

C.Jagan Vs. The District Manager,

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SooperKanoon Citation : sooperkanoon.com/10722

Court : Chennai

Decided On : Dec-17-2014

Judge : M.Venugopal

Appellant : C.Jagan

Respondent : The District Manager,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 17.12.2014 CORAM THE HONOURABLE MR.JUSTICE M.VENUGOPAL Writ Petition (MD).No.18677 of 2014 and M.P.(MD).Nos.1 and 2 of 2014 C.Jagan ..Petitioner versus The District Manager, TASMAL Limited, Konam, Nagercoil, Kanyakumari District.Respondent Prayer Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in connection with the impugned order of rejection passed by him in his proceedings in Na.Ka.No.045/B/2014 dated 13.11.2014 and quash the same and consequently direct the respondent to extend the licence period as one year based on Clause 46 of the Agreement.

!For Petitioner :Mr.G.Thalaimutharasu ^For Respondent :Mr.M.Muniasamy Standing Counsel for TASMAL Orders reserved on : 11.12.2014 Orders delivered on: 17.12.2014 :

ORDER

Heard both sides.

2.The petitioner has preferred the instant writ of certiorarified Mandamus in calling for the records on the file of the respondent in connection with the impugned order of rejection passed by him in proceedings No.Na.Ka.045/B/2014 dated 13.11.2014 and to quash the same.

Further, he has sought for passing of an order by this Court in directing the respondent to extend the licence period for one year, based on clause 46 of the agreement (liquor shop conditions).3.According to the Learned counsel for the petitioner, the respondent during the year 2013 had issued an advertisement for running a bar (collection of empty bottles and selling eatables) attached to TASMAL shop in the whole district of Kanyakumari.

However, it is represented on behalf of the petitioner that there were no bidders and as a result of which, the respondent issued re-tender and during the couRs.of 5th re-tender, issued on 13.07.2014, he participated for shop No.4816.

Since he was successful in the tender process, he was called to pay the deposit and security deposit of Rs.1,48,600/- and Rs.2,97,200/- respectively, in terms of the notices of the respondent in reference No.Na.Ka.045/B/2013 dated 28.08.2014.

He was issued with the licence by the respondent as per proceedings in reference No.Na.Ka.45/B/2013 dated 30.08.2014 and he also paid the annual rent to the land owner.

4.It is the plea of the Learned counsel for the petitioner that the petitioner was required to see the Licence Order prescribing the period for running the shop as 01.09.2014 to 30.11.2014 i.e only for three months.

Usually, the licence to run the bar attached to TASMAL shop is for a period of one year, which is seen from the condition No.46 and apart from that, neither in the re-tender notification nor in the notice, calling for payment, it was mentioned that the period was for only three months.

5. Advancing his arguments, Learned counsel for the petitioner contends that when the petitioner enquired with the Respondent, the Respondent had stated that it was only formal order as all licence comes to an end by 30th November and as such, after the said period, it would be extended.

Taking the words of the Respondent granted, the petitioner is running the shop in efficient manner and there is no arrears as on date.

6. The Learned counsel for the petitioner brings it to the notice of this Court that the petitioner made a representation, addressed to the Senior Divisional Manager, TASMACH, Madurai, on 14.10.2014, wherein, he had inter alia prayed for running of the shop No.4816 for a period of one year and also made a further request that the said shop should not be subjected to the public auction to be held during November 2014.

7. The learned counsel for the petitioner submits that the Respondent had issued a general impugned advertisement in local Tamil Daily ?Thina Thanthi?.

in Advertisement No.Ve.Aa.No.292/SeMATHo/O.Pu/Vi/Ka.Ku/2014, dated 03.11.2014 calling for application form for running bar attached to TASMACH shop in the whole district of Kanyakumari for collection of empty bottles and to sell the eatables in the bar.

The date for selling the application was from 03.11.2014 to 24.11.2014.

The last date for submission of the filled up application was 25.11.2014.

8. At this juncture, the Learned counsel for the petitioner contends that the petitioner immediately approached the Respondent in person, who had stated that he could not exclude any shop from the tender process and if the petitioner was interested, he could participate.

