



W.P.(MD) No.15385 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.15385 of 2025
and
W.M.P.(MD) Nos.11625 & 11627 of 2025**

M.S.Manojith

... Petitioner

Vs.

1. The District Collector,
Kanyakumari District,
Nagercoil.

2. The Assistant Director,
Town Panchayat,
Collectorate Campus,
Nagercoil,
Kanyakumari District.

3. The Executive Officer,
Thirparappu Selection Grade Town Panchayat,
Thumbacode,
Kanyakumari District.

4. The President,
Thirparappu Selection Grade Town Panchayat,
Thumbacode,
Kanyakumari District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned notification in Na.Ka.No. 144/2025/A2, dated 27.05.2025 issued by the third respondent, quash the same and consequently, direct the third respondent to allow the petitioner in collection of Entry Fees for Thirparappu Water Falls based on the previous auction conducted on 23.05.2025.

For petitioner : Mr. G.Radhakrishnan

For respondents : Mr.Ajmal Khan
Additional Advocate General-I,
Asst. by Mr.K.R.Badurus Zaman
Government Advocate for R1 & R2

Mr.S.Shanmugavel
Additional Government Pleader for R3 & R4

ORDER

The petitioner has challenged the impugned auction notice, dated 27.05.2025, proposing the auction to be held on 10.06.2025 for collection of entry fee at Thirparappu water falls at Kanyakumari district.

2. The petitioner was a successful bidder, pursuant to the auction notice, dated 13.05.2025 and the auction was held on 23.05.2025, wherein the petitioner



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emerged as a higher bidder and offered to pay a sum of Rs.85,99,999/-. The petitioner was also informed that the petitioner's bid was provisionally accepted by the third respondent and that the petitioner was required to deposit a sum of Rs.1,02,34,000/- which was also deposited by the petitioner.

3. It is the specific case of the petitioner that despite having accepted the aforesaid amount, the third respondent has, now, proceeded to issue impugned auction, notice dated 27.05.2025.

4. The learned Additional Advocate General-I for the respondents 1 and 2 submits that there is a cartel by the petitioner and others and therefore, an attempt was made to ensure only highest bid was made during auction. However, the highest offer that was made only Rs.85,99,999/-, which was much lower than the highest bid for the period of 2023-24, Rs.1,40,00,000/- by the previous highest bidder, namely, Suman.

5. It is submitted that the acceptance of the offer was subject to the confirmation of the offer by the Council and that the Council has passed



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resolution on 27.05.2025 stating that the amount that was offered by the petitioner did not match with the previous bid amount of Rs.1,40,00,000/- by the said Suman.

6. The learned Additional Advocate General-I drew attention to clause 10 of the tender notice, dated 13.05.2025, which clearly stipulates that the acceptance of the offer is subject to the confirmation by the Council. The relevant clause reads as under:

“செலுத்திய ஏல வைப்புத்தொகை குத்தகை காலம் முடிந்ததும்
தணிக் கைக்கு உட்பட்டு வட்டியின்றி திருப்பி அளிக்கப்படும். ஏலம்
பேரூராட்சி மன்றத்தின் அங்கீகாரத்திற்குட்பட்டது.”

7. The learned Additional Advocate General-I for the respondents 1 and 2 also drew attention to the decisions of the Hon'ble Supreme Court in following two cases:

1. *State of Punjab and others vs. Mehar Din* reported in (2022) 5 SCC 648;
2. *State of Jharkhand and others vs. CWE-Soma Consortium* reported in (2016) 14 SCC 172.



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8. At this stage, the learned counsel for the petitioner submits that in response to the impugned tender notice, the petitioner has also made a bid and will participate in the tender auction that has to be held on 10.06.2025.

9. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Additional Advocate General-I for the respondents 1 and 2 and the learned Additional Government Pleader for R3 and R4.

10. The tender notification is only invitation to make offer, pursuant to which the bidders make offer. Unless the offer is accepted and contract is signed, the highest bidder cannot have any right to enforce the contract, which was not signed.

