



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 28.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD)No.4972 of 2021

and W.M.P. (MD) Nos.4031, 4034 and 6103/2021

(Through Video Conferencing)

M.Ramakrishnan

... Petitioner

Vs.

1.The District Collector
Pudukottai
Pudukottai District.

2.The Assistant Director,
Town Panchayat (Special Grade)
Pudukottai
Pudukottai District.

3.The Executive Officer,
Ponnamaravathi Special Grade Town Panchayat
Ponnamaravathi
Pudukottai District.

4.Saravanan

5.N.Gunasekaran

... Respondents

(R5 has been suo-motu impleaded as respondent
vide order of this Court dated 20.04.2021)

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration to declare the tender cum public auction pertaining to the license for collecting fees in weekly market belonging to the 3rd respondent conducted on 24.03.2021 by the 3rd respondent by proceedings in Na.Ka.No.m1/48/2021 dated 03.02.2021 as null and void and for a direction, directing the respondents to conduct retender/public auction pertaining to the license for collecting fees in weekly market belonging to 3rd respondent within the time period stipulated by this Court.

For Petitioner

:Mr.F.Deepak

For Respondents

:Mr.M.Lingadurai for R1 to R3

Government Advocate (Civil)

Mr.R.Senthilkumar for R5



ORDER

This writ petition has been filed to declare the tender cum auction conducted by the third respondent as null and void and for a consequential direction to the respondents to conduct a fresh auction to grant license for collecting fees in the daily shandy and weekly shandy.

2.The third respondent issued a tender notice to issue license for collecting fees in the daily shandy and weekly shandy, through proceedings dated 03.02.2021. It is seen from this notification that the participant must take a demand draft for a sum of Rs.10 lakhs and submit the tender documents on or before 23.02.2021 before 5.00 p.m. The auction was slated to be held on 24.02.2021.

3. According to the petitioner, he had taken the requisite demand draft and submitted the bid before the third respondent at about 4.30 p.m. on 23.02.2021. The grievance of the petitioner is that the third respondent for reasons best known refused to receive the tender documents and the demand draft and therefore, the petitioner gave a representation on the spot to the third respondent. The third respondent gave a written rejection letter to the effect that there was a delay in submitting the documents and therefore, the tender submitted by the petitioner cannot be accepted. Subsequently the tender was allotted in favour of the impleaded 5th respondent.

4. Aggrieved by the same, the present writ petition has been filed before this Court.

5. The third respondent has filed a counter affidavit and the relevant portions in the counter affidavit are extracted hereunder:

"7.The Tenderer cum Auctioner shall pay EMD to the tune of Rs.5,00,000/- by way of demand draft and bring solvency certificate for a sum of Rs.20,00,000/- and the same shall be deposited with Town Panchayat on 23.02.2021 before 05.00 p.m. so as to get themselves registered for participating in the tender process and to get necessary entry permit to participate in the tender cum auction. Those who do not have the solvency certificate were given the option of depositing the DD for Rs.10,00,000/-. After the public auction, the sealed tenders will be opened on the same day in the presence of tenderers. The tender will be fixed in favour of the highest bidder considering the public auction and sealed tenders. The condition No.10 of the notification stipulated that if the persons who could not participate in the auction, wishes to apply for re-auction, such persons have to deposit 20% over and above the highest bid either by cash or by way of demand draft within 24 hours from the time



of auction to the Town Panchayat along with their explanation stating as to why he/she was not in a position to participate in the auction conducted at the first instance.

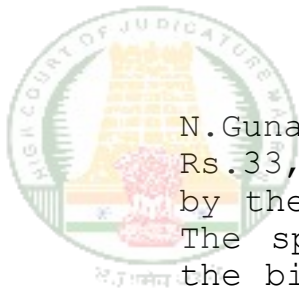
8.I state that the condition No.40 stipulates that those who are yet to clear the arrears of property tax, professional tax, license fee, water charges, shop rents and other arrears due to the town panchayat, shall remit the same before the auction. Only after such remittance such persons will be allowed to participate in the auction. The aforesaid notification dated 03.02.2021 was published in the Dinabhoomi dated on 09.02.2021.

9.One Balasubramanian, S/o.Perumal was the licensee for a block period of 3 years ie., 2018-2019, 2019-2020 and 2020-2021. The license was issued to him as per G.O.Ms.No.181 MA&WS Department dated 19.09.2008. He has to pay the following amount as license fee.

