

(2003) 01 AP CK 0138
In the Andhra Pradesh High Court
Case No : Writ Petition No. 21 of 2004

Jampala Sailu

APPELLANT

Vs

Commissioner Endowments Department and Others

RESPONDENT

Date of Decision : 05-01-2003

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments
Immovable Properties and Other Lands (Other than Agricultural Lands) Leases and
Licenses Rules, 2003 — Rule 10, 12

Citation : (2004) 1 ALD 754

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : I. Maamu Vani, for the Appellant; Government Pleader For
Endowments for Respondent Nos. 1 and 2 and Kondaveti Ravi, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—A short question as to interpretation of Rule 10 read with Rule 12 of A.P. Charitable and Hindu Religious and Institutions and Endowments Immovable and Other Rights (other than Agricultural Lands) Leases and Licenses Rules, 2003 arises for consideration in this writ petition.

2. The petitioner is a barber. It appears, during Sankranthi Festival a large number of devotees visit Sri Mallikarjunaswamy Devasthanam in Inavolu Village and get the head tonsured. The petitioner claims to be one of the barbers attending to the same. In 1999-2000 it was decided to auction the right to collect the hair obtained by tonsuring the heads. The remuneration for barbers were fixed from out of the sale proceeds of tickets for tonsuring. The petitioner participated in the auction and offered to pay Rs. 11,300/- (Rupees Eleven thousand three hundred only). Auction was conducted on 27.12.2000 when the petitioner became highest bidder quoting Rs. 40,200/-(Rupees forty thousand two hundred only). However, the offer was rejected. Again on 1.11.2001 the respondents auctioned the right to collect human hair for the period from

1.1.2002 to 31.12.2002. The petitioner offered Rs. 2,04,000/- (Rupees Two lakhs four thousand only). He states that he became highest bidder, but sustained loss and therefore, if a lease is granted for a further period of three years, he will be able to recover the loss. Therefore, he made a representation to the Commissioner on 16.12.2002 without any response.

3. A further auction notice was issued on 16.11.2002 for the period from 1.1.2003 to 31.12.2003. Contending that the said auction is not in accordance with the Rules, the petitioner filed W.P. No. 23892 of 2002. This Court in WPMP No. 29998 of 2002 passed interim orders on 29.11.2002 not to finalize the auction. The writ petition is pending. Though the application moved by the third respondent for vacating the interim order was rejected, the third respondent filed another WPMP No. 33701 of 2003 seeking permission to conduct fresh auction for the period from 1.1.2004 to 31.12.2004. The said application was allowed on 23.12.2003 by this Court and accordingly, the third respondent issued impugned auction notice dated 24.11.2003 proposing to auction the right to collect human hair for the period from 5.1.2004 to 4.1.2005. This auction notice is assailed in this writ petition.

4. Learned Counsel for the petitioner Smt. I. Maamu Vani contends that the proposed auction is not in accordance with the Rules and that on two occasions, the petitioner suffered losses and therefore, the petitioner ought to have been preferred to others while conferring the right to collect human hair during Jatara. She would further contend that every auction conducted under Rules has to be confirmed by competent authority, and unless and until such confirmation is accrued, no licensee can commence the work. As the confirmation process would take sometime, the proposed auction for the period from 5.1.2004 is illegal. Even if the auction is conducted on 5.1.2004, the successful bidder will get a right only from the date of confirmation and therefore, the impugned notification is vitiated by irregularity.

5. The learned Assistant Government Pleader for Endowments Department and the learned Standing Counsel Sri Kondeti Ravi for Sri Mallikarjunaswamy Devasthanam taken me through the relevant Rules. They contend that at the time of conducting auction, the participants would be made known the relevant rules and therefore, all the participants have to give their bids subject to the conditions laid down in the impugned notification as well as the Rules.

6. The auction notice dated 24.12.2003 contain eight conditions. Condition No. 1 is to the effect that the auction will be subject to further orders of the Commissioner of Endowments Department. Condition No. 7 lays down that all the conditions of auction will be read out before the auction is conducted and it makes clear in Condition No. 4 that the licence period is as mentioned in the schedule i.e., 5.1.2004 to 4.1.2005. Though the auction notice mentions the period as 5.1.2004 to 4.1.2005, having regard to the Rules, which must be held that unless and until the auction is confirmed by the competent authority, no licensee will get right to commence his business of collecting human hair.

