



W.P.(MD) No.1410 of 2013

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 09.01.2023

PRONOUNCED ON : 31.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.1410 of 2013
and M.P.(MD) No.2 of 2013

G.Sundar

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Nagercoil – 629 001,
Kanyakumari District.

2.The Commissioner,
Nagercoil Municipality,
Nagercoil – 629 001,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to cal for the records in Na.Ka.No. 16170/2008/A13 dated 20.04.2011 issued by the 2nd respondent and quash the same as illegal and consequently directing the 2nd respondent to return back the petitioner's deposit amount and also release the bank security.



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For Petitioner : Mr.S.Vasik Ali
for Mr.R.Murugan

For Respondents : Ms.D.Farjana Ghoushia for R1
Special Government Pleader
Mr.P.Athimoola Pandian for R2

ORDER

The writ petition has been filed seeking for a Writ of Certiorarified Manadamus to call for the records of the second respondent dated 20.04.2011 and quash the same and consequently direct the second respondent to return back the petitioner's deposit amount and also release the bank security.

2.Heard Mr.S.Vasik Ali, learned counsel for the petitioner, Ms.D.Farjana Ghoushia, learned Special Government Pleader for the first respondent and Mr.P.Athimoola Pandian, learned counsel for the second respondent.

3.Learned counsel for the petitioner would submit that the second respondent herein had issued an advertisement calling for tenders during the year 2009 – 2010 for a period of three years viz., 2009 – 2010, 2010 – 2011 and 2011 – 2012. Pursuant to the said advertisement, the petitioner had participated in the

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tender-cum-auction and was declared as a higher bidder in respect of collecting charges from lorries in Kotta Nagercoil Municipality. The petitioner had offered Rs.8,69,000/- for the year 2009 – 2010. For the succeeding years, the lease will be increased at 5% per annum. The petitioner was entitled to collect Rs.30/- per lorry, but, however, the lorry owners have only paid Rs.15/- which they claimed to the old amount. Hence, the petitioner had suffered a huge loss. Explaining the aforesaid circumstances, the petitioner had sought to not renew the lease and return back the security deposit by his communication dated 11.02.2010. Without any further communication, the second respondent had called for a tender for the subsequent year viz., 2010 – 2011 and the highest bid amount was at Rs. 4,12,000/-. Hence, by the impugned communication, the second respondent had assessed the loss to the Municipality at Rs.5,00,450/- for the year 2010 – 2011 and Rs.5,25,473/- for the year 2011 – 2012 and had called upon the petitioner to pay a sum of Rs.10,25,923/- within 15 days as it being the loss caused by the petitioner to the Municipality. Immediately on receipt of the said notice, the petitioner through his counsel had sent a legal notice explaining the circumstances and the representations made by the petitioner and called upon the second respondent to recall the notice. The same was replied to by a legal notice



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by the respondents reiterating the impugned demand. Hence, the petitioner had approached this Court.

4.Learned counsel for the petitioner would vehemently contend that the conditions of tender do not postulate recovery of the loss if there is a surrender of lease. When the second respondent had accepted the surrender of lease and had called for a fresh tender, then it is not open to the second respondent to seek for the loss due to the second respondent in view of a lesser bid amount. He would further submit that in spite of repeated representations, the second respondent had not taken any steps to address the grievance espoused by the petitioner with regard to the lesser payment by the lorry owners. He would further submit that even during the succeeding years viz., 2012 – 2013 and 2013 – 2014, the second respondent was not receiving any bid amount as made by the petitioner. Hence, he would submit that there could be no actual loss to the second respondent.

5.Countering his arguments, learned counsel for the second respondent would submit that when a person who knowingly had bid a particular amount upon a tender called for three years cannot in the interregnum for any reasons



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whatsoever walk away from the bid process. Due to the conduct of the petitioner, the second respondent had suffered loss to the tune of Rs.10,25,943/-, for which, the petitioner alone is liable to compensate the second respondent Municipality. He would rely upon Clauses 13 and 16 of the tender notification to state that the tender is for a period of three years and with 5% increase from the amount paid for the first year. If the successful bidder fails to renew the license then, it is always open to the second respondent either to collect the charges by itself or to re-tender. When such re-tender is made and the loss is caused to the second respondent, the successful bidder of the tender will have to compensate the Municipality. The petitioner with open eyes had submitted his offer subject to the conditions stipulated in the tender notice and hence, he cannot wriggle out from such obligation. It is upon the petitioner to collect the fixed charges and he cannot blame the second respondent.

