



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2020

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P. (MD)No.17413 of 2019

K.K.P.Vijayan

.. Petitioner

vs.

The Commissioner,
Thoothukudi Corporation,
Corporation Office,
Thoothukudi.

.. Respondent

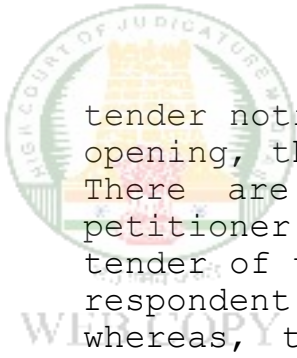
Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondent to issue licence for the period of 2019 to 2022 in favour of the petitioner as a successful bidder of tender conducted in respect of the two wheeler parking, new bus stand campus, Thoothukudi Corporation by accepting the highest bid amount of Rs.8,24,950/- as fixed at the time of conducting tender scheduled on 15.07.2019.

For Petitioner : Mr.J.Ashok

For Respondent : Mr.Saji Bino

ORDER

The petitioner is the successful bidder of the tender conducted in respect of two-wheeler parking in the bus stand campus, Tuticorin Corporation for the period from 01.08.2019 to 31.07.2022, but was not given the award and the consequential licence. The petitioner also was a licence holder from the period between 2016-2019, having been the successful bidder for the tender floated by the Tuticorin Corporation. The said licence period expired on 31.03.2019 and subsequently, the respondent had extended the same on 29.03.2019 in proceedings A16/004741/2015 by directing the petitioner to pay additional charges for the extended period of four months. Accordingly, the lease period was extended till 01.08.2019. The said cycle stand also has CCTV coverage and there is also manual patrolling. While so, the respondent had invited tender in Na.Ka.No.A16/0029/2018 by publishing it in a vernacular daily and fixing the date of tender as 15.07.2019. The tender notification contains 16 items of tender particulars, including deposit amount, additional deposit amount etc. The petitioner also had participated by making the deposit amount of Rs.1,30,000/- as required in the



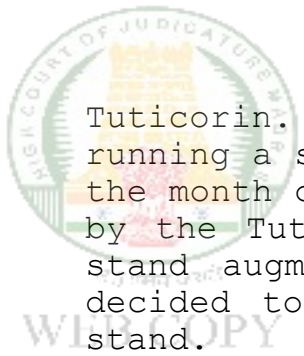
tender notification. On 15.07.2019, on the date fixed for the tender opening, the petitioner was present in the office of the respondent. There are only totally two persons viz., S.Murugavel and the petitioner himself, who had participated in the auction for the tender of the two wheeler parking in the new bus stand campus of the respondent Corporation. The said Murugavel had offered Rs.5,25,000/- whereas, the petitioner herein had offered Rs.8,24,950/-. As the petitioner offered highest amount, he was declared as successful bidder in the said auction. As per the tender condition, the successful bidder has to pay the auction amount within a period of seven days from the date of tender. Accordingly, the petitioner, being the successful bidder, approached the respondent in-person for payment of the entire auction amount. However, the respondent did not receive the amount or give proper response to the petitioner. Hence, on 01.08.2019, the petitioner submitted a grievance petition requesting the authorities to issue him a certificate of licence as a successful bidder to the tender auction. However, there was no response for the same. Hence, the petitioner has moved this Court, seeking a mandamus, directing the respondent to issue the licence in his favour.

2. The case of the petitioner was opposed by the respondent stating that on the date of auction, the said Murugavel alone was present and the petitioner did not participate. However, it is admitted that the petitioner was the highest offeror by quoting Rs.8,24,950/-. As there was only a sole bidder, auction could not be validly completed and final decision could not be taken by the respondent.

3. However, it is further contended by the respondent that the offer made by the said Murugavel was below the amount as expected by the Corporation, which was at least Rs.10 lakhs and as he was not keen to take the cycle stand licence in the new bus stand, the tender process was dropped according to the powers vested with the Commissioner coupled with the general condition of tenders attached to Tuticorin Corporation. The respondent also relied on Condition No.10 of the tender notice, which is as follows:

10) ஏலம் நடக்கும் பொழுது ஏலம் நடத்துகிறவர் அவசியமெனக் கருதினால் அவர் குறிப்பிடும் ஒரு தேதிக்கு அல்லது மின்னொரு தேதிக்கு ஏலத்தை எந்த நிலையிலும் ஒத்தி வைப்பதற்கு அதிகாரமுண்டு அவ்விதம் செய்வதில் அன்றைய தினத்தில் உச்சக் கேள்வி ஏலம் மாற்றி வைக்கப் பட்டிருக்கும் நாளில் முதல் கேள்வியாக ஏலம் துவங்கும். ஏந்தவித காரணமும் தெரிவிக்காமல் எந்த ஏலத்தையும் ஒத்தி வைக்கவோ மறுமுறை ஏலத்தில் விடவோ அல்லது ஒப் பந்தம் புள்ளி வரவழைக்கவோ மாமன்றம் / ஒப் பந்தக் குழு/ ஆணையருக்கு அதிகாரம் உண்டு.

