

(2014) 07 MAD CK 0253

In the Madras High Court

Case No : Writ Petition No. 17911 of 2014 and M.P. Nos. 1 and 2 of 2014

N. Manivannan

APPELLANT

Vs

The Commissioner, Kallakurichi Municipality

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Citation : (2014) 07 MAD CK 0253

Hon'ble Judges : Meenakshi Sundaram Sathyanarayanan, J

Bench : Single Bench

Judgement

M. Sathyanarayanan, J.—The petitioner challenges the impugned public auction-cum-tender notification dated 23.06.2014, published in Tamil Nadu vernacular daily 'Dhina Thanthi' dated 25.06.2014 and to quash the same and further directing the respondent to issue a fresh notice of auction-cum-tender by fixing a minimum reserved premium or rent for the shops bearing Nos.1, 2, 3, 4, 23, 24, 25 and 26 constructed on the land bearing S.No.473, situated at Salem Main Road, Kallakurichi.

2. The learned counsel for the petitioner would submit that the respondent municipality on an earlier occasion issued a public auction-cum-tender notification dated 30.12.2013 and it was published in the Tamil Nadu vernacular daily "Thinamani" dated 31.12.2013 in respect of the very same shops bearing Nos.1, 2, 3 and 4 with a condition to deposit a sum of Rs.25,00,000/- and Rs.15,00,000/- respectively and it was put to challenge by filing W.P.No.1271/2014 and notice of motion was ordered on 21.01.2014 and an order of ad-interim injunction was granted in respect of confirmation of tender alone for a period of four weeks and in order to get over the interim order, the respondent had cancelled the earlier public auction-cum-tender notification and issued the impugned notification dated 23.06.2014, fixing the security deposit of Rs.10,00,000/- each in respect of shop Nos.1, 2, 3 and 4 and Rs.5,00,000/- each in respect of shop Nos.23, 24, 25 and 26. It is the further submission of the learned counsel appearing for the petitioner that the petitioner had an intention

to participate in the public auction-cum-tender and in view of the fact that the respondent has put an onerous condition of pre/security deposit for participating in the auction itself, he could not participate and imposing of such a condition is per se arbitrary and it has no purpose to the object sought to be achieved and hence, prays for quashment of the impugned notification with a further direction for re-issuance of public auction-cum-tender notification. Attention of this Court was also drawn to G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007 by the learned counsel for the petitioner and it is his submission that as per Clause(5) of the said Government Order, lease amount has been fixed depending upon plinth area and therefore, the respondent ought to have fixed the quantum of security deposit in terms of the said Government Order only.

3. Per contra, the learned counsel appearing for the respondent would submit that G.O.Ms.No.92 dated 03.07.2007 has no application to the case on hand for the reason that the said Government Order is applicable in respect of a person who has applied for the lease of shops/premises and in the case on hand, it is only a case of license and would further submit that originally there were 10 shops in the shopping complex and they were old and not fetching sufficient funds and therefore, a decision has been taken by the respondent to demolish the building and put up construction with 26 shops in the place of 10 shops and to carry-out the same, leases were issued with a notice to vacate the respective portion in their occupation and challenging the same, batch of writ petitions came to be filed and were dismissed and so also the writ appeals and the matter was taken up before the Hon''ble Supreme Court of India by way of S.L.P.(Civil) Nos.32780-32788/2011, wherein the Hon''ble Supreme Court of India, vide order dated 11.11.2013, permitted the respondent municipality to auction four newly constructed shops of its choice from the front row and four shops from the rear row in a public auction on such terms and conditions as it may consider just and proper and a report as to the outcome of the auction including the premium and the rental offered by the same be submitted to the Court by the next date of hearing and the matter was directed to be called after three months and in pursuance to the same only, the earlier notification dated 31.12.2013 was issued and because of the interim orders granted in W.P.No.1271/2014, the respondent could not confirm the highest bid and subsequently, a decision has been taken to withdraw the earlier notification and a fresh notification came to be issued. It is further contended by the learned counsel appearing for the respondent that in the absence of any malafide or arbitrariness in floating and evaluation of tenders, this Court may not interfere with the terms and conditions of the public auction-cum-tender notification and prays for dismissal of the writ petition.

4. This Court has carefully considered the rival submissions and also perused the materials available on record.

5. The Hon''ble Supreme Court of India in Tata Cellular Vs. Union of India, has emphasized the need to find the right balance between administrative discretion

to decide the matters, on the one hand, and the need to remedy any unfairness, on the other, and observed as follows in para 94:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. ?
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle [(1948) 1 KB 223] of reasonableness (including its other facets pointed out above) but must be free from arbitrariness, not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

6. In *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, , the Hon"ble Supreme Court of India held that the award of contract was essential in commercial transactions which involves commercial consideration and results in commercial decision and while taking such decision, the State can choose its own method on terms of invitation to tender and enter into negotiations and it is relevant to extract para 7 of the said judgment:

7. The award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. ? Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making

out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

7. The Hon''ble Supreme Court of India in the decisions in Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, and Jagdish Mandal Vs. State of Orissa and Others, laid down the following test for judicial interference in exercise of power of judicial review of administrative action:

22. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached".

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226.

8. The only point put forth by the petitioner is that in the light of G.O.Ms.No.92 dated 03.07.2007 coupled with the fact that the tender conditions more particularly the amount fixed for security deposit are very onerous and therefore, he was unable to participate in the public auction-cum-tender. As already observed above, G.O.Ms.No.92 dated 03.07.2007 has no application to the case on hand and the Hon''ble Supreme Court of India, in its interim order dated 11.11.2013, has permitted the respondent municipality to auction four newly constructed shops of its choice from the front row and four shops from the rear row in a public auction on such terms and conditions as it may consider just and proper (emphasis supplied) and the impugned tender notification also refers to the above said order. The Hon''ble Supreme Court of India in the decisions referred to above has also held that unless the action on the part of the concerned authority exhibit arbitrariness or unreasonableness, it cannot be lightly interfered with and in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be acceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers.

9. In the light of the factual aspects and legal position, this Court is of the view that the impugned public auction-cum-tender notification is not liable to be interfered with and finds no merit in the writ petition. Therefore, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are

closed.