
(2005) 04 KL CK 0014
In the High Court Of Kerala
Case No : Writ Petition No. 10542 of 2005

Paraman

APPELLANT

Vs

Kodungallur Municipality

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Municipalities Act, 1994 — Section 15(2), 218, 218(1), 29

Citation : (2005) 3 KLT 53

Hon'ble Judges : P.R. Raman, J

Bench : Single Bench

Advocate : Renjith Thampan and P.A. Anitha, for the Appellant; C.E. Unnikrishnan and M.P. Ashok Kumar, for the Respondent

Final Decision : Allowed

Judgement

P.R. Raman, J.—The right to collect bus stand fee for the year 2005-2006 was done by inviting tenders by the Kodungallur Municipality-- the first respondent herein. Petitioner and the additional third respondent along with others submitted their respective tenders. Petitioner offered an amount of Rs.6,42,000/- whereas the third respondent offered Rs. 6,37,125/-. According to the petitioner, his offer is the highest. He is willing to pay the balance 1/3rd of the amount on the very same day, viz., on 26.3.2005, the day on which the tenders were opened. According to him, he tendered the balance amount, but the same was not accepted as it was beyond 5.30 p.m. and he was advised to attend the office the next day on which day a special working day for the Municipality. However, on that day also the amount was not received. Later he came to understand that steps were taken to accept the tender submitted by the third respondent who was the next highest tenderer. Alleging that the action of the respondents are arbitrary or capricious and seeking appropriate reliefs including writ of mandamus to the respondents to accept the balance 1/3rd of the amount from the petitioner and to confirm the right to collect fee from the Municipality Bus stand in his name and for other consequential reliefs, this Writ Petition was filed.

Subsequently when he came to know that the tender was confirmed in favour of the additional third respondent, he filed an amendment petition seeking for the relief of quashing the proceedings of accepting the tender of the additional third respondent.

2. In the counter affidavit filed for and on behalf of the Municipality, it is averred that the office was kept open till 8 p.m., but the petitioner was not prepared with the balance amount to be remitted, viz., 1/3rd of the bid amount by cash. Petitioner only wanted time till 8 p.m. for tendering the cheque. Petitioner however did not pay the amount and even declined to hand over the cheque. The next day being a special working day, on that day also the petitioner did not turn up. It is only on Monday viz., 29.3.2005 that the next highest offer of the third respondent was accepted and orders issued to him and the contract was executed on 30th. Though an interim order was passed by this Court on 30.3.2005 directing the respondent not to confirm the tender, but the same has become infructuous as the confirmation has already taken place even before filing the Writ Petition.

3. The question as to whether the petitioner had really tendered the balance 1/3rd amount by cash or not is a disputed question of fact and therefore in the absence of any acceptable material produced by the petitioner, it cannot be decided either way. The two affidavits filed in support of his contention, one of which is filed by one of the agencies and the other by local public are not sufficient to act upon without their testimony being cross examined. At any rate, this is not an appropriate proceeding to resolve such disputed questions of facts regarding the tender of the balance amount. In this connection it has to be observed that even in the representation submitted by the petitioner Ext.P2, no mention is made that the balance amount by cash was tendered by him. He has only stated that the officers of the Municipality did not receive the balance amount. Whether the balance amount was tendered by cash, by cheque or by Demand Draft is however not mentioned in his own representation Ext.P2 submitted on 28.3.2005.

4. However, he has a contention that as per Section 218(c) of the Municipalities Act, "where tender is necessary, no contract shall be made by the Secretary unless the tender therefore has been accepted by the competent authority" and according to him, as per Section 218(1), "A Municipality may enter into and perform all such contracts as it may consider necessary or expedient carrying into effect the provisions of this Act". The Secretary could not have accepted the tender and entered into any contract. Such procedure is opposed to Section 218(c) of the Municipalities Act. The learned counsel appearing on behalf of the Municipality however, contended that this is the third occasion where the right to collect bus stand fee is put in public auction. Municipality had taken a decision on 16.3.2005 ratifying the action of the Chairman in re-tendering the right to collect bus stand fee scheduled on 26.3.2005 and has also authorised the Chairman to finalise the tender. He also places reliance on Ext.R2(d) decision of the council

