

(2016) 01 MAD CK 0200

In the Madras High Court

Case No : Writ Petition (MD) No. 21884 of 2015 and Miscellaneous Petition (MD) Nos. 2 to 4 of 2015

C. Manimala and Others

APPELLANT

Vs

The District Collector, Madurai District and Others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2016) 4 CTC 67 : (2016) 2 MLJ 118

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : T. Lajapathi Roy, for the Appellant; M. Murugan, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandra Babu, J.—1. The petitioners are the lessees of shops at T. Kallupatti Town Panchayat Bus stand commercial complex. They are aggrieved against the tender notification issued for tender-cum-auction of those shops for a period commencing from 01.01.2016 to 31.12.2018.

2. Though the writ petition was filed by raising also by raising a ground that the petitioners are entitled for renewal of license, Mr. T. Lajapathy Roy, learned counsel appearing for the petitioners confined his submissions only by contending that impugned proceedings are not issued as per Rule 11(4) of the Tamil Nadu Transparency in Tenders Rules, 2000. It is the specific contention of the learned counsel for the petitioners that as per Rule 11(4) of the said Rules, the Director of Information and Public Relations alone is competent to issue the tender notification and not the Executive Officer of the Town Panchayat, as has been done in this case. He further submitted that when the respondents have chosen to follow the above said Rules by giving 15 days time for submitting tenders as contemplated under Rule 20, ought to have followed the Rule 11(4) also. In support of his submission, he relied on an observation made by the

Division Bench of this Court in its order made in W.A.(MD) No. 604 of 2015 dated 14.07.2015 in respect of the very same Town Panchayat and also an order passed by a learned single Judge of this Court made in W.P. (MD) Nos. 5070 to 5080 of 2015 etc., dated 22.08.2015.

3. Per contra, the learned counsel appearing for the respondent Panchayat submitted that Rule 11(4) of the said Rules is not applicable to the present case and in support of such submission, he relied on a decision of this Court reported in , 2005 Writ L.R. 30. (S. Selvarani vs. The Commissioner, Karaikudi Municipality and another). He further submitted that under Rule 303(2)(d) of the Tamil Nadu District Municipalities Rules, the Town Panchayat is empowered to lease the property vested in or belonging to the Panchayat and therefore, such vested power cannot be taken away by applying Rule 11(4) of the Tamil Nadu Transparency in Tenders Rules, 2000. He further submitted that the petitioners do not have any vested right in seeking for renewal. In that aspect, he relied on a decision of the learned single Judge of this Court reported in , 2015 (3) CTC 170 (C. Vinoba and 34 others vs. The Commissioner, Palladam Municipality, Palladam, Tiruppur District). It is his further contention that when the Panchayat is entitled to augment more income, it is open to the Panchayat to go for public auction and therefore, there is no arbitrariness involved in this case. In support of such contention, he relied on a decision of the Division Bench of this Court reported in , 2014 (5) MLJ 129 (P. Muthusamy vs. State of Tamil Nadu).

4. Heard both sides.

5. It is an admitted fact that some of the petitioners herein along with others, earlier filed writ petitions in W.P. (MD) No. 3641 of 2015 etc., and challenged the auction-cum-tender notification in respect of the shops issued by the very same panchayat, by raising a contention that auction proceedings were not issued in accordance with Tender Transparency Act. Their specific objection therein was that when the value of the tender is more than Rs. 25 lakhs, paper publication has to be effected as per the Tender Transparency Act and on the other hand, no such publication was made by the authorities and such notice and such publication were effected only in the notice board. It is seen that they also specifically undertook before this Court that if the publication is made accordingly and new tender is called for, they will participate in the new auction.

6. Considering the above contention and undertaking, the learned single Judge of this Court passed a common order on 17.03.2015 setting aside the said auction notification dated 05.03.2015, on the ground that the same was not in conformity with the Tender Transparency Act. While setting aside the auction notification, the learned Judge also directed the authorities to issue paper publication as per Tender Transparency Act and conduct auction without any delay. The petitioners were also permitted to take part in the auction. The relevant paragraphs 2 and 3 of the said order is extracted hereunder:-

"2. The learned counsel appearing for the petitioners in all Writ Petitions would

contend that as per the Tender Transparency Act, if the value of the tender is more than Rs. 25 Lakhs (Rupees Twenty Five Lakhs Only), the paper publication has to be effected. Admittedly, in the case on hand, the value of the tender works out to be Rs. 50 Lakhs (Rupees Fifty Lakhs only). Unfortunately, no publication has been made by the authorities. They have effected only in the notice board of the respondents. Further, the petitioners in these Writ Petitions have voluntarily undertook that if a publication is made and a new tender is called for, they will participate in the new auction.

3. In view of the aforesaid submission of the petitioners, the present notification issued by the respondent dated 05.03.2015 stands set aside only on the ground that it is not in conformity with the Tender Transparency Act. It is made clear that the authorities will immediately do the paper publication as per the Act and conduct the auction without any delay. Needless to state that the petitioners shall participate in the auction, once the tender is called for by the respondents."

