



W.P.(MD) No.11865 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.11865 of 2024

and

W.M.P.(MD)Nos.10572, 10574 & 10575 of 2024

V.Krishnakumar

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment,
Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Chennai – 600 034.

3.The Executive Officer,
Arulmigu Subramania Swamy Thirukovil,
Tiruchendur,
Thoothukudi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in his proceedings in Na.Ka.No.2402/2024/E2, dated 20.04.2024, quash the same and consequently, to direct the respondents to issue fresh auction cum tender notification in respect of the above referred item by giving wide publicity in the newspaper in accordance with Article 14 of the



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Constitution of India besides providing e-tender method in conformity with the proceedings of the first respondent in Circular Na.Ka.No. 19300/2023/Z1, dated 19.05.2023, within the time that may be stipulated by this Court.

For Petitioner	: Mr.M.Ajmalkhan Senior Counsel for M/s.Ajmal Associates
For R1 and R2	: Mr.P.Subbaraj Special Government Pleader
For R3	: Mr.M.Muthugeethaiyan Standing Counsel

ORDER

The petitioner is before this Court on the eleventh hour challenging the impugned order passed by the third respondent on 20.04.2024. The impugned order is nothing but a Notification issued by the third respondent proposing to auction certain rights in the Temple. Initially, the auction was scheduled to be held on 08.05.2024 and on the same day, the bid amount has to be paid.

2. It appears that the third respondent had decided to postpone the tender to an alternate day. It is noticed that the tender Notification dated 20.04.2024 proceeded by a paper publication on 21.04.2024. Similarly,



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the postponement of the auction under the tender was also advertised by the third respondent on 17.05.2024, fixing the date of auction as 07.06.2024 at 02.00 p.m. *i.e.*, tomorrow.

3. The petitioner has challenged the impugned tender Notification dated 20.04.2024 primarily on the ground that it violates the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000. Specifically, it is submitted that the tender Notification dated 20.04.2024 impugned herein has not fixed the upset price and thereby, there is opaqueness in the tender process.

4. The learned Senior Counsel for the petitioner has placed reliance on the decision of a Division Bench of this Court rendered in the case of the **Director of Fisheries, Fisheries Department, Chennai and others vs. S.T.Mani** [W.A.(MD)No.1251 of 2020, dated 03.02.2021], which was preferred against the order of the learned Single Judge in W.P.(MD)No. 5485 of 2020, dated 31.08.2020. The learned Senior Counsel would draw the attention to Paragraph No.10 of the said judgment, which reads as under:-



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"10. For the ensuing years, we call upon the official respondents, including the Secretary to Government, Fisheries Department, to adopt a different methodology as suggested by the learned Single Judge, by fixing the upset price and thereafter, call for tender. The highest amount offered by the successful bidder will have to be offered to the Bodi Fisherman Society. It is better to follow this methodology in future in all cases, as the Government would not lose the revenue and in any case, fixation of the upset price is a starting point and the same will not be the actual price that will fetch in an auction. It is a price, which will facilitate somebody to take part in the auction, being the minimum value of the subject matter of the licence."

5. It is submitted that somewhat similar procedure is also being followed by Samayapuram Mariamman Temple, wherein, upset price was fixed for the shops that were let out by the said Temple in an auction. It is submitted that the tender process adopted by the third respondent does not give a fair opportunity for the public to participate in the tender process.

6. It is submitted that only Earnest Money Deposit [EMD] has been fixed and there is no indication as to minimum qualification for evaluation of the offer of a prospective bidder in the auction by the third respondent. That apart, it is submitted that none of the safeguards under the Tamil



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Nadu Transparency in Tenders Act, 1998 has been followed by the third respondent.

7. On the other hand, the learned Standing Counsel for the third respondent Temple would submit that the petitioner is a seasoned player in the field, inasmuch as he also participated in similar tenders floated by Samayapuram Mariamman Temple. The learned Standing Counsel would further submit that the petitioner cannot scuttle the proposed auction by filing this Writ Petition on the eleventh hour without even applying in the tender. It is submitted that the present Writ Petition is not *bona fide*.

8. The learned Standing Counsel would further submit that the petitioner is an interloper as far as the proposed auction is concerned. That apart, the learned Standing Counsel for the third respondent Temple would submit that although the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 are not strictly applicable, the Commissioner of H.R. & C.E. Department has advised all the Temples to follow Rule 4-A of the Tamil Nadu Transparency in Tenders Rules, 2000, which came to be incorporated into the Rules vide G.O.Ms.No.93, Finance (Salaries) Department, dated 30.03.2023, with effect from 01.04.2023.



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WEB COPY 9. It is submitted that the paper publication meets the requirement of Rules 10 and 20 of the above said Rules. It is further submitted that the Rules do not contemplate intimation of the minimum bid amount and therefore, the petitioner cannot challenge the impugned tender Notification on the said ground.

10. That apart, it is submitted that a sum of Rs.1,57,000/- was spent on both the occasions when the paper publication was made on 21.04.2024 and thereafter, on 17.05.2024. It is therefore, submitted that at best the petitioner can be given liberty to participate in the proposed auction to be held on 07.06.2024 at 02.00 p.m. [tomorrow], subject to the petitioner complying with all the terms and conditions of the tender Notification.