under date 16.3.2005. The decision taken as evidenced by Ext.R2(d) is only to ratify the action of the Chairman in rendering the right to collect bus stand fee by public notice. There is nothing in Ext.R2(d) decision for authorising the Chairman to finalise the tender. On the other hand, considering the urgency of the matter, a decision was taken that the tender will be finalised on the same day on which it is opened. The counsel has decided to take a final decision on the very same day on which the tender is opened. There is no authorisation in favour of the Chairman on behalf of the council to finalise the matter. Be that it may, going by Section 218(c) of the Act, the Secretary can only place the matter before the council for its decision and final decision has to be taken by the Municipal Council. No decision of the Municipal Council accepting the tender by the additional third respondent is produced. As such it has to be presumed that after accepting Ext.R2(d) decision, there was no decision taken by the Municipality to accept the tender submitted by the third respondent. Learned counsel appearing for the Municipality however contended that as per Section 15(2) of the Municipalities Act, the Chairman has got power to implement the provisions of the Act and hence the decision was taken by the Chairman and as such the Chairman is prepared to take a decision in such a matter. By virtue of Section 15(2) of the Kerala Municipalities Act "except as otherwise provided in this Act or thereunder, the administrative power to implement the provisions of this Act and the resolutions passed by a Council, shall be vested in the Chairperson". Therefore, if there are other provisions of the Act, the power of the Chairperson u/s 15(2) is subject to such other provisions contained in the Act. Further the later provision of Sub-section (2) of Section 15 clearly states that "the administrative powers to implement the provisions of this Act and the resolutions passed by a Council". Hence, there has to be a decision by the Council. The question of exercising the administrative power to implement that decision will arise only thereafter. It was nextly contended that as per Section 29 of the Municipalities Act, "the Administration of the Municipality shall vest in the council and the Council shall, if necessary, be entitled to exercise, in the manner prescribed, the functions expressly assigned by or under this Act or any other law to the Chairperson, the Secretary, a Standing Committee or any other committee". Section 29 does not give an over riding effect to the other provisions of the Act. Further it is the Municipal Council which is the authority who can assign the exercise of the power in the manner prescribed which functions are assigned by or under this Act to any person including the Chairman, Secretary or a Standing Committee, as the case may be. The resolution Ext.R2(d), as I have already found also does not authorise the Chairman to finalise the tender, de hors the provisions contained in Section 218(c) of the Municipalities Act. Section 218(c) is mandatory and that no contract shall be made by the Secretary unless the tender has been accepted by the competent authority and in the light of the provisions contained in Section 218(1), the competent authority is the Municipality and the decision of the Municipality is by or through its Municipal Council. Hence I do not find any merit in these contentions.

5. Learned counsel however also submitted that the petitioner has not tendered 1/3rd of the tender amount and he is estopped from challenging the action of the Municipality and in that regard this Writ Petition is not maintainable. As I could see, the petitioner was the highest tenderer whose rights are directly effected and hence the Writ Petition challenging the decision adopted by the Municipality in accepting the tender is certainly opened to be challenged by him. It is true that judicial review in matters of contract is limited to the examination of the procedure followed in the manner of awarding the contract. As I have already found, when the tender is accepted by the Secretary, contrary to the provisions of Section 218(c) of the Municipalities Act, the decision adopted is vitiated and therefore this Court is perfectly justified in interfering with the matter in exercise of his power under Article 226 of the Constitution of India. As a matter of fact, the later decision and a Full Bench decision of this Court has held that even in contractual matters, this Court can interfere with the limited spheres.

6. In the result, Writ Petition is allowed.

7. An award of the contract in favour of the additional third respondent will stand quashed. It will be open to the Municipal Council either to reacquire the right to collect the bus stand fee or negotiate with the petitioner and the third respondent, as the case may be. The Municipality shall take the decision within a period of two weeks and during this period, it will be open to the Municipality to continue the present arrangement on a temporary basis.