



W.P(MD)Nos.6682 & 6871 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 14.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.6682 & 6871 of 2024

and

W.M.P(MD)Nos.6427, 6429, 6206, 6207
& 10396 of 2024

W.P(MD)No.6682 of 2024:

Ramesh

... Petitioner

Vs.

1.The District Collector,
Theni District,
Theni.

2.The Additional Director,
Mines & Minerals Department,
Theni.

3.The District Revenue Officer,
Theni District,
Theni.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings in Na.Ka.No.93/Minerals/2024 dated 11.03.2024



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on the file of the first respondent, to quash the same as illegal, arbitrary and without jurisdiction insofar as it relates to item No.6, Bodinayakanur Taluk, Kodangipatti Village Government Poromboke land in S.F. No.32/2 (Part 4) 2.50.0 hectares stone quarry and further direct the respondents to receive the balance bid amount of Rs.4,50,00,000/- (Rupees Four Crores and Fifty Lakhs) and execute the mining lease.

For Petitioner : Mr.H.Lakshmi Shankar for Ms.Prabha

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.G.V.Vairam Santhosh
Additional Government Pleader

W.P(MD)No.6871 of 2024:

J.Vasanth

... Petitioner

Vs.

1.The District Collector,
Office of the Collectorate,
Theni District.

2.The District Revenue Officer,
Theni District,
Theni.

3.The Revenue Divisional Officer,
Bodinayakanur,
Theni District.

... Respondents



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Prayer: Writ petition is 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 order of the first respondent in Na.Ka.No. 93/Mines/2024 dated 11.03.2024 and quash the same and consequently directing the respondents to confirm the tender in the name of the petitioner for the quarrying operation in government poramboke land in S.No.32/2 part 4 of Kodangipatti Village of Bodinayakkanur Taluk of Theni District.

For Petitioner : Mr.K.Govindarajan
for Mr.S.Ramsundarvijayraj

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.G.V.Vairam Santhosh
Additional Government Pleader

COMMON ORDER

Heard the learned counsel appearing for the writ petitioners and the learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the official respondents.

2.The subject matter pertains to grant of quarry lease for the petition-mentioned Government poramboke land. The District Collector, Theni issued notification dated 13.02.2024 under the relevant provisions of the Tamil Nadu Minor and Mineral Concession Rules, 1959.



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Thiru.J.Vasanth / petitioner in W.P(MD)No.6871 of 2024 submitted his tender in response thereto. Rule 8 sets out the procedure for leasing of lands for quarry purposes. The said Rule also enables the interested persons to participate in the process even without submitting a formal tender by bidding at the auction to be conducted by the authority. Accordingly, Thiru.Ramesh / the petitioner in W.P(MD)No.6682 of 2024 participated in the auction held on 06.03.2024 in the office of the District Revenue Officer, Theni.

3.As many as six persons including Thiru.Ramesh and Thiru.J.Vasanth took part in the auction. Thiru.J.Vasanth had bid for a sum of Rs.3 Crores and 11 Lakhs. Thiru.Ramesh bid for a sum of Rs.3 Crores.

4.Tender submitted by Thiru.Vasanth was thereafter opened. It was seen that Thiru.Vasanth had offered Rs.4 Crores and 12 Lakhs. It was one lakh above the upset price of Rs.4 Crores and 11 Lakhs. At that stage, Thiru.Ramesh offered to take the lease for a sum of Rs.5 Crores. Thereafter, the District Revenue Officer wanted to know if there is anybody to outbid the said offer. Since no one including Thiru.Vasanth



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outbid the said offer, Thiru.Ramesh was declared as the highest bidder.

Thiru.Ramesh remitted a sum of Rs.50 Lakhs on the same day being 10% of the lease amount. He was to pay the remaining 90% of the amount within 15 days thereafter. Whiles, on 11.03.2024, the District Collector, Theni passed the impugned order cancelling tender-cum-auction process held on 06.03.2024. Challenging the same, both Thiru.Ramesh as well as Thiru.J.Vasanth filed these writ petitions.

5.The learned counsel appearing for the petitioners reiterated the stand set out in the affidavits filed in support of the respective writ petitions. Counter affidavits have been filed by the authorities and the learned Additional Advocate General took me through their contents.

6.I carefully considered the rival contentions and went through the materials on record.

