

T.Nirmala Vs. the Commissioner.

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Court : Chennai

Decided On : Apr-09-2012

Judge : M.Jaichandren, J.

Acts : [Constitution of India](#) - Articles 226

Appeal No. : Writ Petition No.4134 of 2012

Appellant : T.Nirmala

Respondent : The Commissioner.

Advocate for Def. : Mr.N.Visahamurthy, Adv.

Advocate for Pet/Ap. : Mr.R.Karthikeyan, Adv

Judgement :

This writ petition is filed under Article 226 of the [Constitution of India](#) praying for the issuance of a Writ of Mandamus forbearing the first respondent from in any manner granting the licence for collection of fees from the users of the Public Convenience in Cuddalore Municipal Bus Stand that is the subject matter of Item 13 of the Auction notification issued by the first respondent dated 22.12.2011 placed as Item No 13 in the Regular meeting of the Cuddalore Municipal Council on 17.02.2012 and consequently direct the respondent to confirm the auction in favour of the petitioner.

ORDER

1. Heard the learned counsels for both sides.

2. This writ petition has been filed praying that this Court may be pleased to issue a writ of Mandamus forbearing the first respondent from, in any manner, granting the licence, for the collection of fees from the users of the public convenience, in Cuddalore Municipal Bus Stand, which is a subject matter in the Tender-cum-Auction notification, dated 22.12.2011, issued by the first respondent, and to consequently direct the first respondent to confirm the Tender-cum-Auction in favour of the petitioner.

3. It has been stated that the petitioner had participated in the Tender-cum-Auction, held for collection of fees from the users of the public convenience, in Cuddalore Municipal Bus Stand, for the years 2012-2015. The subject matter had been notified by the first respondent, in the notification, dated 22.12.2011. The petitioner had made a bid for a sum of Rs.31,00,100/-. In the auction held, on 25.1.2012, there was only one other tender, submitted by the second respondent. The second respondent's bid was for a sum of Rs.25,00,000/-. Since, the bid made by the petitioner was the highest, and as the tender submitted by the second respondent had been rejected, as it did not contain the signature of the tenderer, the tender bid made by the petitioner had been placed before the municipal council for its confirmation, on 17.2.2012.

4. It had also been stated that, in the council meeting, the tender bid made by the petitioner had been ignored and the tender bid made by the second respondent had been confirmed, and it had been published in the daily news paper 'Thinathanthi'. It had been learnt that the confirmation in favour of the second respondent had been made for the reason that the power of attorney agent, who had participated on behalf of the petitioner, had filed a case against the first respondent, in respect of certain rental arrears and that, as per clause 6 of the General Conditions of Auction notification, dated 22.12.2011, a person, who had filed a case against the first respondent Municipality cannot participate in the auction.

5. It had been further stated that clause 6 of the General Conditions of Auction Notification, dated 22.12.2011, cannot be held to be valid in the eye of law, as it is against the fundamental rights of a person to approach a court of law. In such circumstances, the petitioner had submitted a representation, dated 19.2.2012. However, the first respondent did not respond to the said representation made by the petitioner. Hence, the petitioner had preferred the present writ petition before this Court, under Article 226 of the [Constitution of India](#).

6. This Court, while ordering notice regarding admission, to the respondents, had granted an order of interim injunction restraining the first respondent from, in any manner, granting the confirmation of the auction, held on 25.1.2012, in favour of the second respondent, by its order, dated 22.2.2012.

7. The learned counsel appearing for the first respondent had submitted that the tender bid of the petitioner could not be accepted, as her power of attorney agent had filed a case against the first respondent Municipality. As per clause 6 of the General Conditions of Auction Notification, dated 22.12.2011, a person, who had filed a case against the Municipality, cannot participate in the auction.

8. The learned counsel appearing for the first respondent had submitted that the tender submitted by the second respondent did not contain the signature of the tenderer and therefore, it ought to be rejected. In such circumstances, the first respondent is willing to issue a fresh notification to conduct the Tender-cum-Auction, in respect of the right for collection of fees, from the users of the public convenience, in Cuddalore Municipal Bus Stand, for the years 2012 to 2015, within a period specified by this Court.

9. The learned counsel appearing for the second respondent had submitted that the second respondent had submitted a sealed tender with the bid of Rs.33,00,000/-. When the tender had been opened, the tender bid made by the second respondent had been rejected, as it had not been signed by the second respondent. However, in the open auction, the second respondent had offered a sum of Rs.25,00,000/-, whereas the petitioner had offered a sum of Rs.31,00,100/-, in a sealed tender. During the meeting of the Municipality held on 17.2.2012, a resolution had been passed in Resolution No.82, declaring the second respondent

as the successful bidder, as the bid made by the second respondent, for a sum of of Rs.25,00,000/-, was the higher than the average amount for the past three years. The bid made by the petitioner had not been accepted for the reasons stated in the said resolution.

10. In view of the submissions made by the learned counsels for the petitioner, as well as the respondents, and in view of the records available, this Court finds it appropriate to permit the first respondent to issue a fresh notification for holding a Tender-cum-Auction, in respect of the right for collection of fees, from the users of the public convenience, in Cuddalore Municipal Bus Stand, for the years 2012 to 2015, within a period of four weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. It is made clear that it would be open to the petitioner, as well as the second respondent, to participate in the Tender-cum-Auction, to be held by the first respondent, if they are found to be eligible to do so, as per the terms and conditions of the said Tender-cum-Auction, and as per the procedures established by law. No costs. Connected M.P.Nos.1 and 2 of 2012 are closed.

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