Further, the real grievance of the petitioner is that the Respondent had failed to follow the tender conditions and trying to deceive him, after accepting the payment without any express condition that the tender period was only for three months.

Moreover, it is projected on the side of the petitioner that if the Respondent had intimated the petitioner before issuing the tender licence that the period was only for three months, then, he would not have opted for the tender and therefore, he made a representation on 10.11.2014 to the Respondent as well as higher authorities through registered post to extend the licence period as well as to stop the auction for shop No.4816.

However, his representation dated 10.11.2014 has not been considered till date.

9.Proceeding further, the Learned counsel for the petitioner projects an argument that the petitioner filed W.P.(MD).No.18416 of 2014, seeking for an order to be passed by this Court in calling for the records on the file of the respondent in connection with the impugned general advertisement issued by him in Advertisement.

No.Ve.Aa.No.292/ SeMaTho/O.Pu /Vi/ Ka.Ku/2014, dated 03.11.2014 and to quash the same insofar as the Bar attached to the TASMACH Shop No.4816 and resultantly to direct the respondent to extend the licence period for running the bar attached to TASMACH Shop No.4816.

10.The Learned counsel for the petitioner brings it to the notice of this Court that when W.P.(MD).No.18416 of 2014 came up for admission on 14.11.2014, the same was withdrawn with a liberty to challenge the duration of the period of allotment order.

In the meanwhile, the respondent had now passed the impugned order of rejection, based on the petitioner's representation seeking for extension of licence period as one year and directed him to participate in the present tender as per proceedings dated 13.11.2014.

11.The core contention advanced on behalf of the petitioner is that the allotment order issued in reference No.Na.Ka.45/B/2013, dated 30.08.2014, insofar as the period stipulated in the allotment order was granted only for three months, being contrary to one year agreement clause specified in the terms and conditions.

Also that, the impugned order of rejection was passed without following the terms and conditions and the impugned order has virtually affected the petitioner's fundamental rights to livelihood and the right to trade and business.

Moreover, it is submitted on behalf of the petitioner that since the period mentioned in the allotment order had expired on 30.11.2014, prior to completion of one year, the respondent is to be directed to allow the petitioner to continue the licence as per the agreement period.

Hence, the respondent has to be restrained from calling for the tender insofar as shop No.4816 is concerned for the year 2014-2015.

12.Yet another argument advanced on behalf of the petitioner is that inviting fresh tender for the shop No.4816 is nothing but a breach of contract and a colourable exercise of power.

Also that, it is the argument of the learned counsel for the petitioner that before passing the impugned order of rejection dated 13.11.2014, the respondent had failed to appreciate the terms and conditions stipulated in the agreement of the contract.

Hence, the impugned order is liable to be quashed.

13.Per contra, it is the submission of the Learned counsel for the respondent that in the District Manager's proceeding of the Tamil Nadu State Civil Supplies Corporation, Kanyakumari District, dated 30.08.2014 in respect of shop No.4816 of Kanyakumari District, the petitioner had mentioned the highest bid amount of Rs.1,48,600/- and the same was accepted and accordingly, permission was granted to run the eatables shop.

Further, the petitioner was directed to furnish security deposit of Rs.2,97,200/- and as such, while confirming the bid in his favour, it was mentioned that the said order would be in force from 01.09.2014 to 30.11.2014 and as such, rightly, the petitioner's representation dated 10.11.2014 was rejected by the respondent by mentioning that the agreement period could not be extended and further, it was mentioned that the agreement period for the TASMAL retail shop was coming to

an end on 30.11.2014 and therefore, the petitioner was advised to take part in the public tender to be held during November 2014 by receiving the necessary application form.

14. Apart from the above, the Learned counsel for the Respondent vehemently contends that the petitioner had not taken part in the tender for the year 2014-2015 by submitting necessary application and as per tender rules, the licence period could not be extended beyond 30.11.2014 and further in respect of the public auction for the year 2014-2015, in respect of retail TASMAL Shop No.4816, a public tender/auction was conducted, in which three persons took part and one Kannan was the highest bidder, who was selected temporarily as the successful bidder in respect of the shop No.4816.

In these circumstances, it is represented on behalf of the respondent that the petitioner cannot maintain the writ petition and viewed in that perspective, the impugned order dated 13.11.2014 passed by the respondent is legally a valid one.