7.The procedure for leasing of lands for quarrying mines and minerals has been set out in Rule 8 of the Tamil Nadu Minor Mineral Concession Rule, 1959. Rule 8(5)(a) and (b)(1) are relevant. They read as follows:

***“8.Letting of lands for quarrying minor minerals
other than the minerals covered under rules 8-A and 8-***



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C of these rules:-

5 (a) (i) [Before opening tender applications received for each area for which applications are invited through notification and advertisement an auction shall be conducted in which all eligible applicants who made payment of application fee as applicable from time to time and earnest money deposit of [Rs.25,000/-] along with all other documents as are required of a tender applicant can also participate. The tender applicants need not repeat this process but can participate straightway in the auction. Applications submitted for direct participation in the auction need not contain particulars of tender/bid amount ; ”

(ii) All persons who have made applications for participating in the auction and the tender offering shall be present during the entire auction cum tender proceedings so as to know as to who is declared as the successful person eligible to obtain the lease of the area and to make 10% of the bid or tender amount as initial payment immediately after the declaration made by the district Collector. In the absence of the Applicant, one nominee of the applicant may be permitted to participate in the auction and allowed to be present when the tender applications are opened provided the nominee produces an authorisation letter from the applicant authorising the nominee to do so and signed before a notary public who shall attest the signature of the applicant and the



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nominee.

(b) (i) Before opening the tender applications received for each area an auction shall be conducted by the District Collector or the Officer authorised by the district Collector allowing the tender applicants as well as others to bid at the auction for making further offer of lease amount to obtain the area on lease. Immediately after the conclusion of the auction all the valid tender applications for the area shall be opened and examined by the district Collector or the authorised Officer.”

A careful reading of the aforesaid Rule indicates that while tender applicants have to enclose 10% of the tendered amount by way of Demand Draft along with the tender application, bidders at the auction do not have any such restriction. Any person who remits a sum of Rs.25,000/- towards Earnest Money Deposit (EMD) can offer his bid in the auction. Auction has to be held first. Only thereafter, the tender applications will be opened. The person whose offer is the highest will be confirmed at the end of the process. In other words, the auction has to precede the opening of the tender applications.

8.In the auction, admittedly Thiru.J.Vasanth had outbid Thiru.Ramesh. It is true that Thiru.J.Vasanth had tendered a sum of



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Rs.4 Crores and 12 Lakhs whereas in the auction his offer was only Rs.3 Crores and 11 Lakhs. But this cannot be put against Thiru.Vasanth. He knew that he was the sole tenderer. He was not obliged to make a bid at the auction for a sum higher than the tender amount.

9.In this case, after the tender applications were opened, Thiru.Ramesh had on his own made an offer of Rs.5 Crores and thereafter, the authority had wanted to know if the said offer can be outbid. This procedure was patently illegal. The Rules do not contemplate holding of auction after the opening of tender applications. In J.Jayalalitha v. State of Karnataka (2014) 2 SCC 401, it was noted that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. Where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden (*Expressio unius est exclusio alterius*). This approach is also known as the rule in Taylor v. Taylor (1875) 1 Ch D 426. In this case, the process was finalized by following a procedure contrary to what was laid down in the statute. The District Collector was justified in coming to the conclusion that there has been a breach of the statutory rule.



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10.Be that as it may, as a result of Rule breach, the Government stood to gain. Thiru.Ramesh had offered Rs.5 Crores whereas Thiru.J.Vasanth had tendered only 4 Crores 12 Lakhs. Obviously, this Court will not be justified in allowing W.P(MD)No.6871 of 2024. The writ Court cannot ignore or forget the revenue interest of the Government. At the same time W.P(MD)No.6682 of 2024 filed by Thiru.Ramesh also cannot be straight away allowed. It is obvious that Thiru.Vasanth was taken by surprise. Thiru.Ramesh had absolutely no right whatsoever to make an offer of Rs.5 Crores after the tender application was opened. He did it on his own. It was something wrong and he cannot be allowed to take advantage of the same (*Nullus commodum capere potest de injuria sua propria*).

11.Be that as it may, the field stands narrowed to only two persons, namely, Thiru.Ramesh and Thiru.J.Vasanth. Both of them shall be present before the first respondent / the District Collector, Theni on 25.06.2024 at 03.00 p.m. The entire proceedings will be duly video-recorded. Both the petitioners will make their offers in writing in sealed covers. The same will be opened by the first respondent. The first respondent will confirm the highest tender.



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WEB COPY 12. These writ petitions are disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MGA

Note: Issue order copy on 20.06.2024.

To

1. The District Collector, Theni District.
2. The District Revenue Officer,
Theni District, Theni.
3. The Revenue Divisional Officer,
Bodinayakanur, Theni District.
4. The Additional Director,
Mines & Minerals Department, Theni.



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