.Jayakandan

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)

The petitioner had applied for Godown-VN-124 for the outright purchase under Auction-cum-Tender by means of online application. The minimum upset price for the said godown had been fixed as Rs.5 Crores and 20 Lakhs and one of the conditions of the Auction-cum-Tender is that 20% of the said amount should be remitted as Initial Deposit and accordingly, the petitioner has remitted a sum of Rs.1 Crore and 2 Lakhs. The last date for downloading the tender document had been fixed from 28.11.2019 to 06.01.2020 and the filled price bid has to be deposited in the office of the 3rd respondent from 07.01.2020 to 08.01.2020 up to 05.00 p.m. The petitioner downloaded the said application from the website of the respondents on 06.01.2020 at about 03.01 p.m. and after obtaining the Demand Draft for the Initial Deposit, along with enclosures, has submitted the same.

2.Mr.M.Raja Sekhar, learned counsel appearing for the petitioner, would submit that, subsequently an Addendum was published in the morning hours of 06.01.2020 stating additional conditions and the additional conditions have also been fulfilled by the petitioner, though a perusal of the affidavit filed in support of this writ petition does not specifically disclose the said point. The petitioner was shocked and surprised to know that the 4th respondent was declared as the successful bidder and challenging the said communication dated 04.08.2020 issued by the 3rd respondent, the petitioner came forward to file this writ petition for further direction directing the respondents 1 to 3 to conduct public auction in respect of the bid submitted by the petitioner for the outright purchase of the godown in Shop No.VN-124 situated at Koyambedu Wholesale Market Complex, Koyambedu, Chennai - 600 107, as per the tender document dated 28.11.2019 uploaded by the 2nd respondent. The writ petition was entertained.

3.The primordial submission made by the learned counsel for the petitioner is in the light of the fact that the petitioner fulfilled the terms and conditions of the tender document as well as the Addendum dated 06.01.2020 in all

respects and his bid has also been submitted and admittedly, the tender documents were opened only on 31.07.2020, and though one of the conditions of the tender was that the tenderers should be present at the time of opening of the tenders, the petitioner was not informed of the same and he would further add that the respondents 1 to 3 acted in an arbitrary and biased manner and had knocked down the bid in favour of the 4th respondent, though the petitioner had quoted a higher bid and consequently, the respondents are also put to some loss and hence, prays for interference.

4.Mr.P.H.Arvinth Pandian, learned Additional Advocate General, assisted by Mr.Karthik Rajan, learned Standing Counsel for CMDA, would submit that, though as per the Addendum, Income Tax Returns of the individual/company for the last three years, i.e. 2017-2018, 2018-2019, 2019-2020 have to be furnished, the petitioner did not furnish the Income Tax Returns for the year 2019-2020, whereas he has furnished the Income Tax Returns only for the years 2016-2017, 2017-2018 and 2018-2019 and rest of the conditions were eschewed by the petitioner. Since the tender application submitted by the 4th respondent was complete in all respects, the bid was knocked down in his favour and it is the further submission of the learned Additional Advocate General that, though the petitioner alleges arbitrary, mala fide and element of bias against the official respondents, making mere averments will not do, unless they are supported by substantial materials and admittedly, the petitioner has failed to place any material in support of the said averments and prays for dismissal of the writ petition with costs.

5.This Court also heard Mr.B.L.Jayakandan, learned counsel appearing for the 4th respondent, who would submit that, in the light of the fact that the 4th respondent offered the highest bid, by adopting a fair and transparent procedure, the bid was knocked down in his favour.

6.The original files have also been submitted before this Court for perusal. This Court also perused the same.

7.A perusal of the filled-up downloaded application filed by the petitioner would disclose among other things that he had enclosed the Income Tax Returns for the years 2016-2017, 2017-2018 and 2018-2019 and he had not furnished the Income Tax Returns for the year 2019-2020.

8.It is relevant to extract the Addendum :

'1.The Individual/Company/Partners in the company should not be a defaulter in making payment to any Govt. Department/Undertaking/Boards.

2.The Application made by company/individual

should have been in existence already in the perishable trade for the past 5 years as on December 2019 for running the godown,

3.The tenderer should not be a licence holder of Market Management Committee, Koyambedu Wholesale Market Complex.

4.Income Tax assessment statement of Individual/Company for the last three years 2017-18, 2018-19, 2019-20 should be furnished.

5.The applicants applying for VN-124 and VG-88 should furnish the above details on or before 23.01.2020 to qualify for allotment.''

9.In the considered opinion of this Court, the petitioner appears to have fulfilled the condition (4) of the Addendum partly and did not comply with the conditions 1 to 3. No specific averment has been made in the affidavit filed in support of this writ petition as to the compliance of the above said conditions. A perusal of the original files establishes that the online application submitted by the petitioner also did not disclose the said fact and as such, the arguments advanced for allowing the prayer of the writ petition cannot be sustained.

10.This Court has also perused the note files of the 1st respondent and it would disclose that, in respect of Shop No.VN-124, the 4th respondent alone was the eligible tenderer and when this Court has posed a specific query to the learned Additional Advocate General as to whether it was the second or third auction in respect of the said godown, the learned Additional Advocate General, on instructions, would submit that it was the first tender. The best business practice normally requires that, in respect of the first tender-cum-auction, if there is only one bidder, normally a fresh tender-cum- auction would be invited and further one also, and thereafter, a call will be taken to finalise the said tender. But in this case, at the first instance itself, the tender was knocked down in favour of the 4th respondent. Though the tender floating authority is vested with all powers to appraise, evaluate and accept the tender, the fact remains that the respondents deal with public and therefore, their endeavor should be to obtain the best possible price and this Court hopes and trusts that the said kind of practice may be adopted by them atleast in future in respect of tender-cum-public auctions.

11.In the light of the reasons assigned above, this Court finds no merit in this writ petition.

12.Though it is one of the conditions stipulated in the tender that, in respect of the rejected tenders, 10% of the

amount deposited will be forfeited, in the light of the fact that no specific rejection order has been passed and an Initial Deposit has been made by the petitioner to the 2nd respondent and in the light of the facts and circumstances of the case, this Court directs the 2nd respondent to refund the Initial Deposit without interest in favour of the petitioner, within a period of three weeks from the date of receipt of a copy of this order.

This writ petition is dismissed subject to the above observations. However, considering the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
2. The Chief Executive Officer,
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Tower II, 9th Floor,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+1cc to Mr.Rajasekar advocate sr 36241
+1cc to Mr.Jayakandan advocate sr 36252
+1cc to Mr.Velmurugan advocate sr 36413

W.P.No.11576/2020

MG (CO)
SP (20/11/2020)