11. In fact, the two mentioned decisions has also clarified the position. In first decision in **Mehar Din**'s case (cited supra), it has held that it is not disputed that the auction sale conducted by the Tehsildar Sales on 04.06.1993 was provisionally accepted in favour of the respondent being the highest bidder. Pursuant thereto, 1/5th of the bid amount as earnest money was deposited, but



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that acceptance being provisional, was subject to confirmation by the Sales Commissioner. When the proceedings of auction were placed for confirmation before the competent authority (Sales Commissioner), the competent authority after perusing the record of auction observed that the provisional bid is quite on the lower side and looking to the location of the property in question, it needs a good publicity to fetch the better sale price of the subject land and while cancelling the auction sale, directed to initiate the process of re-auction and further observed that he should be informed in advance and intended to remain present at the time of auction by order dated 02.07.1993. That apart, it is not disputed that total applicants were fourteen but only three bidders had participated in the bidding process. In this case, Hon'ble Supreme Court has observed in para 19 as follows:

“19.This Court has examined right of the highest bidder at public auctions in umpteen number of cases and it was repeatedly pointed out that the State or authority which can be held to be State within the meaning of Article 12 of the Constitution, is not bound to accept the highest tender of bid. The acceptance of the highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions in which the auction has been held. In the present case, no right had accrued to the respondent even on the basis of statutory provisions as being contemplated under Rule 8(1)(h) of Chapter III of the Scheme of Rules, 1976 and in terms of the conditions of auction notice notified



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12. The bid was not confirmed by the Competent Authority and therefore, the discretion was exercised by the Competent Authority in taking a decision for cancellation. In fact, in para 27 of the said case, the Hon’ble Supreme Court has held under:

“27.This being a settled law that the highest bidder has no vested right to have the auction concluded in his favour and in the given circumstances under the limited scope of judicial review under Article 226 of the Constitution, the High Court was not supposed to interfere in the opinion of the executive who were dealing on the subject, unless the decision is totally arbitrary or unreasonable, and it was not open for the High Court to sit like a Court of Appeal over the decision of the competent authority and particularly in the matters where the authority competent of floating the tender is the best judge of its requirements, therefore, the interference otherwise has to be very minimal.”

13. The same view expressed by the Hon’ble Supreme Court in the second mentioned case in **CWE-Soma Consortium**’s case (cited supra) in paras 13, 15, 20, 23, which are held as under:

“13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender



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may decide not to enter into any contract and thereby cancel the tender. It is well-settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide *Laxmikant and Ors. v. Satyawand and Ors.* (1996) 4 SCC 208; *Rajasthan Housing Board and Anr. v. G.S. Investments and Anr.* (2007) 1 SCC 477 and *Uttar Pradesh Avas Evam Vikash Parishad and Ors. v. Om Prakash Sharma* (2013) 5 SCC 182).

...

15. The State derives its power to enter into a contract under [Article 298](#) of the Constitution of India and has the right to decide whether to enter into a contract with a person or not subject only to the requirement of reasonableness under [Article 14](#) of the Constitution of India. In the case in hand, in view of lack of real competition, the state found it advisable not to proceed with the tender with only one responsive bid available before it. When there was only one tenderer, in order to make the tender more competitive, the tender committee decided to cancel the tender and invited a fresh tender and the decision of the appellant did not suffer from any arbitrariness or unreasonableness.

...

20. Admittedly, in the pre-bid meeting held on 24.03.2014, ten tenderers have participated. After conclusion of the pre-bid meeting on 24.03.2014, as a result of stringent conditions prescribed in clause 4.5(A)(a) and 4.5(A)(c), only three tenderers could participate in the bidding process and submit their bids. As noticed earlier, upon scrutiny two were found non-responsive. In our considered view, High Court erred in presuming that there was adequate competition. In order to make the tender more competitive, tender committee in its collective wisdom has taken the decision to cancel and re-invite tenders in the light of SBD norms. As noticed earlier, the same was reiterated in a subsequent meeting held on 09.07.2014. While so, the High Court was not justified to sit in judgment over the decision of tender Committee and substitute its opinion



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on the cancellation of tender. Decision of the state issuing tender notice to cancel the tender and invite fresh tenders could not have been interfered with by the High Court unless found to be mala fide or arbitrary. When the authority took a decision to cancel the tender due to lack of adequate competition and in order to make it more competitive, it decided to invite fresh tenders, it cannot be said that there is any mala fide or want of bona fide in such decision. While exercising judicial review in the matter of government contracts, the primary concern of the court is to see whether there is any infirmity in the decision-making process or whether it is vitiated by mala fide, unreasonableness or arbitrariness.

...

23.The right to refuse the lowest or any other tender is always available to the government. In the case in hand, the respondent has neither pleaded nor established mala fide exercise of power by the appellant. While so, the decision of tender committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender.”

14. Law on the subject clears that there is no scope in interfering with the tender floated by the respondents.

15. Hence, this Writ Petition is become infructuous, as the petitioner has also offered the bid in response to the tender floated on 27.05.2025. Since the petitioner already made a bid in response to the above said tender notification, it



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is open to the petitioner to make competitive bid.

16. This Writ Petition is dismissed with the above observations. No costs.

Consequently, connected miscellaneous petitions are closed.

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Internet : Yes / No

apd

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C.SARAVANAN, J.

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