

(2015) 08 MAD CK 0033

In the Madras High Court

Case No : W.P.(MD) Nos. 9203, 9587, 10116, 12193 of 2015 and M.P.(MD) Nos. 1, 2 of 2015

M. Reji and Others

APPELLANT

Vs

District Collector, Kanyakumari District and Others

RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 8 MLJ 47

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : S.C. Herold Singh, N. Dilip Kumar, K.A. Thirumalaiappan and M.P. Senthil, Advocates, for the Appellant; K.P.S. Krishnadas and T.S. Mohamed Mohideen, AGPs, for the Respondent

Judgement

R. Subbiah, J.—The issue involved in these writ petitions are with regard to the right to collect the parking fees as well as right to collect the fees for using the toilets at sunset point in Kovalam, which belongs to the Kovalam Village Panchayat. W.P. (MD) Nos. 9203 and 9585 of 2015 have been filed by two individuals viz., Mr. M. Reji and Mr. P. Sivaperumal respectively. These two individuals, in their respective writ petitions, have challenged the impugned proceedings passed by the Kovalam Village Panchayat vide., dated 19.03.2015 published in "Dina Murasu", whereby tenders were called for, in respect of the right to collect the parking fees as well as the right to collect fees for using the toilet at sunset point in Kovalam Village Panchayat.

2. W.P. (MD) No. 10116 of 2015 has been filed by another individual viz., S. Filasiyas Gangan seeking to direct the Official Respondents to confirm a sum of Rs. 4,00,000/- as lease amount and further to authorise him to collect the parking fees as well as the fees for the usage of toilet for three years, by considering his representation dated 15.06.2015.

3. The successful bidder in the public auction viz., S. Alagesan has filed the other

Writ Petition (MD) No. 12193 of 2015 seeking to quash the subsequent order passed by the Kovalam Village Panchayat dated 10.07.2015 restraining him from collecting the aforesaid fees.

4. The brief facts, which are necessary to decide the issues involved in these writ petitions, as culled out from the affidavits filed by the parties in the writ petitions, are as follows:--

4.1. The Kovalam Village Panchayat has issued the impugned tender notification vide dated 19.03.2015, by making advertisement in the Tamil Daily Thina Murasu", calling for tenders from the interested persons in respect of the right to collect the parking fees as well as the right to collect fees for using the toilet at sunset point in Kovalam Village Panchayat. In the said notification, it has been stated that tender documents would be issued from 20.03.2015 till 05.04.2015 and the last date for submitting the filled-in tender forms is 06.04.2015. It was further stated in the said notification that the tender forms would be opened, followed by public auction, on 07.04.2015 at 11.00 am.

4.2. It is the case of the petitioners in W.P. (MD) No. 9203, 9587 and 10116 of 2015 that in conducting the tender/public auction, the statutory requirements prescribed under the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayat) Rules, 2001 (hereinafter referred to as "the Rules"), have not been complied with by the official respondents. On 07.04.2015, the petitioners M. Reji and S. Sivaperumal have appeared in the panchayat office and the general public were also present. The general public questioned the President of the Village Panchayat in giving a discreet publication with an intention to award the lease to one Alagesan (Petitioner in W.P. (MD) 12193 of 2015). Considering the unexpected twist, the President of the Kovalam Village Panchayat immediately adjourned the auction to a different date and it was also intimated by way of a hand-written notice on 07.04.2015 issued by the President of the Kovalam Village Panchayat that the tender is adjourned for different administrative reasons. But, to everyone's surprise, on 16.04.2015, without intimating the next date, the President of the Kovalam Village Panchayat attempted to finalize the lease; however, on the said date also, due to the opposition from the general public, the President of the Village Panchayat once again postponed the lease proposal citing administrative reasons. On 01.06.2015, the tender forms were opened by the President of the Kovalam Village Panchayat and one Alagesan, who is the petitioner in W.P. (MD) No. 12193 of 2015, was declared as successful bidder. Hence, the petitioners M. Reji and P. Sivaperumal have filed the present writ petitions viz., W.P. (MD) No. 9203 and 9587 of 2015 challenging the tender notification dated 19.03.2015.

4.3. On 09.06.2015, in W.P. (MD) No. 9203 of 2015, this Court has granted interim order not to confirm the tender, till the disposal of the writ petition.