7. Not being satisfied with the said order, one of the writ petitioners therein, namely, M. Periasamy, who is the present 5th petitioner herein, filed W.A. (MD) No. 604 of 2015 by contending that he is entitled for renewal of the license for a period of 9 years. The Division Bench, after considering the matter in detail and after finding that the appellant and other writ petitioners therein have agreed to participate in the auction before the authorities, dismissed the writ appeal, by an order dated 14.07.2015 also by observing that the tender auction shall be conducted immediately as per the provision of the Tamil Nadu Transparency in Tenders Act, 1998, and Rules 2000 framed thereunder. Paragraph 21 of the order of the Division Bench reads as follows:-

"21. In the light of the above discussion and decision stated supra, this Court is not inclined to interfere with the impugned order made in W.P.(MD) No. 3694 of 2015, dated 17.03.2015. Accordingly, writ appeal is dismissed. As the intention of the respondents Town Panchayat, is to augment more revenue, by way of public auction, the same shall be conducted immediately, as per the provisions of the Tamil Nadu Transparency in Tenders Act and the rules framed thereunder. No costs. Consequently, M.P.(MD) No. 1 of 2015 is closed."

8. At this juncture, it is to be noted that even though the learned counsel appearing for the appellant therein, who is the very same counsel appearing in this writ petition, has raised a specific plea that due publicity was not given as per Section 11(4) of the Tamil Nadu Transparency in Tenders Rules, and also questioned the competency of the Executive Officer of the Town Panchayat in issuing the tender notice, the Division Bench has not given any finding on that aspect and however, directed the auction as per the above Act and Rules. Consequent upon the said order passed by the Division Bench, when the Town Panchayat issued fresh tender notification, the same was again challenged by the petitioners and others in W.P. (MD) No. 5070 of 2015 etc., on the ground that a minimum time of 15 days was not given between the date of publication of notice inviting tender and the last date for submission of the tenders. Taking note of the

fact that only 11 days time was given, the learned single Judge by passing a common order in those writ petitions, set aside the impugned tender proceedings therein, however, by giving liberty to the respondents to issue tender notification afresh in accordance with the Tamil Nadu Transparency in Tenders Act and Rules made therein. The present respondents are the respondents therein as well.

9. At this juncture, it is to be noted that though an argument was advanced before the learned single Judge once again by citing Rule 11(4) to contend that only the Director of Information and Public Relations alone can publish the notice, the learned Judge has not given any direction to that effect and on the other hand, given liberty to the respondents therein, who are Assistant Director of Town Panchayats, Madurai and the Executive Officer, T. Kallupatti Town Panchayat, T. Kallupattai, Madurai, to issue tender notification afresh in accordance with the Act 1998 and Rules made thereunder. Paragraphs 4 to 6 of the order read as follows:-

"4. Learned Additional Advocate General, after elaborate argument, has fairly submitted that in the event of this Court setting aside the notification, liberty may be granted to the respondents for issuance of fresh tender notification after complying with the statutory requirements as prescribed under the Rules.

5. At this juncture, learned counsel for the petitioners has reciprocated that the petitioners are also ready to participate in the fresh tender to be published by the respondents on due compliance of the Rules.

6. In view of what is stated on both sides herein above, I am of the view that there is no need to go into the factual aspects of the case. Hence, the impugned order dated 24.03.2015 is set aside by giving liberty to the respondents to issue afresh tender notification in accordance with the Act, 1998 and the Rules made thereunder."

10. It is seen that the said order passed by the learned Single Judge has become final and conclusive and binding on the parties. Consequent upon the said order, the present impugned auction-cum-tender notifications are issued by the Executive Officer, T. Kallupatti Town Panchayat. When such notification is issued, the very same petitioners challenged the same in this writ petition once again by contending that the Director of Information and Public Relations alone can publish the notification and not the Executive Officer of the Town Panchayat.

11. There is no difficulty in answering the above question raised by the petitioners in this writ petition, had it been raised as the first time. No doubt, the said question can be answered by looking into the said provision, provided this Court finds some bone fide on the part of the petitioners in their repeated attempt in challenging the auction proceedings. Needless to say that this Court exercising the discretionary jurisdiction under Article 226 of the Constitution of India, has to exercise such power only where it finds that such exercise of discretion is essential and inevitable, without which a travesty of justice may result in. Keeping the above principle in mind and going by the past track of this