15. It is to be borne in mind that the object of hosting a public auction is to get the best possible price.

It is to be remembered that by merely quoting 'Bids', a 'Bidder' does not acquire any vested right.

Further, there is no concluded contract until the said bid is accepted.

As a matter of fact, till then, it is open to the 'Bidder' to withdraw the 'Bids' and it is open to the 'Authority' concerned to reject any 'Bid' for reasons to be assigned in the order so passed.

16. One cannot brush aside an important fact 'that disposal of public property' by a public auction must be transparent and rule out the possibilities of favoritism on the part of the authorities.

Also then, it is to be noted that in private contracts, a private party may seldom have a 'Bargaining power' as that of Government or instrumentality of State.

As such, the public functionaries should act fairly and reasonably.

Moreover, a 'writ' is not the proper remedy for assailing the contractual obligations.

17. Besides the above, it is to be taken into consideration that after a contract has been validly entered into, the right of parties shall be determined by the terms of contract, even though one of the parties is a statutory authority.

Indeed, in the absence of any statutory obligation, it would be a case of breach of contract, in a simple fashion, for which, the remedy lies in filing a suit for 'Damages' and not to file a petition under Article 226 of the Constitution of India, as opined by this Court.

In short, in case of violation of contractual terms in an agreement, a suit for specific performance would also lie.

To put it precisely, no writ of mandamus would lie to enforce a right claimed in terms of the contract.

18. It is to be noted that the terms and conditions in respect of the TASMACH shop clause No.46 speaks of the licence period as 'one year' and further, it mentions that it is temporary permission etc., In this connection, this Court very pertinently points out that even though the terms and conditions of the TASMACH shop clause No.46 speaks of licence period as one year, the letter of the respondent dated 30.08.2014 clearly mentions that the agreement would be in force from 01.09.2014 to 30.11.2014.

(Although the bid of the petitioner was confirmed). That apart, it is not in dispute that the petitioner had paid Rs.2,97,200/- as security deposit and also paid the highest bid amount of Rs.1,48,600/- and a receipt for the month of October 2014 was issued in respect of the shop No.4816 dated 08.10.2014 (signed by an Assistant on behalf of the respondent). 19. Admittedly, the petitioner had not taken part in the 'Auction' held during November 2014.

It is represented on behalf of the respondent that for 2014-2015, a public tender/auction was conducted, in which three persons took part and the highest

bid amount was quoted by one Kannan, who was selected temporarily as the successful bidder in respect of the retail Liquor shop No.4816.

20.Asfar as the present case is concerned, even though clause 46 of the Liquor Shop terms and conditions/licence speaks of the licence period, validity as one year, (since in the communication dated 30.08.2014 of the respondent, it was clearly mentioned that the agreement/contract would be in force from 01.09.2014 to 30.11.2014 in favour of the petitioner).this Court is of the considered view that the petitioner cannot fall back upon and place reliance on clause No.46 of the agreement/terms and conditions namely the licence period of the shop in question is one year and as a matter of fact, the proceedings of the respondent dated 30.08.2014 governs the parties namely the petitioner and Respondent, wherein, the longevity of the agreement was mentioned as from 01.09.2014 to 30.11.2014 (from the date of issuance of proceeding).Viewed in that perspective, the impugned order dated 13.11.2014 passed by the respondent, wherein, the petitioner was informed that the agreement period/contract period in respect of TASMAL shop No.4816 comes to an end on 30.11.2014 and as such, the same could not be extended cannot be found fault with, in the considered opinion of this Court.

Resultantly, the writ petition fails.

21.In the result, the writ petition is dismissed leaving the parties to bear their own costs.

The impugned order dated 13.11.2014 passed by the Respondent is affirmed by this Court for the reasons assigned in the present writ petition.

Consequently, connected miscellaneous petitions are also dismissed.

17.12.2014 Index : Yes Internet : Yes VS To The District Manager, TASMAL Limited, Konam, Nagercoil, Kanyakumari District.

M.VENUGOPAL, J.

VS Pre-delivery order made in Writ Petition (MD).No.18677 of 2014 .12.2014