4.4. Subsequently, in view of the interim order dated 09.06.2015 passed by this Court, the President of the Village Panchayat has passed an order dated

10.07.2015 restraining the successful bidder from collecting the parking fees and toilet charges. Aggrieved over the same, the successful bidder Alagesan has filed W.P. (MD) No. 12193 of 2015.

4.5. That apart, one S. Filasiyas Gangan has filed W.P. (MD) No. 10116 of 2015 for a mandamus to direct the official respondents to confirm the lease in his favour. According to him, the Pachayat has not made proper publication with regard to the tender in respect of the right to collect the parking fees as well as the right to collect fees for using the toilet at sunset point in Kovalam Village Panchayat. Further, he is ready and willing to pay a sum of Rs. 4,00,000/- for confirmation of the tender/auction in his favour. In this regard, he has given a representation to the Official respondents on 15.06.2015. Thus, he sought for a direction to the official respondents to confirm the tender/auction in his favour, by considering his representation dated 15.06.2015.

5. The District Collector, Kanyakumari District, has filed a counter affidavit contending as follows:--

The Kovalam Village Panchayat passed a resolution vide No. 224, dated 25.11.2014 for collecting the entry fees from the vehicles entering into the sunset point at Kanyakumari and also collecting the charges from the toilet users therein for a period of three years. The District Collector has accorded permission to the President of the Kovalam Village Panchayat, vide proceedings , dated 02.02.2015 to take appropriate actions to collect the entry fees from the vehicles entering into the above said place and to collect charges from the toilet users therein. Accordingly, a tender notice was affixed in the Notice Board of the Village Panchayat Office and a paper publication was effected in a popular daily "Thina Murasu" on 19.03.2015 informing the date of opening of tenders as 07.04.2015. Six bidders had sent their quotations before 07.04.2015, but since the petitioners and some others objected to open the received tenders, the tenders quoted by six persons were not opened on 07.04.2015 and the same was affixed in the Notice Board and it was informed to the said six bidders that the date of tender opening would be informed to them. Subsequently, on 16.04.2015 at the time of opening the said tenders, again the local public including the petitioners raised objection to open the tenders. Hence, opening of the tender was kept in abeyance for the second time on 16.04.2015. Under such situation, one of the bidders viz., Mr. S. Alagesan (petitioner in W.P. (MD) No. 12193 of 2015) had filed a writ petition in W.P. (MD) No. 8456 of 2015 and in the said writ petition, on 21.05.2015 this Court has passed the following order:

"4. Taking into consideration the above submission of the learned Government Advocate, and having seen that the date of opening of tenders has been repeatedly adjourned from 07.04.2015 to 16.04.2015 and from 16.04.2015 to another date, this Court deems it fit and proper to direct the respondent to fix the date and time for opening the tenders submitted by the petitioner and the others to the respondent, pursuant to the Notification issued, within a period of one week from the date of receipt of a copy of this order."

Hence, in compliance with the order passed by this Court, the President of the Kovalam Village Panchayat, vide proceedings dated 27.05.2015 in Na.Ka. No. 37/2015, called for all the six bidders and informed about the order passed by this Court and finalized the date of opening of the tenders as 29.05.2015 at 11.00 hours. On 29.05.2015 the bidders (1) Alagesan, (2) Mr. Krishnakumar, (3) Mr. Krishnadhas, (4) Mr. Soundrapandian, (5) Mr. Narasingamoor-thy and (6) Mr. Saravanan participated in the tender opening process. In the tender, Mr. Alagesan (Petitioner in W.P. (MD) No. 12193 of 2015) had quoted Rs. 1,32,600/- and the same was the highest bid amount among the said six bidders. Hence, the President of the Kovalam Village Panchayat issued orders vide Na.Ka. No. 43/2015, dated 01.06.2015 in favour of the said Alagesan to collect entry fees from the vehicles entering into the sunset point and to collect the charges from the toilet users in that place, for a period from 01.06.2015 to 31.05.2018. The higher bidder Alagesan has paid Rs. 1,52,490/- with tax of Rs. 19,890/- for the period of one year i.e., from 01.06.2015 to 31.05.2016. There is no violation in opening the tender.