case and the conduct of the petitioners in the earlier round of litigations challenging the very same auctioning of the shops, this Court finds that there is no necessity warranting exercise of such discretionary power, since it is evident that there is no bone fide on the part of the petitioners in litigating the matter repeatedly for the same cause of action raising one ground on another with the sole object of retaining the shops and without allowing the authorities to go for public auction. This Court also finds that the very same point raised by the petitioners on earlier occasion has not resulted with any positive finding or direction given by this Court as sought therein. Therefore, raising the very same point once again in this writ petition cannot drive the petitioner anywhere except to revert them back to their original position of the order already passed, namely, allowing the panchayat to issue fresh auction notice and giving liberty to the petitioner to take part in the said auction. In fact, I wonder as to how the said writ appeal was filed by the 5th petitioner herein earlier while he has also given an undertaking before the learned single Judge along with other petitioners that they would participate in the auction proceedings, once the publication is made by the respondents in the Newspapers. Therefore, the conduct of the petitioners herein from the beginning would only show that there is no bone fide on their part in litigating the matter repeatedly. Thus, in view of such conduct and earlier orders passed as discussed supra, I am of the firm view that the petitioners should not be permitted to litigate this matter any further for the very same cause of action. Even otherwise, a procedural lapse, which does not go to the root of the matter and affect the interest of the public, can be condoned and on account of such immaterial and non-vital or non-fatal procedural lapse, this Court need not interfere with the impugned proceedings, when admittedly the opportunity of the petitioners in taking part in the public auction has not been taken away in any manner because of such procedural lapse.

12. At this juncture, it is useful to refer to the decision of the Apex Court reported in , (2008) 1 SCC 560 (Udyami Evam Khadi Gramodyog Welfare Sanstha vs. State of U.P), wherein it has been observed that repeated writ petition on the very same issue is an abuse of process of Court.

13. Likewise, it is also well settled that this Court can interfere with the matter pertains to Government Contracts only if it is against the public policy and there is an arbitrariness, discrimination and unfairness. In this aspect, it is useful to refer the decision of the Apex Court reported in , 2010 (7) SCALE 638 (Zonal Manager, Central Bank of India vs. Devi Ispat), wherein at paragraph 15 it is observed as follows:-

"15.(c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Art. 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power."

14. Perusal of the above-stated facts and circumstances would show that the petitioners are estopped from raising such ground even though the Tamil Nadu Transparency in Tenders Act, 1998 and Rule made thereunder are to be made applicable in respect of the tender notification issued by the Panchayat as well, more particularly under the circumstances that this Court specifically gave liberty to the panchayat to issue fresh tender notification in its last order made in W.P(MD) No. 5070 of 2015 etc. It is not in dispute that the present tender notification has given minimum 15 days time gap between the date of publication of the tender and the date of submission the tender forms. Mr. T. Lajapathy Roy, learned counsel appearing for the petitioner submitted that now Rule 20 of the Tamil Nadu Transparency in Tenders Rules has been followed by the respondents and the petitioners are not having any grievance in that aspect. When that being the admitted case, the petitioners are not justified in filing this writ petition once again by contending that the notification issued by the Executive Officer is without competency. In effect, the continuous action of the petitioners by way of multiple litigations before this Court would amply show that their sole intention is only to prevent the shops being auctioned through public action, so that they can continue to enjoy the possession of the shops. In , (2011) 3 SCC 408 (M. Nagabhushana vs. State of Karnataka and others), the Apex Court has found that the principles of constructive res judicata would apply to the writ proceedings as well. In this aspect, the decision reported in , (2010) 1 MLJ 31 (K. Vinayakamurthy vs. Union of India) also can be relied on.

15. As rightly pointed out by the learned counsel for the respondents, the respondents are entitled to bring the shops for auction in order to augment the income. At this juncture, he relied on a decision reported in , (2014) 5 MLJ 129 (cited supra), wherein the Division Bench has observed at paragraph Nos. 20 to 22 are as follows:-

"20. There is no doubt that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1961, does not apply to the case on hand. The petitioners can very well participate in the proposed auction. In other words, they cannot claim the right of a statutory tenant."

21. The object of letting out the shops is to collect more revenue for the respondent-Municipality, which is meant to be used for welfare measures...."

22. The best way to get the maximum revenue is by way of public auction. This will also create a level playing field enabling others to participate along with the petitioners/licensees. Therefore, we do not find any arbitrariness in the action of the respondent-Municipality....."

16. In , 2015 (3) CTC 170 (cited supra), the learned single Judge has found that the licensees running their shops on rental basis are not entitled to seek for renewal of license in terms of Section 321(11) of the District Municipalities Act. Paragraphs 36 of the order only reads as follows:-

"36. Licences that are dealt with by Section 321, are those that are granted for

the purpose of running a Factory or Industrial establishment or a Business enterprise. Section 321, has nothing to do with the letting out of properties belonging to the Municipalities. As I have pointed out earlier, letting out of properties owned by Municipalities, is not very clearly dealt with by any provision contained in the Act, except the indication generally found in Section 259 & 260 that deal with Public Markets. Section 321, has no application to the Licencees of buildings owned by the Municipalities for the purpose of locating Public Markets. Hence, the second contention of the Petitioners cannot be accepted."

17. Considering all these facts and circumstances, I am of view that the petitioners are not entitled for any relief in this writ petition. Accordingly, this Writ Petition is dismissed. The interim order already granted is vacated. No costs. Consequently, connected miscellaneous petition is closed.