(1993) 11 MAD CK 0020

In the Madras High Court

Case No : W.A. No. 1068 of 1993

M. Muthuvel APPELLANT

Vs

The Collector, The Revenue Divisional Officer, The Assistant Commissioner (Excise) and Natarajan RESPONDENT

Date of Decision : 03-11-1993

Acts Referred:
Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 10, 11, 11(2), 13, 5

Citation : (1993) 11 MAD CK 0020

Hon'ble Judges : K.A. Swaini, C.J;Somasundaram, J

Bench : Division Bench

Advocate : M. Venkatachalapathi, for the Appellant; A.S. Venkatachalamoorthy, AGP and M. Baskar, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, C.J.—This writ appeal is preferred against the Order dated 30th August, 1993 passed by the learned single Judge in W.P.

No. 15680 of 1993. As the writ petition has been dismissed, the Petitioner has come up in the writ appeal.

2. In the writ petition, the Petitioner sought for quashing the proceedings bearing R.C. No. J4/48884 dated 19/8/1993 in respect of shop No. 7,

Kottaipattinam Village Panchayat and to further direct Respondents 1 to 3 to declare that the Petitioner is the auction purchaser in respect of

IMFL Shop No. 7 in Kottaipattinam Village Panchayat on the strength of the bid amount of Rs. 5,08,00/- offered by him and grant licence to him

under Rule 13 of the Tamil Nad Liquor (Retail Vending) Rules, 1989 (hereinafter referred to as the Rules).

3. Learned single Judge has held that the highest bidder Selvam had promised to

come back with the requisite money, but he did not return. The

other two persons, viz., M. Muthuvel and T. Veeriah left the auction hall and they were not to be seen. Therefore, the only person who had offered

the next highest bid, available was R.S. Natarajan (the 4th Respondent). Therefore, the 2nd Respondent accepted the bid offered by the 4th

Respondent and finalised the auction sale, forfeited the earnest money deposited by the other three bidders. Therefore, it has been held by the

learned single Judge that Rules 5 to 11 of the Rules have not been violated. Accordingly, learned single Judge has dismissed the writ petition.

4. It is contended before us that as per Rule 10 of the Rules, on the failure of the deposit of the balance of the amount by the highest bidder, the

2nd Respondent ought to have forfeited the earnest money deposit of the highest bidder, viz., Selvam and should have declared the Petitioner who

had offered the next highest bid, as auction - purchaser and called upon him to pay the balance of the amount, that as the Sale Officer, viz., the 2nd

Respondent had failed to follow the procedure established under Rule 10 of the Rules, the auction sale finalised in favour of the 4th Respondent

who was the 4th highest bidder, is illegal and is liable to be quashed.

5. Respondent No. 2 has filed a counter affidavit and has also produced the records. It is contended by the learned Government Pleader, on the

basis of the records, that no doubt, Selvam was the highest bidder, but, he failed to deposit the balance of the amount, as he did not return, after he

went out of the auction hall for bringing the money. Similarly, the Petitioner and Veeriah left the hall and were not available at the time when the

auction was to be finalised, after Selvam failed to return with the, balance of the bid amount. Therefore, the only way left to the 2nd Respondent is

to finalise the auction sale in favour of the 4th Respondent. It is also contended that prior to the auction sale in question, several times, the auction

sale was conducted, but the time did not fructify. It is also the contention of the learned Government Pleader that as per counter-affidavit sworn to

by the 2nd Respondent, the first three highest bidders are no other than the employees of the person, in whose favour the auction has been finalised

in respect of shop No. 8 in the same Panchayat area and he does not want another person to become his competitor on taking the shop No. 7 for

vending liquor.

6. The second contention is supported by the counter- affidavit sworn to by the 2nd Respondent. However, for our purpose, it is not necessary to

go into the second contention, Rule 10 of the Rules reads thus:

10. Remittance of privilege amount by auction purchaser- (1) The auction purchaser shall immediately on such declaration, remit the privilege

amount in one lump sum. If he fails to remit the privilege amount, his Earnest Money Deposit shall be forfeited and the next highest bidder or

highest tenderer, as the case may be, shall be declared as auction purchaser by the Sale Officer.

(2) All remittances shall be in cash or by a Demand Draft drawn on the State Bank of India or a Nationalised Bank in favour of Collector or partly

by cash and partly by Demand Draft.

(3) The privilege amount once remitted shall, on no account, be refunded except in a case referred to in Sub-rule (2) of Rule 11.