6. The highest bidder Alagesan (petitioner in W.P. (MD) No. 12193 of 2015) has also filed a detailed counter affidavit in the writ petitions viz. W.P. (MD) Nos. 9203 and 9587 of 2015, denying the case of the petitioners.

7. It is the submission of the learned counsel for the petitioners in W.P. (MD) Nos. 9203 and 9587 of 2015 that the Panchayat President failed to give due publication about the tender/auction and there is violation of statutory Rules viz., The Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules. Under the first Notification dated 19.03.2015, it was mentioned that the last date for receiving the tender bids and for conducting open auction shall be 07.04.2015 at 11.00 hours. Therefore, it is meant that there will be an open auction. Under the statute also lease rights can be granted only by way of open auction. Shocking and surprisingly, the Panchayat President has acted in wilful disobedience to the statute and has awarded the lease right to one Alagesan (petitioner in W.P. (MD) No. 12193 of 2015) in an arbitrary and whimsical manner. No public auction was conducted before awarding the said rights to the said Alagesan. In this regard, the learned counsel for the petitioners in W.P. (MD) Nos. 9203 and 9587 of 2015 invited the attention of this Court to Rules 3(2)(vi) to the said Rules and submitted that the right to collect the fees in the public market, cart-stand, public landing or halting-places, bus-stand, slaughter houses, fish markets or ferry places is under the control of the Panchayat, which can be leased out. Further, the learned counsel for the petitioners submitted that a close reading of Rules 21 and 22 of the said Rules would show that the Panchayat has to award licence only by conducting public auction. At the same time, the Panchayat is also having power to invite tenders in an open and transparent manner for the enjoyment of lease of a property or right to collect fees covering the salient formalities and legal aspects. If the Panchayat has reason to believe that due to collusion among the bidder or due to any other reason like, either there was no bid at least on two occasions, the

terms and conditions which are normally prescribed in the auction notice for lease may be adopted with such modifications as are necessary when calling for tenders. According to the learned counsel for the petitioners in W.P. (MD) Nos. 9203 and 9587 of 2015, in the instant case, the Panchayat President without following the procedures has awarded the licence to one Alagesan (petitioner in W.P. (MD) No. 12193 of 2015) by opening the tender. Hence, the tender notification has to be quashed and the consequently, Official respondents has to be directed to conduct fresh auction.

8. That apart, the learned counsel for the petitioners in W.P. (MD) Nos. 9203 and 9587 of 2015 have also submitted that the tender was opened on 29.05.2015 and the tender was confirmed in favour of Alagesan on 09.06.2015 and even before the confirmation of tender, lease agreement was entered into between the Panchayat and Alagesan on 01.06.2015 itself, permitting the said Alagesan to collect the fees from 01.06.2015, which is in violation to Rule 16 of the said Rules. As per Rule 16 of the said Rules, a Committee comprising of three members for supervising the conduct of auction should be appointed. But, in the instant case, no such committee was appointed. Further, the learned counsel for the petitioners in W.P. (MD) Nos. 9203 and 9587 of 2015, by inviting the attention of this Court to the tender notice dated 19.03.2015 submitted that in the said notice the place of auction was not mentioned, which is against Rule 14 of the said Rules.

9. Further more, the learned counsel for the petitioners in W.P. (MD) Nos. 9203 and 9587 of 2015 invited the attention of this Court to Rules 11(7) of the said Rules, and submitted that the right to collect fees for the use of public places should be only for a period of one year; but, in the instant case, the licence agreement was entered into for a period of three years. Thus, the learned counsel for the petitioners submitted that by giving a go-by to all the Rules, the tender was confirmed in favour of the said Azhageson by the Panchayat. Hence, the tender notification has to be quashed and the official respondents has to be directed to conduct fresh auction.

10. The learned Additional government pleaders have also submitted that there is no violation in conducting the tender/auction by the official respondents.

