(2013) 02 KL CK 0024

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 912 and 1837 of 2013

Thambi, T.G. APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 39, 47, 57

Citation : AIR 2013 Ker 129 : (2013) 2 ILR (Ker) 79 : (2013) 1 KHC 711 : (2013) 1 KLJ 779 : (2013) 1 KLT 730 : (2013) 4 RCR(Civil) 573

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : D. Kishore, for the Appellant; C.C. Thomas , Sri Nireesh Mathew, Sri M.G. Karthikeyan and Sri C.S. Manilal, Spl. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—A rival claim by proud owners of two motor vehicles for allotment of the same fancy registration mark has sparked off this controversy. The procedure contemplated under Rule 95 of the Kerala Motor Vehicles Rules, 1989 (''the Rules'' for short) incidentally falls for consideration. I shall refer to the parties and exhibits in W.P. (C) No. 912/2013 and the fourth respondent therein has filed W.P. (C) No. 1837/2013. The petitioner as well as the fourth respondent applied for reservation of the fancy registration mark-KL 01/BJ 7000- in the requisite proforma along with the proof of remittance of reservation fee of Rs. 25,000. The petitioner had in addition submitted a sealed cover containing an offer letter quoting an amount of Rs. 10,600 and a demand draft for half of the amount quoted was enclosed. An auction followed the tender process on 31-12-2012 wherein the petitioner bid for an amount of Rs. 1000 and the fourth respondent bid for an amount of Rs. 2000. The fancy registration mark was eventually decided to be allotted to the petitioner since he was the highest bidder in the auction-cum-tender process. The quotation for Rs. 10,600 in the tender by the petitioner was obviously higher than the bid for Rs. 2000 in the auction by the fourth respondent and hence the decision. But the actual allotment was withheld by the Regional Transport Officer on the oral direction of the Transport Commissioner and the same is impugned in W.P. (C) No. 912/2013. The fourth respondent contends that the auction was abruptly stopped when the bid reached Rs. 2000 and that he was even prepared to offer a bid of Rs. 1,01,000 for the registration mark. The fourth respondent has filed W.P. (C) No. 1837/2013 seeking inter alia to conduct an auction afresh after fixing the floor price as Rs. 1,01,000 for allotment of the fancy registration mark.

2. I heard Mr. D. Kishore, Advocate on behalf of the petitioner, Mr. C.C. Thomas, Senior Advocate on behalf of the fourth respondent and Mr. C.S. Manilal, Senior Government Pleader on behalf of respondents 1 to 3.

3. Rule 95 of the Rules has underwent a drastic change by the Kerala Motor Vehicles (Amendment) Rules. 2011 by which reservation of fancy registration mark could be made only for the registration of a new motor vehicle. Rule 95 of the Rules as amended now applies only for the registration of a new motor vehicle u/s 39 of the Motor Vehicle Act 1988 (''the Act'' for short). Section 47 of the Act enabling assignment of new registration mark to an old motor vehicle on removal to another State is conspicuously absent in Rule 95 of the Rules after the amendment. An auction-cum-tender procedure was also introduced to modify the conditions of eligibility for reservation of the fancy registration mark departing from the auction procedure alone as it stood before amendment. The explanatory note to amended Rule 95 of the Rules reflects that the new procedure has been introduced to effectively check heavy loss to the state ex-chequer by touts and agents.

4. The petitioner has a contention that even the application put in by the fourth respondent was defective in as much as the same was not accompanied by a sealed cover containing an offer letter quoting the amount Rule 95(5)(v) of the Rules indicates that the offer letter quoting the amount in addition to the reservation fee is only optional and is not mandatory while making an application. But it is evident therefrom that a demand draft for an amount not less than half of the amount so quoted should be enclosed in case there is a sealed cover containing an offer letter. That a sealed cover enclosing an offer letter and a demand draft is not essential is fortified by the fact that an application can also be made ''on line'' as reflected by the proviso to Rule 95(5)(v) of the Rules. The application accompanied by a sealed cover containing an offer letter quoting the amount with insufficient Demand Draft shall however be summarily rejected as evident by Rule 95(6) of the Rules. The contention of the petitioner that the application put in by the fourth respondent is defective for want of a sealed cover for participation in the tender is hereby rejected.

5. The procedure for allotment of the fancy registration mark is not only governed by Rule 95 of the Rules but also by Circular No. 06/2011 dated 18-2-2011 issued by the Transport Commissionerate. Clause 21 of the said Circular states that ''the highest bidder will be determined on the basis of the bid

amount in the auction and the amount quoted in the tender whichever is the highest''. This would mean that the tender process and the auction process should proceed parallely and the applicant who had quoted in the tender or bid in the auction for the highest amount is to be adjudged successful. The sealed tenders shall however be opened only after the auction is complete and before declaring the successful applicant as is discernible from Rule 95(7) of the Rules. The application put in by the petitioner was accompanied by a sealed cover containing an offer letter quoting an amount of Rs. 10,600 accompanied by a Demand Draft for half of the amount quoted. The fourth respondent did not submit any sealed cover for participating in the tender and was rest contended with participating in the auction that followed. The petitioner bid for an amount of Rs. 1000 whereas the fourth respondent bid for an amount of Rs. 2000 in the auction conducted by the Regional Transport Officer and none bid for a higher amount. The contention of the fourth respondent that she was even prepared to bid for a sum of Rs. 1,01,000 and that the auction was abruptly stopped is emphatically denied by the respondents. The tender register and the auction register were made available to me by the Senior Government Pleader and I did not find any irregularity or impropriety in the conduct of tender and auction. The auction register contains an endorsement that the fourth respondent refused to sign the same after the auction which is very much in tune with the contentions of the petitioner.

6. The petitioner asserted that the auction-cum-tender process had become complete by noon relying on the information uploaded by the Motor Vehicles Department at 12.31 a.m. on the same day. The chronology of events suggest that the fourth respondent submitted a petition to the Regional Transport Officer on the afternoon of 31-12-2012 offering a bid of Rs. 1,01,000 much after the results were known. The fourth respondent also met the Transport Commissioner who orally directed the Regional Transport Officer to withhold the actual allotment of the fancy registration mark to the petitioner. This was followed by an appeal to the Transport Commissioner purporting to be u/s 57 of the Act against the proceedings of the Regional Transport Officer. But no appeal is provided u/s 57 of the Act against an order of the registering authority u/s 39 of the Act read with Rule 95 of the Rules. The Transport Commissioner had obviously no jurisdiction either to entertain the appeal u/s 57 of the Act or to withhold the actual allotment of the fancy registration mark to the highest bidder. The fourth respondent lastly contended that the State ex-chequer would stand to lose heavily if the auction-cum-tender is confirmed for a sum of Rs. 10,600 as against the offer bid for Rs. 1,01,000 made by her. It is the case of the fourth respondent that no prejudice would be caused to the petitioner if a fresh auction-cum-tender process is resorted to fixing the floor price at Rs. 1,01,000. I am afraid that I cannot countenance this plea since the decision making process can be annulled only if the same is found to be vitiated by mala fides, arbitrariness or total unreasonableness. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry to make mountains out of

molehills and persuade courts to interfere by judicial review should be resisted [See Jagdish Mandal Vs. State of Orissa and Others,]. The upshot of the above discussion is that the Regional Transport Officer has to be directed to proceed further for allotment of the fancy registration mark KL 01/BJ 7000 to the petitioner. I do so.

W.P. (C) No. 912/2013 is allowed and W.P. (C) No. 1837/2013 is dismissed. No costs.

