

(1972) 04 MAD CK 0015
In the Madras High Court

V. Sannasi Konar

APPELLANT

Vs

The Commissioner, Pudukottai Municipality and Another

RESPONDENT

Date of Decision : 19-04-1972

Acts Referred:

Constitution of India, 1950 — Article 26

Citation : (1972) 85 LW 696 : (1972) 2 MLJ 264

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The petitioner is rate-payer residing within the jurisdiction of the Pudukottai Municipality. As is customary for the

Municipality, an auction was held to farm out the right to collect and levy the fees on the persons willing to carry on their trade in the weekly

shandy held within the precincts of the Municipality on every Friday. One such auction was held on 28th February, 1972. The petitioner bid for

Rs. 5,250 and the second respondent for Rs. 5,251. The second respondent's bid was the highest. It is common ground that both the petitioner

and the second respondent complied with the pre-requisite as laid down in the conditions and terms of the auction in that each of them paid a

deposit amount of Rs. 10,000 as earnest money to participate in the said auction. According to condition No. 9 the highest bidder should pay

within three months from the date of auction an advance representing the weekly shandy fees which invariably is the amount for which he has bid at

the auction. Under condition 11 (a), soon after the highest bid is accepted by the appropriate authority, the highest bidder should pay an advance

representing the shandy fees for a week. Under conditions 13 and 15 if a default is committed in the matter of the deposits referred to in conditions

No. 9 and 11 [a) then the order of confirmation shall be cancelled and a fresh auction held. Condition No. 17 provides that as soon as the auction is completed if a doubt is entertained about the solvency of the highest bidder, then an investigation has to be undertaken and if the Commissioner of the Municipality is satisfied he may call upon the highest bidder to deposit a sum representing three weeks shandy fees as security. Condition No. 27 enables the Commissioner of the Municipality to modify or alter any of the conditions of the said auction. It is in such auspices that the auction was held on 28th February, 1972 and confirmed on 2nd March, 1972. At or about the time when the auction was confirmed the Municipality resolved, apparently because they felt a doubt about the solvency of the second respondent, to call upon him to deposit three weeks shandy fees as required under condition No. 17. It is not in dispute that the resolution and the decision as above of the Municipality were communicated to the 2nd respondent only on 10th March, 1972. Before the order of confirmation was so communicated, the Commissioner on 8th March, 1972, called upon the 2nd respondent to pay three weeks' shandy fees apparently on the foot of the decision already taken by the Municipality by the 15th of March, 1972. The second respondent paid the amount on 14th March, 1972. It is also on record that subsequently a lease deed pursuant to the above concluded arrangement between the Municipality and the second respondent was entered into and the second respondent is actually functioning as the lessee under the authority of the lease-deed entered into by the Municipality in his favour and is collecting the fees from the vendors in the shandy.

2. On 23rd March, 1972 it appears that the petitioner caused a letter to be sent to the Chairman of the Municipality complaining about certain irregularities in the conduct and conclusion of the auction as above, but it should be stated that there is no proof of service of such a memorandum to the Chairman of the Municipality. It is in these circumstances that the petitioner has come up to this Court for the issue of a writ of mandamus directing the Commissioner of Pudukottai Municipality to perform his statutory duty in accordance with the bylaws governing the conduct of the weekly shandy in Pudukottai town and declared the lease in favour of the second respondent as invalid

3. The petitioner's case is that as there has been a violation of the conditions under which the auction was held and as these conditions should be

treated and dealt with as by-laws adopted by the Municipality any violation of such bylaws either in the matter of its understanding or application is

a violation in the eye of law and, therefore, the entire proceedings are vitiated. The second contention is that notwithstanding the fact that condition

No. 17 has been invoked in the instant case it was obligatory on the part of the second respondent to have paid the advance amounts stipulated in

conditions 9 and 11(a) and that not having been paid or demanded there is equally a departure from the required procedure. The third condition is

that the second respondent having deposited the amount contrary to the time-limit prescribed in conditions 9 and 11, there is a violation of the

conditions of the auction and, therefore, the proceedings are equally irregular.

4. The learned Counsel for the second respondent, however, would state that conditions 9 and, 11 are only intended to be invoked in normal

circumstances and if once action is taken under condition No. 17 the importance of conditions 9 and 11 recede to the background. It is also stated

by the learned Counsel for the Municipality that the advances under condition 9 and condition 11(a) are one and the same. The most important

contention is that the petitioner has no locus standy to seek for a writ of mandamus or any other direction as he cannot be deemed to be an

aggrieved person. The last contention is that, in any event, the second respondent has complied with the demand as made by the Municipality and

therefore, there is no irregularity in the entirety of the proceedings.

5. I am of the view that the petition has to fail on the ground that the petitioner is not an aggrieved person and no personal right of his is affected.