11. The learned counsel for the successful bidder (petitioner in W.P. (MD) No. 12193 of 2015) submitted that the tender was opened on 29.05.2015 and lease agreement was entered on 01.06.2015 and the entire process was completed by the Panchayat by way of resolution and absolutely there is no violation of the Rules. That apart, the learned counsel for the successful bidder made his submissions that the petitioners in W.P. (MD) Nos. 9203, 9587 and 10116 of 2015 have not participated in the tender and they have not purchased the tender form from the Panchayat and as such, totally they are aliens to the auction conducted by the Pachayat; therefore, they have no locus standi to file the present writ petitions. In support of his submissions, the learned counsel for the successful bidder has also relied upon the following judgments:

(1) Unreported judgment of Bombay High Court in W.P. (Lodging) No. 2666 of 2008 in the case of A.M. Yusuf v. Mumbai Municipal Corporation and Others, dated 11.12.2008.

(2) Unreported judgment of Bombay High Court in W.P. No. 2415 of 2010 in the case of S. Motilal Plywood House v. State of Maharashtra and Others, dated 29.04.2010.

(3) Unreported judgment of Jharkhand High Court in W.P. (C). No. 1192 of 2008 in the case of Dinesh Ram v. Union of India and Others, dated 04/07.12.2012.

(4) Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others, .

12. Heard the submissions made on either side and perused the materials available on record.

13. Very many contentions have been raised by the learned counsel for the petitioners in W.P. (MD) Nos. 9203, 9587 and 10116 of 2015 stating that by violating the Rules, the Panchayat has conducted tender/auction and confirmed the same in favour of the successful bidder and in this regard, the learned counsel for the petitioners have also invited the attention of this Court to various rules. But, the same was denied by the learned Additional Government Pleaders stating that by duly following the procedures, the tender/auction was conducted by the Panchayat.

14. The learned counsel for the successful bidder Alagesan has also made a detailed submissions. It is the submission of the learned counsel for the successful bidder that the petitioners have not participated in the tender and as such, they have no locus standi to file the present writ petitions. In this regard, he has also relied upon various judgments.

15. At the outset, I am of the opinion that the question with regard to the entitlement of the petitioners in W.P. (MD) Nos. 9203, 9587 and 10116 of 2015 to file the writ petitions has to be decided and in the event of non-entitlement of the petitioners, there is no need for this Court to traverse into the other averments.

16. Admittedly, even according to the petitioners, they have not taken participation in the tender process. It is also not the case of the petitioners in the affidavit that they were prevented by the respondents from participating in the tender. In fact, from the affidavits of the petitioners, it could be seen that they were well aware of the tender process. Even according to the petitioners, they were present on 07.04.2015 and public gathered before the Panchayat office on that date and requested the Panchayat President not to open the tender. The petitioners herein were also present at that time. Therefore, the averments in the affidavits would show that they were well aware of the public auction on 07.04.2015 and inspite of the same, they have not chosen to buy the tender forms. Now, after completion of all the process, the present writ petitions have been filed by the petitioners. When the petitioners have not taken any part in the

public auction, I am of the opinion that they have no locus standi to challenge the impugned notification dated 19.03.2015. In this regard, it would be appropriate to place reliance on the judgment of Bombay High Court in W.P. No. 2415 of 2010, dated 29.04.2010, in the case of S. Motilal Plywood House v. State of Maharashtra and Other, wherein it has been held as follows:

"14. The foremost question that needs to be considered is whether the Petitioners in the respective Petitions have locus standi to maintain the challenge before this Court in respect of the tender conditions. In so far as Petitioner in Writ Petition No. 2415/2010 is concerned, it is noticed that he has not even enlisted himself after the publication of 2nd tender notice. If it is so, there is force in the argument of the Respondents that such person cannot be permitted to assail the terms and conditions which are essentially a contractual matter.

15. To get over this position, it was argued on behalf of said Petitioner that he had enlisted himself after publication of the first tender notice and immediately thereafter challenged the terms and conditions of the first tender notice which are *pari materia* with the 2nd tender notice. In other words, the basis of challenge is common in respect of both the tender notices. We are not impressed with this submission. So long as the Petitioner is not participating in the tender process, it cannot be heard to question the validity of the tender process in question."