4. The further contention of the respondent is that there were lot of complaints received from the general public with respect to cycle stand and hence, the Corporation has decided to develop it as a smart cycle stand with the smart card payment facilities to avoid any extra charging from the users in the new bus stand,



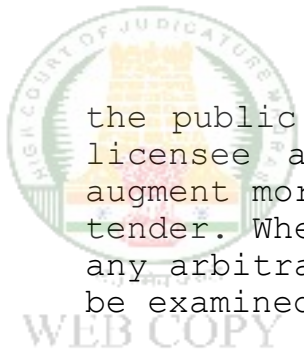
Tuticorin. It is stated that at present, Tuticorin Corporation is running a smart cycle stand in the new bus stand, Tuticorin and from the month of September to November, 2019, the total amount collected by the Tuticorin Corporation is Rs.8,21,119/-. As the smart cycle stand augments income from the cycle stand, the Corporation had decided to do away with the tender process of leasing the cycle stand.

5. The question arises for determination is whether the petitioner has to be given licence for running the cycle stand, being the highest bidder.

6. Admittedly, the petitioner was the bidder holding the licence still 01.08.2019. The present tender for cycle stand was called for on 04.07.2019 along with other leases for collection of various charges, totally about 16 items. The cycle stand lease is figured as item No.6. In the said tender notice, the pre deposit is mentioned as Rs.1,30,000/-, additional deposit is Rs.1,95,000/- and the period is from 01.08.2019 to 31.07.2022, i.e., for three years. It is not in dispute that only two people had offered to take the cycle stand on lease. Besides the petitioner, one Murugavel had offered, which was much less than what was offered by the petitioner. It is the case of the respondent that on the date fixed for opening of the tender lease on 15.07.2019, the petitioner was not present and only his offer was there and the offer of the said Murugavel was much less than the expected price, therefore, they have decided to cancel the tender and go for smart cycle stand.

7. The tender notice was issued on 04.07.2019 and the date of tender was fixed on 15.07.2019. The respondent Corporation has announced on 08.08.2019 in proceedings A16/004741/2015 that so far as cycle stand lease is concerned, the tender received from the petitioner, who claims to be the highest bidder is only a little, more than the previous years tender. However, the said amount is much less than the market price. Hence, a Committee was appointed to examine the infrastructure of the cycle stand within the bus stand and also the possibilities of managing the cycle stand more efficiently. Accordingly, it was decided to collect the rent from the users by computerised billing, which could be operated by the employees of the Corporation themselves. The said method fetches more than the total income, that may be secured by the Corporation by leasing out the same to third parties. The tender condition also provides for calling off the tender at any time without assigning any reason by the Corporation.

8. In the case on hand, according to the Corporation, the petitioner was never present on 15.07.2019, the date on which, tender was opened. Therefore, though the petitioner had made a highest offer, as he was not personally present, the bid could not be considered. As the other bidder had quoted less and also



the public that there was a demand of more money than fixed by the licensee and also for improving the entire system, which would augment more income to the Corporation, it was decided to cancel the tender. Whether such decision taken by the respondent is vitiated by any arbitrariness or it suffers from illegality or infirmity, has to be examined.

9. As stated supra, the tender condition itself gives powers to call off the tender for undisclosed reasons. Secondly, the petitioner was not present on the date of opening the tender. Thirdly, it is not the case of the petitioner that the contract was awarded to anybody else who was not competent by ignoring him. The Corporation itself had decided to run the cycle stand through its employees by computerising the same. The Corporation also has produced the resolutions to that effect and also had demonstrated that the income of the Corporation for three months ie., from September to November 2019, is almost equal to the bid amount offered by the petitioner for three years. Therefore, the petitioner cannot have any grievance that the tender was cancelled and the respondent decided to run the cycle stand on their own.

10. The learned counsel appearing for the respondent also contended that the respondent has not re-auctioned, but only decided to run on its own. The refusal to accept the tender of the petitioner on the ground that the offer made was lesser than the market price is therefore valid and the rights of the petitioner cannot be said to have infringed because of the cancellation of the bid. The learned counsel appearing for the respondent also placed his reliance on a decision reported in **(2009) 6 Supreme Court Cases 171 [Meerut Development Authority Vs. Association of Management Studies and another]**, wherein, paragraph Nos.27 to 29, read as follows:

"27.The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

28.It is so well-settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for



disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process.

29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favoritism."

11. The Corporation had floated the tender only on 04.07.2019 and fixed tender date as 15.07.2019 and had changed its mind on 08.08.2019 for converting the cycle stand into a smart cycle stand. The respondent could have assessed and decided the method of disposal of the cycle stand even before issuing the tender. Having caused legitimate expectation in the mind of the petitioner, the Corporation need not have cancelled the tender at the last minute. Nevertheless, one cannot challenge the terms and conditions of the tender, as the terms and conditions of the tender are within the realm of contract.

12. The learned counsel appearing for the petitioner also mentioned that the petitioner is willing to increase his bid amount to Rs.10 lakhs as expected by the respondent. As mentioned in the above decision of the Hon'ble Supreme Court, a bidder is not entitled as a matter of right to enter into further negotiation, unless the terms and conditions so provided for.

13. In view of the above, there is no arbitrariness in the act of the respondent and the petitioner as a highest bidder cannot challenge the change of circumstances at the instance of the respondent. Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mj

+1 CC to M/s.S.SAJI BINO, Advocate (SR-3311[F] dated 28/01/2020)

W.P (MD) No.17413 of 2019

28.01.2020