

## D.V.V. Narasimham Naidu Vs Commissioner for Endowments, Government of A.P. and Another

**Court:** Andhra Pradesh High Court

**Date of Decision:** Nov. 28, 2003

**Acts Referred:** Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 â€” Section 6  
 Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other Lands  
 (Other than Agricultural Lands) Leases and Licenses Rules, 2003 â€” Rule 10, 12, 4, 6, 7  
 Constitution of India, 1950 â€” Article 226

**Citation:** (2004) 3 ALD 53 : (2004) 1 ALT 794

**Hon'ble Judges:** V.V.S. Rao, J

**Bench:** Single Bench

**Advocate:** G.V. Shivaji, for the Appellant; G.P. for the Respondent No. 1 and M. Adinarayana Raju, for the  
 Respondents No. 2, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.

Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, (hereinafter called, the Temple), issued a public

auction notice, dt. 27-2-2003 proposing inter alia to auction right to collect fee from pilgrims for coconuts at  
 Bhairavavaka, down-hills of

Simhachalam Temple. The petitioner, who was successful bidder in the auction conducted on 8-1-2003 for leasing out  
 right to collect fee for

coconuts, assailed the action of the Temple in re-auctioning the right as illegal and arbitrary.

2. The facts in brief leading to filing of the Writ Petition are as follows. The Temple conducted auction on 8-1-2003 for  
 grant of licence to collect

fee for coconut. The petitioner became successful bidder for one year. On the day of the auction he paid an amount of  
 Rs. 40,000/- (Rupees forty

thousand only). He was also required to pay the balance of amount of Rs. 76,000/-(Rupees seventy six thousand only)  
 within fifteen days, as the

bid was for Rs. 1,16,000/- (Rupees one lakh sixteen thousand only). In the meanwhile, petitioner's mother died on  
 20-1-2003. Therefore, the

petitioner could not pay the amount on 23-1-2003, which is last date for paying the auction amount. He alleges that he  
 could not come out of his

house before 26-1-2003, and on 26-1-2003 when he approached the Temple authorities and prepared to pay the  
 amount of Rs. 76,000/-

(Rupees seventy six thousand only), the second respondent refused to receive the same and also refused to give audience. The petitioner sent a

representation on 15-2-2003 to the second respondent, but no action was taken. The Temple issued the impugned auction notice on 27-2-2003

proposing to hold auction on 12-3-2003. It is contended that the action of the second respondent Temple in re-auctioning the right to collect fee

on coconuts is illegal and arbitrary.

3. The Temple has filed a counter affidavit stating that the Temple issued auction notice on 24-12-2002 to auction the right to collect fee for

coconuts and ancillaries at Bhairavavaka, down-hills of the Temple. The petitioner along with others participated in the auction depositing an

amount of Rs. 25,000/- (Rupees twenty five thousand only) towards Earnest Money Deposit (EMD) as per condition No. 1 of the auction

conditions. The petitioner became higher bidder for an amount of Rs. 1,16,000/- (Rupees one lakh sixteen thousand only) and his bid was

accepted. The petitioner immediately paid an amount of Rs. 15,000/- (Rupees fifteen thousand only) towards 1/3rd of bid amount (Rs. 25,000/- +

Rs. 15,000/-) as required under condition No. 2. As per condition No. 3 highest bidder has to pay balance of 2/3rd amount within fifteen days

from the date of auction. Though the petitioner is aware of the said condition, which is mandatory, he did not pay the amount and in view of the

same the auction in his favour stood cancelled automatically. The second respondent is not aware of death of mother of petitioner. But the fact

remains that he failed to pay the amount of Rs. 76,000/- (Rupees seventy six thousand only) on or before last date. He made a representation only

on 27-2-2003 requesting the Temple to receive the balance amount. In the meanwhile, on 27-2-2003 the impugned auction notice was issued for

licensing twenty-seven items, including collection of fee for coconuts at Bhairavavaka, down-hills of Simhachalam Temple.

4. The auction was to be held on 12-3-2003, but the same was postponed and ultimately auction was held on 9-7-2003. One Sri P. Appala Raju

became highest bidder for Rs. 1,28,000/- (Rupees one lakh twenty-eight thousand only). He paid the entire amount subject to orders of this court

in this Writ Petition, as this court permitted the respondents to conduct auction, but directed not to finalise the tenders. As the petitioner failed to

pay the balance of 2/3rd amount within due date, he has no right to challenge the auction notification.