6.He would also rely upon Clause 30 of the said tender notice and submit that it is not open to the petitioner to claim any compensation towards loss or damage suffered by him. He would further submit that in view of the specific condition imposed in the tender document, the petitioner cannot wriggle out of



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the contract by him and is legally bound to compensate the loss sustained by the second respondent.

7.I have considered the rival submissions made by the learned counsels appearing on either side.

8.It is an admitted fact that the petitioner was the successful bidder for collecting charges from lorries at Kotta Nagercoil Municipality. It is also an admitted case that the petitioner had bid Rs.8,69,000/- for the year 2009 – 2010 and the period of lease was till 2011 – 2012. It has also been admitted that 5% increase shall be for the succeeding years viz., 2010 – 2011 and 2011 – 2012 respectively.

9.A perusal of Clauses 13 and 16 of the tender document would postulate that if the successful bidder had failed to pay the lease amount for the succeeding year, then it is open to the Municipality to either perform the contract by itself or re-tender the same. If a loss is occurred to the Municipality in view of the re-tender, then the said successful bidder would have to compensate the



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Municipality for the loss suffered by the Municipality. In the present case on hand, since the petitioner was not able to collect the full charges, he had made a request to the second respondent Municipality to advise the lorry owners to pay the amount fixed by the Municipality. Such a request has been made by the petitioner on 06.07.2009 and 11.02.2010. The said representations seems to have not been replied to by the second respondent. Hence, the petitioner had sought to refund the security deposit thereby expressing his intention not to renew the lease for the year 2010 – 2011 and 2011 – 2012. Upon a query by this Court, the second respondent was directed to submit the lease amount obtained by the subsequent tender-cum-auction. Pursuant to the query, learned counsel for the second respondent on instructions would submit the following:

<i>Period</i>	<i>Amount in Rs.</i>
2010 – 2011	4,12,000/-
2011 – 2012	4,32,600/-
2012 – 2013	4,54,230/-
2013 – 2014	6,11,100/-
2014 – 2015	6,41,655/-

10.The above periods from 2010 – 2011 to 2012 – 2013 were pursuant to



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disinclination of the petitioner to renew the lease. The subsequent period viz., 2013 – 2014 and 2014 – 2015 were pursuant to the fresh tender. Even assuming that re-tender pursuant to the petitioner refusal had gone for a lesser amount which the petitioner has to compensate. For the further fresh auction conducted for the period 2013 – 2014 was the highest bid only Rs.6,11,100/-. This amount is also very much less to the amount that was offered by the petitioner in the year 2009 – 2010. This Court would also take judicial notice of the aforesaid fact. The conduct of the petitioner in bidding for a higher amount seems to be zealous. The amount bid in the subsequent auction which has been accepted by the Municipality would only lead to an irresistible conclusion that practically what the petitioner bid in the year 2009 – 2010 was on the higher side and the actual collection would only be much lesser than what the petitioner had bid. That apart, even in the representation dated 11.02.2010, the petitioner had claimed that he had suffered a loss of Rs.3,88,500/- deducting the said mount from the bid amount of Rs.8,69,000/- it could be seen that the petitioner had managed a collection of Rs.4,80,500/- during the year 2009 – 2010. But, however, the second respondent Municipality had only re-tender the said contract for Rs.4,12,000/- for the year 2010 – 2011 and 5% increase by the same bidder for the year 2011 –



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2012 it was Rs.4,32,600/-.

11.Considering such a fact, the subsequent highest bid amount for the year 2013 – 2014 was Rs.6,11,100/-, I am of the view that there could not have been any loss caused to the Municipality in view of the refusal of the petitioner. The second respondent cannot unjustly enrich itself due to the fanciful bid by the petitioner. But, however, the petitioner is liable to compensate the Municipality for the expenses that has been incurred by it, pursuant to the conduct of re-tender which had taken place on the failure of the petitioner to renew the lease for the further periods. The Municipality is also entitled to retain the security deposit since the petitioner had failed to perform his part of the contract.

12.In view of the above, the order of the second respondent impugned in this Writ Petition dated 20.04.2011 is set aside, however, the consequential relief to direct the second respondent to return back the deposit amount made by the petitioner is rejected. The second respondent Municipality is at liberty to recover the cost of re-auction.



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13.In fine, the Writ Petition is partly allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

31.01.2023

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
NCC : Yes / No

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To

The District Collector,
Kanyakumari District,
Nagercoil – 629 001,
Kanyakumari District.



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K.KUMARESH BABU, J.

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