
(1989) 11 KAR CK 0026
In the Karnataka High Court
Case No : W.P. Nos. 7508 & 7509/89

B. Lokeswar and Another

APPELLANT

Vs

Mysore City Municipal Corporation

RESPONDENT

Date of Decision : 29-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1990) 1 KarLJ 113

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-Though these petitions are posted for orders, having regard to the fact that they can be disposed of on a short ground, the same are heard for final hearing.

2. In these petitions under articles 226 and 227 of the Constitution, the petitioners have sought for the following reliefs:

(i) Directing the acceptance of the tenders of the petitioners in respect of the shops in Phase I, along Anesarot street, Mysore and from among 11 fruit stalls and 11 mutton stalls now built and ready for occupation sought for by them and at rates notified by them and subject to the terms and conditions as per Annexure-A and deliver possession of the premises to them by taking such documents as are necessary and require in that behalf.

(ii) restrain the Corporation from either disposing of the shops in the Anesarot Street, Mysore in the First Phase being 11 fruit stalls and 11 mutton stalls by public auction or by fresh tenders and delivering possession by the allotment or otherwise to 3rd parties;

(iii) award court costs and such other reliefs as the Hon"ble Court deems fit to grant as the situation demands in the interests of justice.

3. The respondent called for the tenders by the Notification dated 18th September, 1987 bearing No. B3/HUDCO/1652/87-88, Annexure-A, for leasing out 22 shops for a period of 3 years. Shop Nos. 1 to 11 were of the size of 12" x

16" approximately, intended to be used as Fruit Stalls and another 11 Shops of 12" x 8" approximately being Shops Nos. 1A to 11A to be used as Mutton/Fish stalls. The important terms of the tender Notification were as follows:

"(1) The applicant shall deposit Rs. 50,000/- and Rs. 30,000/- in respect of shops mentioned in Sl. Nos. 1 to 11 of sizes 12" x 16" and 1A to 11A of size 12" x 8" (Approx) respectively along with the application.

(2) The applicant shall pay 10 months rent as advance within 15 days after the lease is confirmed. The advance of rent and the Deposit shall be refundable only after the vacation of the shop premises leased is re-delivered in proper tenenable condition, except with normal wear and tare.

(3) The amount of deposit and advance of rent till refunded shall not carry interest.

(4) The period of lease will be for three calendar years on the expiry of the period of lease, in case of continuation of lease is sought for by the lessee, extension of lease period will be on the usual terms and conditions mutually agreed to between the parties. In the extension of lease period, the lessee has to pay enhanced rent of 10% over the previous rent for the renewed period of lease.

(5) The lease shall be liable for termination by 3 months notice given by one party to the other in writing."

"(18) The Applicant who has offered highest rent is entitled to get the premises on lease but the Corporation is at liberty to reject even the highest rent offered without assigning reason. Barring the accepted offer the rest of applicants are entitled for the refund of deposit amount within thirty days from the date of rejection of the application.

(19) The Applicant whose offer is accepted shall pay 10 months rent as advance within 15 days from the date of intimation of confirmation failing which the lessee will not be entitled for refund of the deposit or for lease."

4. Pursuant to the aforesaid notification, the petitioners submitted their tenders and also deposited the sum. The petitioner in writ petition No. 7508/89 submitted the tender for a fruit stall, depositing Rs. 50,000/- and the petitioner in Writ Petition No. 7509/89 submitted his tender for a mutton stall, depositing a sum of Rs. 30,000/-. In all 22 tenders were received (one tender in respect of each shop). The last date for submitting the tenders was 15th October, 1987. It was incumbent upon the respondent to open the tenders within a reasonable time, immediately after the expiry of the last date for submitting the tenders. However, the tenders were not opened nearly for a year. Only on 20th August, 1988, it was resolved by the respondent to reject the tenders on the ground that the rent offered was very low. Thereafter the respondent tried to negotiate with the petitioners and another Smt. K. Jayamma. During the Course of negotiations, higher rate of rent offered by the petitioners and Smt. K. Jayamma was also not acceptable to the respondent. The stand now taken by the Respondent is that it

has resolved to put up the shops in question for an outright sale by public auction. The contention of the petitioners is that as the Municipality received a substantial sum by way of deposit along with tender and did not consider the tenders well in time and as there were only 22 tenders received, one in respect of each shop, the respondent acted arbitrarily in rejecting the tenders.