As per the aforesaid Rule, the highest auction purchaser shall have to, immediately On being declared as such, remit the privilege amount in one

lumpsum. That Selvam failed to remit, because after he went out of the hall with permission of the Sale Officer to bring the privilege amount, he

failed to return. Consequently, the 2nd Respondent was entitled to forfeit his earnest money deposit. As per Rule 10, the next highest bidder, the

Petitioner was entitled to be declared as auction-purchaser. That the Sale Officer could have done so provided the Petitioner was present. As per

the proceedings of the 2nd Respondent, neither the Petitioner was present, nor Veeriah who was the third highest bidder was present. Therefore,

he had no option, but, to declare the 4th Respondent as the auction-purchaser. The proceedings drawn by the 2nd Respondent on the spot are in

Tamil, a true translation of the same is furnished to us by the learned Government Pleader, the correctness of which is not disputed by the Learned

Counsel for the petitioner, are as follows:

IMFL Shops Retail Vending For the Period 1993-94.

Name of Shop Date of the Auction Upset Price

Shop 7

Kottaipattinam 16-8-93 Rs. 4,69,775

Village Panchayat

Sl. No. Name of the Bidder Bid Amount in Rs.

1. R.S. Natarajan 4,75,000 4,77.000 4,

79,000 4,81,000

4,83,000 4,85,000

4,88,0004, 90,000

4,94,000 4,98,000

5,01,000 5,04,000

5,06,000

2. T. Veeriah 4,76,0004, 78,0004,

80,000 4,82,000

4,84,0004, 82,000

4,89,0004, 92.000

4,96,000 5,00,000

5,02,000 5,05,000

5,07,000

M. Muthuvel 5,08,000

4. R. Selvam Rs. 5,10,000

II. Highest Bid -

III. No. of tenders Nil

IV. Highest tender amount -

V. Whether highest tender is -

higher than highest bid

VI. If so continue auction: -

R. Selvam and Muthuvel did not make the deposit even though they were given sufficient time. They left stating that they would come back with

amounts; but they did not come back. Hence, the sum of Rs. 7,500/- paid as security deposit is forfeited. T. Veeriah, who offered Rs. 5,07,000/-

is not available and he has disappeared. His security deposit of Rs. 7,500/- is forfeited to the Government. Finally, Mr. R.S. Natarajan is ready to

pay Rs. 5,06,000/- and the auction is confirmed in his favour. Rs. 5,06,000/- has been received.

Witnesses: sd...

1. Venkatasubbu, Divl. Excise Officer,

Aranthangi. Sales Officer

2. Veerian, Excise Inspector.

3. G. Ravindran, Excise Inspector, Aranthangi. 170

From the aforesaid proceedings, it is clear that the 2nd Respondent has followed Rule 10 of the Rules strictly. The contention of the Learned

Counsel for the Petitioner is that when Selvam who had offered the highest bid and who was declared as the auction-purchaser, failed to return,

the Petitioner was in the present of the place, where the auction was held, therefore he should have been declared as the auction-purchaser. We

are of the view that the proceedings recorded do not lend support to the contention. There was no reason whatsoever for the 2nd Respondent to

ignore the presence of the Petitioner, if he were present at that time and not to declare the Petitioner as the highest bidder. There are no allegations

of malafides made against the 2nd Respondent. In the absence of allegations of malafides, the official acts must be presumed to have been done in

the manner expected. Therefore, we are of the view that there is no reason whatsoever to discredit the recording made by the 2nd Respondent at

the spot, when the auction was conducted. No doubt, if the Petitioner were present, he could have been declared as the auction-purchaser. In the

absence of the bidders, who had offered the second and third highest bids, there was no necessity to declare that they were the auction-

purchasers. Therefore, the 2nd Respondent only recorded their absence and forfeited their earnest money deposit and declared the 4th highest

bidder who was present and available, as the auction-purchaser and he deposited the privilege amount immediately. Therefore, we are of the view

that Rule 10 of the Rules is not violated in any manner.

7. It is contended that there is variation between the averments made in the counter-affidavit and the recording made by the 2nd Respondent about

the auction proceedings. The variation, if any, does not affect the substance of the matter, inasmuch as the effect of the averments made in the

counter-affidavit and the proceedings recorded by him is the same inasmuch as at the relevant point of time, the second and third highest bidders were not present, as they went out of the hall, after the highest bidder, viz., Selvam went out of the hall to bring the privilege amount. The absence

of all the three, viz., the first, second and third highest bidders could also lend support to the averment made by the 2nd Respondent that they are

no other than the henchmen of the auction purchaser of shop No. 8 in the same Panchayat area. Whatever it may be, in view of the conclusion

reached by us on the first contention, we do not find any merit in the petition. Accordingly, learned single Judge is justified in rejecting the same.

Hence, the appeal is rejected. No order as to costs.