
(2014) 05 KL CK 0030
In the High Court Of Kerala
Case No : WP(C). No. 4441 of 2013 (E)

K.G. Antony

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 05 KL CK 0030

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : Ashik K. Mohamed Ali, Advocate for the Appellant; K.A. Sanjeetha, Government Pleader, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—This writ petition is filed seeking for a direction to quash one of the conditions in Ext. P4 tender notification and for other consequential reliefs.

2. The facts involved in this case would disclose that as part of the initiative of the Government to set up marketing infrastructure for agricultural produces, it was decided to set up agricultural urban wholesale markets. One among such market is developed in Nettoor, Ernakulam District, which has facilities to handle more than 2500 tones of agricultural produce. It is said that the area has all necessary infrastructure required for farmers to keep track of the daily prices and other requirements. Petitioner's complaint is with reference to Ext. P4 notification. It is inter alia contended that as per Ext. P4 notification No. 04/2012, tenders are invited for four number of stalls. The last date of tender was 18.2.2013. The measurement of the shop rooms was 8 x 6 sq. meters. Licence was to be granted for a period of 11 months. According to the petitioner, there was no necessity to invite tenders for the four shop rooms as a single unit. The intention is, according to the petitioner, mala fide to enable the award only to a few persons, especially giant commission agents. Persons like the petitioner will not get opportunity to participate in the tender. Their requirement is much less and therefore the petitioner seeks for cancellation of Ext. P4 tender

notification to the extent mentioned above.

3. Counter affidavit is filed by the 4th respondent inter alia stating that the petitioner is a licensee to sell agricultural products. He has been allotted a stall bearing No. G. 15 as per agreement dated 21.8.2012. He was also allotted another stall bearing No. P3/22 as per agreement dated 1.9.2012. The petitioner's wife was allotted another stall bearing No. G26 as per agreement dated 1.7.2012 and she was also allotted two other stalls bearing Nos. P1-2 and P1-3 as per agreement dated 1.9.2012. It is further indicated that the executive committee, under the Chairmanship of the District Collector, is the authority to take a decision regarding inviting tenders for allotment of shops. The said committee has decided to invite tenders for the four shops as a single unit as per Resolution No. 11(b) and authorized the 4th respondent to invite tenders. This decision was taken by the committee to ensure more storage facilities of agricultural products to the traders. It is mentioned that fruits like banana and pineapple are cultivated on a large scale in Ernakulam District. During harvesting season, these fruits fetch very low returns to the farmers in domestic market. Therefore, the committee members opined that if the shops are let as a single unit, it will offer more storage space, which will attract traders with both national and international links who can procure these products from farmers on a large scale. The intention of the committee members is to exploit the export potential of these fruits, which will give great relief to the farming community. It is for helping the farmers such a decision has been taken. It is also indicated that due publicity has been made about the tender notification through advertisements. The respondent also contends that the petitioner has no locus standi to challenge the tender notification, especially when he has procured a tender form but did not submit his tender.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

5. The petitioner challenges the conditions of tender, especially, inviting tender for four shop rooms together. The total area of the shop rooms is only 48 sq. meters. First of all, tender conditions are not liable to be challenged by a prospective tenderer. It is absolutely within the jurisdiction of the person inviting tenders to impose conditions regarding the tender. When a concrete decision has been taken by the committee constituted for the purpose of giving licence to the premises in question, it is not open for a prospective tenderer to challenge the same unless such decision is either arbitrary or violative of Article 14 of the Constitution of India. This position has been held so in the judgment of the Supreme Court in *Tata Cellular Vs. Union of India*, .

6. Having regard to the aforesaid position of law, the question to be considered is whether the decision taken by the 4th respondent to invite tender notification for four shops together is in any way arbitrary. In the counter affidavit filed by the respondent, it is clearly indicated that the decision was taken by the executive committee under the Chairmanship of the District Collector. Therefore, it is clear

that it was not the decision of a single person. That apart, in paragraph 7 of the counter affidavit, the reason for giving licence/lease to four shops as a single unit is also indicated. It is for the purpose of enabling traders having export potential to come to the market and purchase materials from the farmers. According to the committee, such a decision is taken on account of the special circumstances and is not intended to avoid any other person. That apart, it is clear from the material on record that the petitioner and his wife have been allotted several spaces in the market and therefore it is not a case where the petitioner is affected in any manner by inviting tenders in the light of Ext. P4.

7. Though the learned counsel for the petitioner tried to impress upon this Court regarding the scheme under which this market is set up and the circulars issued in this regard, as far as invitation of tender is concerned, when it is purely within the discretion of the authorities and the executive committee to take a decision to tender four shop rooms together, I do not think that this Court should sit in judicial review on such matters, especially in the absence of any material to indicate that the decision is arbitrary or illegal. In such circumstances, I do not think that the petitioner has made out any case for interference with Ext. P4.

Accordingly, the writ petition is dismissed.