

Sriram ... Vs. the Executive Officer Cum Deputy Commissioner, and ors.

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Court : Chennai

Decided On : Jun-15-2010

Judge : D.HARIPARANTHAMAN, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.NO.11270 OF 2010 & M.P.NOS.1 TO 3 OF 2010

Appellant : Sriram ...

Respondent : The Executive Officer Cum Deputy Commissioner, and ors.

Advocate for Def. : Mr.N.Varadarajan; Mr.T.Chandrasekaran, Advs.

Advocate for Pet/Ap. : Mr.V.Lakshminarayanan, Adv.

Judgement :

1. The petitioner states that the first respondent temple issued a notification inviting tenders / public auction to be held on 14.05.2010 relating to vending of Prasadam in the temple for the period from 01.07.2010 to 30.06.2011. It is stated in the tender notification that the last date for receipt of tender documents was 14.05.2010 at 04.00 p.m. and the tender box will be kept open in the temple office from 10.00 a.m. on 13.05.2010. The tender box will be opened at 04.00 p.m on 14.05.2010 in the temple premises. Public auction is also contemplated. Duly filled tender forms should be deposited in the tender box in a sealed cover. It is further stated that the tenderers should deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) by way of demand draft drawn in favour of the first respondent temple, along with the tender form. It is also stated in the tender notification that the persons, who did not offer their tender, could participate in the public auction, by depositing a sum of Rs.1,00,000/-.

2.The petitioner further states that when the tender box was opened, it was found that six persons, including the petitioner, submitted tender forms. Only one person was therefor public auction by remitting a sum of Rs.1,00,000/-. Nobody else was there to participate in the public auction. The petitioner quoted a sum of Rs.12.75 Lakhs, besides complying with the condition by enclosing a demand draft for Rs.1,00,000/- along with his tender form. In these circumstances, the petitioner was the highest bidder.

3.The petitioner states that though he was prepared to remit the tender amount of Rs.12.75 Lakhs, which was quoted in his tender form, the person, who is now running the Prasadam Stall, created a turbulent situation, since he came to know that he was an unsuccessful bidder. He unleashed violence and attacked the petitioner, one Thiru Raja, Thiru Jagadish and Thiru Mohan. Therefore, he went to the E-1 Mylapore Police Station and gave a complaint on 14.05.2010 (the same day) at 10.00 p.m, complaining that he was prevented from remitting the tender amount by some rowdy elements. The said complaint was registered in 181/CSR/E1/2010. He also sent a telegram at 11.00 p.m. on the same day itself, requesting the first respondent to give the account number of the temple, so as to remit the tender amount immediately in the bank.

4.The petitioner also lodged a complaint on 17.05.2010 to the second respondent explaining the above facts and seeking his intervention and there was no reply from the second respondent pursuant to his complaint. He also took two demand drafts i.e. one for a sum of Rs.9,00,000/- and another for a sum of Rs.2,75,000/- totalling a sum of Rs.11,75,000/- and sent those demand drafts to the first respondent through post. The first respondent also received the same on 25.05.2010, but however, returned the same to the petitioner on 26.05.2010 by post.

5.However, the first respondent passed the impugned order dated 15.05.2010 stating that the petitioner failed to remit the tender amount immediately, after it was announced in the mike that he was the successful bidder, and therefore, the tender of the petitioner was cancelled. But the said order was sent by registered post only on 17.05.2010.

6.This forced the petitioner to approach this Court by filing the present writ petition seeking to quash the order dated 15.05.2010 of the first respondent and to permit him to run the Prasadam Stall in the first respondent temple for the period from 01.07.2010 to 30.06.2011.

7.When the matter came up for admission on 27.05.2010, this Court permitted the petitioner to serve notice on the learned Special Government Pleader (HR & CE) and the matter was directed to be listed before the next vacation court. When the matter came up for hearing on 03.06.2010, this Court ordered notice and also granted interim stay on condition that the petitioner should hand over the demand drafts to the first respondent by 05.06.2010. The petitioner complied with the condition.

8.The first respondent filed a counter affidavit refuting the allegations made in the affidavit filed in support of the writ petition. The first respondent also seeks to vacate the interim order passed by this Court.

9.Heard Mr.V.Lakshminarayanan, learned counsel for the petitioner; Mr.N.Varadarajan, learned counsel for the first respondent and Mr.T.Chandrasekaran, learned Special Government Pleader (HR & CE) for the second respondent.

10.The learned counsel for the petitioner submits that on 14.05.2010, the present stall owner unleashed violence and attacked the petitioner and others inside the temple premises, when it was found that the petitioner was the highest bidder. Under such circumstances, the petitioner was forced to leave the premises to protect his life. Thereafter, he went to the Police Station and lodged a complaint at 10.00 p.m. on the same day complaining that he was prevented from remitting the amount offered in the tender form, to the first respondent. He also sent a telegram at 11.00 p.m. to the respondents on the same day itself, expressing his willingness to remit the tender amount directly in the bank. The copies of the complaint, telegram and the receipt for having lodged a complaint, are enclosed in the typed set.