Mr. R.G. Rajan, learned Counsel for the petitioner would say that if the auction was to be set aside because of the alleged violations complained of

as indicated above, then there is a possibility of the petitioner taking part in the auction that might be held by the Municipality and there is also

equally the possibility of the petitioner becoming the highest bidder. All expectancies cannot be substitutes for rights. Whether the petitioner would

at all participate even if a second auction was to be held and whether he would become the highest bidder in such a contingency are all in the realm

of speculation. It is indeed imperative for a rule under Article 226 to be issued

that the petitioner should have a present right in him which is affected in a manner known to law. It is such affectation of existing rights or vested rights that could be the subject matter of an enquiry under Article 26 of the Constitution on the ground that such an affected person is a person aggrieved. In the instant case the petitioner failed to outbid the second respondent. In so far as his activity is concerned, it snapped even on 28th February, 1972, when he did not overbid the second respondent so as to become the highest bidder. Thereafter he had nothing else to do with the subject-matter. If the Municipality erred in applying, understanding and implementing the conditions of the auction even if they were to be treated as by-laws within the meaning of the provisions of the Madras District Municipalities Act, it is not for the petitioner to complain, but there are other higher authorities and other equally stringent provisions in the Act itself which provide for remedies in case of misapplication or misunderstanding of the provisions of the District Municipalities Act by the authorities functioning under the Act. It is not for the rate-payer such as the petitioner to complain about the alleged indoor irregularity committed by the Municipality even if there was one in a writ petition under Article 226 of the Constitution. On the ground that the petitioner is not an aggrieved person the writ petition has to fail.

6. But as arguments were addressed on the import of the conditions of the auction, I wish to refer to them in brief I am of the view that conditions 9 and 11(a) subserve the same purpose and the advance to be paid by the highest bidder in an auction held subject to the conditions under review is one amount and not two amounts, as is contended by the learned Counsel for the petitioner. Even otherwise, the time limit prescribed in condition 9 and condition 11 has to give way to the time limit prescribed in condition 17 if that is invoked by the Municipality. Condition 17 is a provision made to meet the contingency when a doubt is entertained about the solvency of the highest bidder. In normal circumstances condition 17 cannot be pressed into service. It is only when the Municipality makes up its mind and resolves to call for further security in addition to the normal advance demandable by it under condition 9 or 11(a) that condition 17 becomes operative, as otherwise it would not be attracted in normal circumstances at all. As the instant case has been treated as an extraordinary

case and not a normal one by the invocation of condition 17 of the conditions of auction it follows that the inner limit of time of three days referred to in conditions 9 and 11(a) is eclipsed and it is only the three weeks' time that is provided for in condition 17 that looms large. Therefore, if the conditions of auction are thus understood the letter dated 8th March, 1972 becomes very important. Under the said letter the second respondent was called upon to deposit the three weeks' shandy fees by the 15th which he did. What all he was called upon to do under the conditions of the auction and in particular under condition 17 read with condition 27, the second respondent did. The petitioner cannot say that there has been any non-compliance with the requirements as called upon by the Municipality. In those circumstances, I am unable to agree with the learned Counsel for the petitioner that there has been a violation of the terms and the conditions of the auction either. Strictly the contention whether these conditions are purely conditions thought of or imposed by the Municipality as conditions to be observed by themselves as well as the intending bidders in the said auction or are by-laws within the meaning of the provisions of the District Municipalities Act do not arise. Even if they are to be construed as by-laws, the conclusion arrived at by me is equally sustainable. In the Municipal Manual in Chapter 4, Part 1, Rule 6, Sub-clause (3) provision is made for imposing conditions and terms subject to which a lease may be granted. The auction which was undertaken was only a step-in-aid to grant a lease to the highest bidder. The above sub-rule provides that the lessee meaning thereby a person who is competent to become a lessee shall, within One week of the date of the confirmation of the lease in his favour, deposit a sum which together with the security referred to would make 1/4th of the total amount. I have only referred to this to show that the conditions of the auction which were scrutinised by me already, do not appear to be conditions framed by the Municipality under the authority of law. They are conditions thought of and imposed by them in their administrative capacity.

7. In the view that I have already expressed, the decision in G. Rami Reddy Vs. State of Andhra Pradesh and Others, has no application to the facts of this case at all. There a specific rule relating to receipt and expenditure of Municipal Council made u/s 303 of the Act provided that leases

of buildings and of lands belonging to the Council the rents of which are expected to exceed Rs. 200 per annum shall be effected by public auction

which shall be conducted by the executive authority or by a person duly authorised. The learned Judge found that under the Act the Government

had not the authority to give directions in individual cases to the Municipality and thereby abrogate the mandate under the rule. It was in those

circumstances the learned Judges issued a writ at the instance of a ratepayer directing the Municipal Council to lease Out the building by public

auction cancelling the lease granted by the Municipality to an individual contrary to the prescribed provisions of law.

8. On the ground that the petitioner is not an aggrieved person and also on my factual finding that there has not been any violation of any

prescribed conditions of the auction, whether understood as a by law or as a condition of the public auction, I am satisfied that the petitioner is not

entitled to the rule nisi being made absolute. The writ petition is therefore dismissed. There will be no order as to costs.

9. During the pendency of this writ petition the right of the second respondent to collect the fees from the shandy has been interfered with. The

Municipality will take this into consideration and adjust equities in accordance with the rules and by-laws.