5. The relevant terms of the notification calling for the tenders reproduced above do not confer any unqualified right on the applicant that his tender will be accepted or on submitting the tender the applicant will be entitled to have his tender accepted even if it is the highest one. It is relevant to bear in mind that a notification calling for tenders is not an offer to a specific person, it is an invitation to offer to the general public or to those who satisfy the conditions stated in the notification calling for the tenders. It is only when a tender is accepted an agreement takes place. Therefore, on the submission of tenders in conformity with the conditions stated in the notification calling for the tenders the only right the petitioners had, the right to consider their tenders.

6. The terms of the Notification reserve the right to accept or reject the tenders in the respondent. This does not mean that the respondent can arbitrarily reject or accept the tenders. It has to act in conformity with the terms of the notification and also in accordance with law and exercise its power judiciously free from bias, unreasonableness, arbitrariness and in conformity with principles of fairplay and justice. The reason for rejecting the tenders is that the rent offered by each of the tenders is too low. Merely because the respondent has been at the fault in not considering the tenders immediately, it cannot be concluded on that ground that the rejection is arbitrary, as long as the reason given for rejection is relevant and rational. In the case of tenders invited and received for leasing out a premises, quantum of rent offered is the main and relevant consideration in accepting or rejecting the tenders. It is stated in the statement of objections that in the locality the rate of rent is Rs. 18/- per square feet, whereas the rent offered by the petitioners and other tenderers was at the rate of Rs. 1-50 paise per square metre. Under these circumstances, it is not possible to hold that the respondent acted arbitrarily in rejecting the tenders. It is also not possible to hold that the rejection of the tenders was actuated by extraneous considerations. Therefore, the contention of the petitioners cannot be accepted.

7. It is submitted on behalf of the petitioners that they are prepared to pay the rent that is in vogue in the surrounding locality. As the respondent has taken a stand that it has resolved to put up the shops for auction on outright sale and further, the leasing out the property of a local authority shall have to be made invariably by way of public auction, I do not consider it just and appropriate to accept the submission of the petitioners and direct the respondent to consider the request of the petitioners that they are ready to pay the rent at the current rate, as in vogue in the surrounding localities.

8. The next point for consideration is, whether the respondent is justified in

keeping the tenders without considering them, for a period of one year and retaining the substantial sum deposited by each one of the tenders. No circumstances are pleaded by the respondent which disabled or prevented it from considering the tenders, immediately after 25th of October, 1987. The respondent was required to consider the same within a reasonable time after 25th of October, 1987, at any rate not exceeding one month, especially when it had received huge sums by way of deposits. In fact it is stated by the petitioners that with the money received from the applicants along with the tenders by way of deposit, the construction of the shops in question was taken up.

9. Under these circumstances, the question for consideration is as to what right flows to the petitioners out of the laches on the part of the respondent in not considering the tenders well in time. It is true condition No. 3 of the notification calling for the tenders states that "The amount of deposit and advance of rent till refunded shall not carry interest." This does not mean, and cannot be construed to empower the respondent, that the respondent can unreasonably postpone consideration of the tenders so as to enable it to utilise the money of the applicants free of interest. As already pointed out no circumstances are placed on record to justify the long delay in considering the tenders. Thus, there is no justification whatsoever for not considering the tenders within a month from the last date fixed for receiving the tenders. Therefore, in view of the unreasonable delay, the respondent Corporation is liable to pay the interest on the sum received by way of deposit from the petitioners. Any other interpretation would result in permitting the party-the respondent, in this case, to take advantage of its own fault or laches and leads to unfair results. In the facts and circumstances of the case the only way to set right the wrong done to the petitioners is to direct the respondent to pay the interest to the petitioners on the amount of deposit made by them from 1-12-87 till the date of refund. The rate of interest payable by the respondent cannot be less than the rate of interest which any schedule bank charges on the loan advanced by it for commercial purposes.

10. Accordingly, these writ petitions are disposed of in the following terms:

The reliefs sought for by the petitioners are refused. However, in view of the unreasonable delay caused by the respondent in considering the tenders, the respondent is directed to pay interest on the deposit amount at the rate of 18 per cent per annum from 1-12-87 till the date of refund of the deposit amount to the petitioners. In the facts and circumstances of the case there will be no order as to costs. Compliance in one month from the date of receipt of the order.