11.Without considering his telegram, the first respondent cancelled the tender on 15.05.2010, which is the order impugned in the writ petition. In the impugned order, it is stated that the petitioner failed to remit the tender amount immediately after being "announced in the mike" that he was the successful bidder. According to the petitioner, he was not able to remit the amount immediately, since the present Prasadam Stall owner created a turbulent situation.

12.It is the case of the petitioner that it was not the case of the first respondent that the first respondent was not satisfied with the tender amount and that therefore, they wanted to have a fresh auction. On the other hand, it is the specific case of the first respondent that since the petitioner failed to remit the amount immediately, on being "announced through mike" that the petitioner was the successful bidder, the tender was cancelled.

13.The envelope containing the date on which the impugned order was sent through registered post is produced before this Court. As per the noting on the envelope, the impugned order dated 15.05.2010 was sent to the petitioner only on 17.05.2010 by registered post with acknowledgment due.

14.The case of the first respondent is that as per the tender conditions, the petitioner should have remitted the tender amount "immediately" on the announcement in mike that he was the successful bidder. According to the first respondent, since he failed to remit the tender amount "immediately" when his success was announced in the mike, the tender offered by him was cancelled vide the impugned order dated 15.05.2010.

15.In this regard, Clause Nos.5 and 6 of the tender conditions are extracted here-under:

VERNACULAR (TAMIL) PORTION DELETED

16.The crux of the contention of the first respondent was that the term "cld;" appearing in Clause No.6 of the tender conditions contemplates that the petitioner should deposit the tender amount "immediately" after the announcement in the mike that he was the successful bidder. Therefore, one has to see how to interpret the term "cld;" in Clause No.6 of the tender conditions. Clause No.6 never states that the payment should be made on the spot itself.

17.Further, on registering the highest tender amount quoted by the petitioner, without prejudice to the right of the first respondent to cancel the same, as per condition No.5 of the tender conditions, the first respondent should have informed the petitioner in writing that he was the highest bidder, directing him to deposit the amount, without any loss of time. The first respondent could not say that announcement was made in the mike and that the petitioner failed to remit the amount immediately. That is the only reason for cancelling the tender. It is not the case of the first respondent that they were not satisfied with the tender amount offered by the petitioner. According to the first respondent, the petitioner failed to remit the amount immediately on 14.05.2010.

18.The learned counsel for the first respondent states that the tender process was over at 05.30 p.m. on 14.05.2010. He produced the auction register, wherein the offer of the petitioner was recorded as "highest bid". However, no order was issued to the petitioner communicating that he was the successful bidder and that he was awarded with the contract of vending Prasadams in the temple for the period 01.07.2010 to 30.06.2011. Clause No.6 of the tender condition should be read in such a way that the successful bidder has to be informed in writing and thereafter, the successful bidder should remit the amount immediately, without any loss of time, since Clause No.6 contemplates confirmation of highest bidder, by using the term . Confirmation of highest bidder through mike is not contemplated in Clause No.6 of the conditions of tender. Confirmation should only be in writing, otherwise it would lead to arbitrations.

19.The learned counsel for the first respondent has also produced the record showing that a resolution dated 14.05.2010 was circulated forfeiting the fixed deposit of Rs.1,00,000/- remitted by the petitioner along with the tender application, on the ground that he failed to comply with Clause No.6 of the tender conditions. The first respondent sought to forfeit Rs.1,00,000/- on the ground that he failed to deposit the tender amount of Rs.12.75 Lakhs immediately on 14.05.2010, after confirmation of the highest bid was announced through mike.

20.From the facts and circumstances of the case, it is made clear that the petitioner made a complaint to the police at 10.00 p.m. on 14.05.2010 and also sent a telegram at 11.00 p.m. on the same day itself expressing his inability to remit the amount and thereafter, he lodged a complaint on 17.05.2010 to the respondents. Further, he also sent the demand drafts to the first respondent and on receipt of the same, the first respondent returned the demand drafts to the petitioner. Aggrieved over the same, the petitioner has come up with the present writ petition and based on the interim order passed by this Court on 03.06.2010, he handed over the demand drafts to the first respondent on 05.06.2010. Further, it is not the case of the respondents that they were not satisfied with the amount offered by the petitioner. In these circumstances, the petitioner could not be found fault and the allegation that he failed to remit the amount immediately on the announcement in the mike has no merit.

21.The action of the first respondent in passing the impugned order is arbitrary and violative of Article 14 of

the Constitution, as the first respondent proceeded to cancel the tender offered by the petitioner based on the alleged announcement made in the mike confirming the highest bid of petitioner and non-remittance of the amount by petitioner immediately.

22. Therefore, the impugned order is liable to be quashed and accordingly, the same is quashed and the writ petition is allowed. The first respondent is directed to put the petitioner in possession of the Prasadam Stall for the purpose of vending Prasadams at Arulmighu Kabaleeswarar Temple, Mylapore, Chennai on and from 01.07.2010 to 30.06.2011. No costs. Consequently, connected miscellaneous petitions are closed.

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