In the case of A.M. Yusuf v. Mumbai Municipal Corporation and Others W.P. (Lodging). No. 2666 of 2008, dated 11.12.2008, it has been held by the Bombay High Court as follows:

"13. Another important facet which requires examination by the Court is the conduct of the Petitioner. The Petitioner claims to have purchased the tender document in response to the notice dated 20th October, 2008. However, till 11th November, 2008, the petitioner did not submit the tender documents. Vide Corrigendum dated 11th November, 2008, the deposit of EMD was increased and the parties were given one week time for depositing the amounts. The petitioner admittedly took no steps to deposit the amount as per the conditions of notice inviting tenders. The Petitioner did not move his little finger in the entire one week and did not approach the Respondents raising his grievance before them that the condition was likely to cause any prejudice to the Petitioner or other Applicants. While number of other Applicants including Class-A Contractors of the Corporation complied with the condition and deposited the amount, the Petitioner despite issuance of tabulated statement dated 14th November, 2008 did not deposit any amount nor had he raised any protest. The Petitioner just at the nick of time on 17th November, 2008 lodged the Writ Petition in this Court which came up for hearing on 19th November, 2008 and interim order was granted by the Court. Even at that stage, the Petitioner neither showed any intention to comply with the terms and conditions of the tender nor did he deposit money at the rate of 0.5% and/or 2% at any point of time. The Petitioner has challenged the tender process before this Court without even submitting tender and being

an Applicant ineligible or otherwise. The very locus standi of the petitioner in filing this petition would be looked upon with some suspicion by the Court. This is cause of action, which is a private cause of action, if at all available to the petitioner, is not an action in public interest.

14. The doctrine of Locus Standi is well established in administrative law, law of contract and other allied laws. A person prejudicially affected would have a cause of action while in the specified class of cases a third party may be able to bring an action in public interest despite the fact that he may not have personal interest. But in the cases of present kind, the cause of action would be personal to the aggrieved party and not a cause of action in rem. Even if Litmus Test Principle is not strictly applied keeping in view the developing law, still it is difficult for us to hold that the Petitioner without being an Applicant to the tender process could maintain the present Writ Petition, in the peculiar facts and circumstances of the case. As such an approach would neither subserve the public interest and would also hold in avoidance of public mischief.

15. Examined from the view of public interest, we see no infirmity. The Corporation has admitted to protect the larger interest by raising EMD deposit. The Petitioner having opted of his own accord not to participate in the tender process can hardly be permitted to challenge the said process now at this stage. It is expected of every vigilant litigant or whose rights are effected to approach the Court at an appropriate time. Firstly, there is no indefeasible right vested in the Applicant and secondly, even if right of participation/consideration was available to the Petitioner, the Petitioner has voluntarily given up such right by his conduct. No reason whatsoever has been stated as to why the Applicant did not participate in the tender process or raise protest at an appropriate stage. Despite the fact that the concept of locus standi has since undergone a substantial change, still the basic rule that the person aggrieved or a person directly affected is the person who has right to invoke jurisdiction of the Court under Article 226 of the Constitution holds good. The impugned action normally should produce a change in the Petitioner's legal right and more particularly adversely. We have already discussed that the variation effected by Corrigendum dated 11th November, 2008 has no way prejudicially effected any of the applicants and it provided a fair and equal opportunity to the Applicants to participate in the tender process. The Petitioner having lost that opportunity of his own accord can hardly be permitted to raise a grievance now.

16. In the facts and circumstances of the case, we see no reason to interfere with the Writ Petition. The same is dismissed, leaving the parties to bear their own costs. Rule discharged. Interim relief stands vacated."

The dictum laid down in the above said judgments is squarely applicable to the present facts of the case. Without participating in the tender, now the petitioners cannot claim that they suffered due to the confirmation of the tender in favour of the successful bidder. Therefore, I am of the opinion that the petitioners in W.P. (MD) Nos. 9203, 9587 and 10116 of 2015 have no locus standi to challenge the

impugned notification. Therefore, on the ground of locus standi, the writ petitions in W.P. (MD) Nos. 9203, 9587 and 10116 of 2015 are liable to be dismissed.

17. Consequently, the writ petition viz., W.P. No. 12193 of 2015 filed by the successful bidder Alagesan is liable to be allowed. In fine, W.P. (MD) Nos. 9203, 9587 and 10116 of 2015 are dismissed. W.P. (MD) No. 12193 of 2015 is allowed and the impugned order Na.Ka. No. 67/2015 dated 10.07.2015 passed by the President of Kovalam Village Panchayat is quashed. No Costs. Consequently, connected Miscellaneous Petitions are closed.