5. Learned counsel for the petitioner submits that unless and until the auction conducted in favour of petitioner in January, 2003 is either confirmed

or rejected by Commissioner of Endowments, first respondent, in accordance with Andhra Pradesh Charitable and Hindu Religious Institutions

and Endowments Immovable Properties and other rights (Other than Agricultural lands) Leases and Licenses Rules, 2003 (for short, the Rules), it

cannot be said that the auction in petitioner's favour stood cancelled. He therefore contends that having regard to the peculiar facts and

circumstances of the case, second respondent ought to have considered the representation of the petitioner and allowed him to pay the amount.

Learned counsel, however, does not deny that as per conditions of auction petitioner did not deposit the 2/3rd of balance amount within fifteen

days from the date of auction.

6. Learned Standing Counsel for second respondent Temple, Sri M. Adinarayana Raju, opposed the Writ Petition. He contends that requirement

to submit the result of the auction for confirmation of the Commissioner would arise only when the highest bidder fulfils all the conditions. As the

petitioner failed to fulfil the conditions, the Temple proceeded with and conducted fresh auction. The petitioner has not fulfilled the conditions of

auction and therefore he has no right to maintain Writ Petition.

7. The only question that arises for consideration is whether the action of the Temple in re-auctioning the right/licence to collect fee for coconuts is

valid or not?

8. A copy of the public auction notice dt. 5-1-2003 containing conditions of auction is placed before me. Condition Nos. 1 to 5 are relevant and

they read as under:

1. The participants in the auction should pay an amount of Rs. 25,000/- by way of D.D. towards advance deposit.

2. Except the deposit amount of the highest bidder, the deposit amount paid by the rest of the participants will be returned immediately after the

auction is completed.

3. The highest bidder should pay the 1/3rd bid amount immediately and the balance amount within 15 days.

4. The highest bidder should collect through his men from the respective place the coconut pieces, offerings, Amruthakalasas etc., offered by

devotees.

5. If there is any delay in payment of amount payable by the highest bidder to the temple, the amount paid towards advance deposit shall be

forfeited to the temple.

9. A reading of these conditions would show that highest bidder is required to deposit 1/3rd bid amount immediately and balance amount within

fifteen days. In the event the highest bidder fails to deposit/pay 2/3rd of the auction bid amount, the amount paid towards advance deposit shall be

forfeited to the Temple. This indicates that when once the amount stands forfeited, the highest bidder, who does not comply with the conditions of

auction, stands to lose the right to get licence. The auction cannot be allowed to see its logical end. In this background, we have to consider the

effect of the Rules.

10. Rule 4 of the Rules is to the effect that in the case of immovable properties to be given for residential purpose only the religious institution has

to grant lease. In the case of other immovable properties, such as shops and buildings to be given or used for the purpose of running business, a

licence has to be granted. In the case of other rights of usufruct, fishery, collection of coconut prices, human hair also the religious institution has to

grant a licence. In the case of other leases or licences, auction has to be held in accordance with Rules 6, 7 and 8. Rule 9 of the Rules lays down

that if auction notice specifies payment of EMD unless and until the participants deposit EMD as security, they shall not be permitted to bid at the

auction. Rule 10 of the Rules stipulates that licence shall be given to the highest bidder, and all leases and licences according to Rule 12 have to be

confirmed by competent authority. If the value of the licence exceeds Rs. 1,00,000/- (Rupees one lakh only) the competent authority to confirm

licences in respect of institutions and endowments falling u/s 6(a) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act,

1987, shall be the Commissioner.

11. A reading of the Rules would show that after the Temple decides highest bidder, a proposal has to be submitted to the Commissioner for

confirmation under Rule 12 of the Rules. A person can be declared as highest bidder only if he fulfils the conditions of auction issued in the notice

or separately. If the conditions of auction are not complied with, a preliminary decision in favour of a person cannot be taken by the Temple before

submitting proposal for confirmation. As the petitioner failed to deposit 2/3rd of the bid amount with fifteen days, he cannot be considered as

highest bidder and therefore there was no necessity to submit proposal to the Commissioner for confirmation.

12. Insofar as the contention that licence granted in favour of Sri P. Appala Raju has not been confirmed by the Commissioner and therefore, the

petitioner's case can be considered, the same is devoid of any merit. By order dt. 12-3-2003 this court directed that the auction shall not be

finalized until further orders. It is for this reason that the Temple has not submitted proposals to the Commissioner. The learned Standing Counsel

for the Temple also submits that the proposals will be submitted to the Commissioner as and when appropriate orders are passed by this court.

13. The petitioner admittedly did not pay the amount as stipulated in auction condition No. 3 and therefore he cannot enforce any right in these

proceedings under Article 226 of the Constitution of India. No direction can be granted to Temple to allow the petitioner to collect fee for

coconuts.

14. For the above reasons, the Writ Petition fails and is accordingly dismissed. There shall be no order as to costs.