2018-2019	-	Rs.30,20,000/-
2019-2020	-	Rs.31,71,000/- (over and above 5%)
2020-2021	-	Rs.33,29,550/- (Over and above 5%)

10.The said Balasubramanian has paid the license fee only for the years 2018-2019 and 2019-2020. He did not remit Rs.27,74,625/- towards license fee for the year 2020-2021. The Government in G.O.(D) No.298 MA&WS Department dated 02.09.2020 ordered to waive the payment of license fees for the period from 01.04.2020 to 31.05.2020 in respect of the leased out properties of Urban local bodies, 14 corporations, 121 Municipalities and 528 Town Panchayats as State wide COVID-19 lockdown was in force from 24.03.2020 to 31.05.2020. The said Balasubramanian also was given waiver of license fee for two months for the year 2020-2021 and he had to pay license fee for 10 months. However, he defaulted in paying license fee for the year 2020-2021. Balasubramanian who failed to clear arrears of license fee payable to this town panchayat despite receiving notices dated 12.11.2020, 17.12.2020, 04.01.2021, 20.01.2021, 05.02.2021, 19.02.2021, 03.03.2021 and 16.03.2021, thus, became ineligible to participate in the tender cum auction proposed to be conducted as per notification dated 03.02.2021.

11.While that being so, 3 persons deposited EMD and solvency certificate before 5.00 p.m., on 23.02.2021 and received permit from the Town Panchayat to participate in Tender cum auction proposed to be conducted the next day ie., on 24.02.2021 at 11.30 a.m. Their names are N.Gunasekaran, S.Saravanan and C.Palanisamy. This respondent has not received any sealed tenders within the stipulated time ie., on or before 11.00 a.m. on 24.02.2021. Hence auction was conducted. The bid of one



N.Gunasekaran was highest. He quoted a sum of Rs.33,57,000/- and therefore his highest bid was accepted by the Executive Officer of Town Panchayat on 24.02.2021. The special Officer of the Town Panchayat also approved the bid by passing a resolution bearing Resolution No.725 dated 26.02.2021. Thereupon, by proceedings in Na.Ka.No.A1/48/2021 dated 26.02.2021, this respondent issued license to the said N.Gunasekaran.

12.While so, the writ petitioner herein who is the employee of previous licensee namely Balasubramanian came at 5.30 p.m. on 23.02.2021 and requested to permit him to participate in the tender cum auction. Since he came after the stipulated time, he was not permitted. This was informed in writing to him. The writ petitioner Ramakrishnan was set up by the previous licensee Balasubramanian to participate in the tender process without clearing arrears of license fee payable by him for the year 2020-2021. As on date Balasubramanian aforesaid has to pay Rs.27,74,625/-. Since he was barred from taking part in the tender process for the subsequent year, he has instigated his employee Ramakrishnan to scuttle the tender process. I reliably understand that he has also obtained an order of interim injunction before this Hon'ble Court on 09.03.2021 in W.P.(MD) No.4972/2021 restraining this respondent from granting license to the 4th respondent namely Saravanan for collecting fee in the weekly market belonging to this town panchayat.

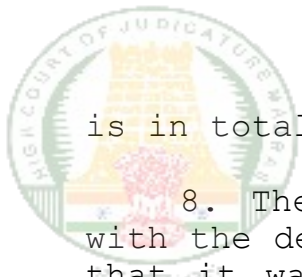
6. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 3 and the learned counsel for respondent No.5.

7. The main contentions raised by the learned counsel for the petitioner are,

(a) in spite of the tender documents submitted by the petitioner on time, (ie.,) on 23.02.2021 at 4.30 p.m., it was refused to be accepted by the third respondent illegally ;

(b) Initially, the third respondent took a stand in his rejection letter dated 23.02.2021 that the documents were submitted beyond 5.00 p.m. and later a different stand has been taken in the counter to the effect that the petitioner was working under one Balasubramanian, who was the previous licensee and he committed default in clearing the license fee and he had set up the petitioner to participate in the auction, and

(c). In spite of the interim injunction order granted by this Court on 09.03.2021, the third respondent proceeded to issue the license and work order in favour of the 5th respondent and the same



is in total violation of the orders passed by this Court.