11. Having considered the submissions of the learned Senior Counsel for the petitioner and the learned Standing Counsel for the third respondent, this Writ Petition is disposed of at the admission stage after hearing the parties at length.



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WEB COPY 12. The petitioner has come to this Court in the eleventh hour to scuttle the proposed auction to be held on 07.06.2024 at 02.00 p.m. Strictly, the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Rules made thereunder are not applicable to the auctions under the provisions of the Tamil Nadu Hindu Religious Charitable and Endowments Act, 1959 and the Rules made thereunder. In fact, a Rule has been framed as far as leasing of immovable property of a religious Institution in the form of the Religious Institutions [Lease of Immovable Property] Rules, 1963. In the context of the Tamil Nadu Transparency in Tenders Act, 1998 and the Rules made thereunder, this view has been taken by this Court in its order dated **27.01.2023**, in **W.P.(MD)Nos.18246 & 13596 of 2014** filed by one R.Thanikachalam vs. The Commissioner, Hindu Religious Charitable and Endowments Department and others. This Court observed as under:-

"A cumulative reading of the above provisions would make it clear that the above Rules would be applicable only to the entities specified in the Schedule to the Act, which reads as under:

"The Schedule [(See Section 2(e)] Procuring Entity

- 1. Government Departments.*
- 2. Public Sector Undertakings of the Government.*



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3.Statutory Boards formed by the Government.

4.Local Bodies in the State.

5.Co-operative Institutions in the State.

6.Universities.

7.Societies formed by the Government."

A reading of the above Schedule would show that the Tender called for by the Respondent temple would not be covered by the said Act. To a pointed question as to whether the Temple would fall within any of the entities enumerated in the Schedule under Section 2(e) of the Tamil Nadu Transparency in Tenders Act, 1998, the learned counsel for the petitioner was unable to fix the Temple under any of the enumerated entities. Assuming that Temples are regulated by HR and CE Department and the authorities under the said Act, that by itself may not convert the Temple as Government Department. In other words, even if the HR and CE Department were to regulate and the Tenders are issued under the supervision of the HR and CE Department, it may not be possible to equate a Temple to HR and CE Department, which regulates the same. The HR and CE Department is a Department which governs all the Temples and the Temple's identity does not get lost or merges with that of the Department. The distinction in their identity would continue to exist and therefore even though no attempt was made to submit that the Temple is a Government Department in any view the same does not have merit. Thus, the above attempt by the petitioner ought to be rejected as having no merit. For all the above reasons, the Writ Petition is dismissed. No costs."

13. Similar Rules to Religious Institutions [Lease of Immovable Property] Rules, 1963 has not been framed for auction of other rights by



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the Temples, like in the proposed auction for sale of Prasadam, food articles and collection of human hair etc. However, the fact remains that the Commissioner of H.R. & C.E. Department has issued guidelines on 19.05.2023 in his proceedings bearing Reference in Na.Ka.No. 19300/2023/Z1, dated 19.05.2023, has directed all the Temples to follow the provisions of the Tamil Nadu Transparency in Tenders Rules, 2000, particularly, Rules 4-A, 16(b) and 33 of the Tamil Nadu Transparency in Tenders Rules, 2000 as amended.

14. Thus, the intention of the H.R. & C.E. Department appears to be to bring transparency in the tender process and therefore, the petitioner is justified in complaining that there was no upset price fixed in the tender Notification and there is fair amount of opaqueness. However, this complaint ought to have been brought to the notice of this Court at an early point of time and not in the eleventh hour. The Division Bench of this Court in the case of Director of Fisheries referred to supra, has already given directions to the Fisheries Department. The Government should take note of the same and suitably amend the Rules, as it is intended to bring more transparency in the tender process and discourage cartelization.



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15. Therefore, to balance the interest of the parties, Court is inclined to permit the petitioner to participate in the proposed auction slated to be held on **07.06.2024** at **02.00 p.m.** [tomorrow], subject to the petitioner filing all the documents that are mandated in the impugned tender Notification dated 20.04.2024.

16. Since the learned Senior Counsel for the petitioner submitted that the petitioner may not be in a position to rustle the EMD for any of the categories in which he is interested, the petitioner is given liberty to pay the EMD for Item Nos.2 to 4 or any of them latest by **13.06.2024**. On being successful bidder, he shall also pay the bid amount on or before **13.06.2024**. The respondents are thus at liberty to proceed further with auction. In case, the petitioner fails to pay the above said amounts, the petitioner's bid will be declared as disqualified. If the petitioner makes a highest bid, but fails to pay the EMD and the bid amount, the auction shall be confirmed in favour of next highest bidder. The third respondent shall have an actionable claim as against the petitioner insofar as EMD is concerned. In other words, if the petitioner fails to pay the EMD by **13.06.2024**, but declared as the highest bidder in the proposed auction scheduled to be conducted on **07.06.2024** at **02.00 p.m.** [tomorrow], the



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third respondent shall have a legal recourse to recover the EMD from the petitioner.

17. This Writ Petition is disposed of with the above observations.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No

Neutral Citation: Yes / No

06.06.2024

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Note:- Issue order copy on 07.06.2024.

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowment,
Chennai – 600 034.
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- 3.The Executive Officer,
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C.SARAVANAN, J.

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