7. At this stage a reference to the Statutory Rules made by the Government in exercise of their powers u/s 153 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 may be made. These Rules made vide G.O. Ms. No. 866 dated 8.8.2003 apply to the lease, licence of Immovable properties and other rights other than agricultural lands. Rule 3 stipulates that all leases/licences shall be made by way of public auction by holding public auction at the place where the properties are situated or the rights exist. However, it is competent for the competent authority to permit auctions at a different place. Rule 4 deals with the period for which auction will be conducted. Though a lease of Immovable property can be granted for a period of three years, no licence can be granted for a period of three years. Rules 5 to 9 of the Rules deal with the method of conducting public auction. Rules 10 and 12 are relevant and read as under:

"10. Lease or licence shall ordinarily be given to the highest bidder. Where it is proposed to accept a bid highest than the highest bid, the reason for not accepting the highest or other bids higher than the accepted bid shall be recorded in writing by the Executive Authority.

12. (1) All leases or licences shall immediately after the auction is conducted be reported to the competent authority; who may either confirm or for the reasons to be recorded in writing, reject the lease or licence.

(2) The authorities competent to confirm or reject the lease or licence and the annual rentals thereon shall be specified in the table below:

TABLE

Sl. No. Classification of The Institution or Endowment Assistant Commissioner
Deputy Commissioner Regl. Jt. Commissioner Addl. Commissioner Commissioner

1.

Institution Endowments published u/s 6(c) of the Act & Mutts whose annual income is below Rs.50,000 /-

Lease value not exceeding Rs. 15,000/-

If the value is between Rs.15,000/- to Rs.30,000/-

If the value is between Rs.30,000/- to Rs.50,000/-

If the value is between Rs.50,000/- to Rs.1,00,000/-

If the value exceeds Rs.1,00,000/-

2.

Institution and Endowments published u/s 6(b) of the Act & Mutts whose annual income is above Rs.50,000/- but below Rs.1, 00,000/-

Not exceeding Rs.30,000/-

If the value is between Rs.30,000/- to Rs.50,000/-

If the value is between Rs.50,000/- to Rs.1,00,000/-

If the value exceeds Rs.1,00,000/-

3.

Institution and Endowments published u/s G(a) of the Act other than the institutions managed by the Executive Officers in the rank of Deputy Commissioner and Regional Joint Commissioners and Mutts whose annual income is above Rs.1,00,000/- but below Rs.5,00,000/-

Not exceeding Rs.50,000/-

If the value is between Rs.50,000/- to Rs.1,00,000/-

If the value exceeds Rs.1,00,000/-

4.

Institution and Endowments published u/s 6(a) of the Act which are managed by the Executive Officers in the rank of Oepul Commissioners and Regl. Joint Commissioners and fall under the purview of the provision contained in Section 6(d) and 6(e) of 111 Act.

Not exceeding Rs.1,00,000/-

If the value exceeds Rs.1,00,000/-

Provided that the Commissioner shall only be the Competent Authority for approval of the leases or licences otherwise than by way of public auction in all cases irrespective of the category of the institution and the value at the lease.

(3) No lease or licence shall be valid and until it is approved by the Competent Authority."

8. A plain reading of Rule 10 would show that lease or licence shall ordinarily be given to the highest bidder. As per Rule 12 after conducting auction, the same has to be returned to the competent authority who has to confirm the same. If the competent authority decides to reject the auction or refuses to confirm the lease or licence in favour of the highest bidder, reasons have to be recorded. In respect of various temples, various competent authorities have been prescribed as above. Unless and until the lease is approved by the competent authority, the same shall not be valid as per Sub-rule (3) of Rule 12. Rule 14 requires a highest bidder to execute either lease deed or licence deed and then only enforce his right.

9. In view of the Rules, it is always open for the authority conducting auction to immediately obtain approval of the auction, obtain a licence deed from the highest bidder and allow him to commence the business. When all the participants are informed of these Rules as per Condition No. 7 of the auction

notice, there cannot be any illegality in mentioning the period of licence from 5.1.2004 to 4.1.2005. Whether it is possible or impossible to get the approval/confirmation of lease or licence by the competent authority, in such circumstances is irrelevant and immaterial. All the persons are expected to participate in the auction knowing all the conditions and rules especially Rule 12(1) and Rule 14(1) which are to the effect that unless and until the lease or licence is confirmed and lease deed or licence deed is executed, a participant in the auction shall not be entitled to enforce his right. In that view of the matter, the submission made by the learned Counsel for the petitioner is misconceived.

10. In the result, for the above reasons the writ petition fails and is accordingly dismissed.