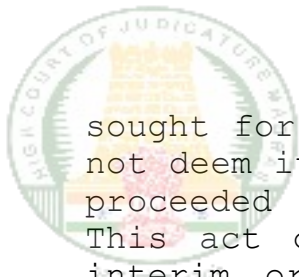
8. The third respondent had initially rejected the bid along with the demand draft submitted by the petitioner only on the ground that it was submitted beyond the prescribed time under the tender notification. The same is clear from the rejection letter dated 23.02.2021. According to the petitioner, the demand draft and the bid was submitted at 4.30 p.m. on 23.02.2021 and it was intentionally refused to be received by the third respondent for reasons best known to him. This stand taken by the petitioner is borne out by the written letter given by the petitioner to the third respondent on 23.02.2021.

9. Having taken a specific stand in the rejection letter, the third respondent improves the case by stating that the petitioner has been set up by the earlier licensee Balasubramanian, who was disqualified from participating in the auction, since he did not clear the arrears of license fee. This is an issue, which could not have been determined by the third respondent at the threshold. While receiving the application, the third respondent can only see if the bid is submitted with all the relevant documents and the demand draft within the time stipulated in the notification. Beyond this, the third respondent cannot raise any other objection for receiving the bid. At the best, the allegation that has been put against the petitioner as if he was a benami for Balasubramanian could have been determined, if there was an objection to that effect while scrutinizing the documents and even then the petitioner should have been put on notice.

10. In view of the above, this Court, on considering the facts and circumstances on a whole, comes to a conclusion that the third respondent has virtually attempted to improve the case in the counter.

11. This Court, while entertaining the writ petition, granted an order of interim injunction on 09.03.2021 restraining the third respondent from granting license for collection of fee in the weekly market. This order was passed in the presence of the learned Government Advocate and the learned standing counsel for the third respondent and the third respondent was aware about this order. In spite of the same, the third respondent proceeded to issue a license in favour of the 5th respondent by backdating it to 26.02.2021 and making it effective from 01.04.2021.

12. Even if for the sake of argument, it is taken that the third respondent had issued the license on 26.02.2021 much before the interim orders were passed, the work order should not have been issued with effect from 01.04.2021, since the interim injunction granted by this Court was in force. The third respondent ought to have approached this Court and either sought for a clarification or



sought for vacating of the interim order. The third respondent did not deem it fit to resort to either of these procedures and directly proceeded to issue the work order in favour of the 5th respondent. This act of the third respondent is clearly in violation of the interim order passed by this Court on 09.03.2021. The license granted by the third respondent in favour of the 5th respondent by issuing the work order with effect from 01.04.2020 must be considered to be non-est and void in the teeth of the interim order passed by this Court. If orders passed by a competent Court is disregarded and the officials proceed to act on their own, it is the duty of the Court to restore rule of law and nullify such illegal acts of the officials. If this is not effectively implemented, orders will look more like a paper tiger. Therefore, the license issued by the third respondent in favour of the 5th respondent and the work order that was made effective from 01.04.2021, has to be necessarily struck down by this Court.

13. In view of the above discussion, the public auction conducted by the third respondent on 24.02.2021 and the consequent issuance of license in favour of 5th respondent effective from 01.04.2021 is declared to be null and void. There shall be a direction to the third respondent to call for a fresh auction by issuing a notification within a period of two weeks from the date of receipt of a copy of this order and proceed further in accordance with law and thereafter grant license for collecting the fees in the daily and weekly shandy to the successful bidder.

14. In the result, the writ petition is allowed with the above directions. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CSII)

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/ /2021

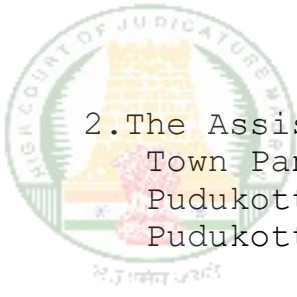
Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector
Pudukottai
Pudukottai District.



2.The Assistant Director,
Town Panchayat (Special Grade)
Pudukottai
Pudukottai District.

3.The Executive Officer,
Ponnamaravathi Special Grade Town Panchayat
Ponnamaravathi
Pudukottai District.

+1 CC to M/s.F.DEEPAK, Advocate (SR-20611[F] dated 30/06/2021)

+1 CC to M/s.SPL GP (SR-20688[F] dated 30/06/2021)

W.P. (MD)No.4972 of 2021
28.06.2021

KB(08.07.2021) 7P 6C