

(2009) 04 MAD CK 0507

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 1574 of 2009 and M.P. (MD) No's. 1 and 3 of 2009

B. Tamilarasi

APPELLANT

Vs

The Commissioner,
Kumbakonam Municipality,
Kumbakonam, Thanjavur District
and R. Selvi

RESPONDENT

Date of Decision: April 17, 2009

Citation: (2009) 6 CTC 748

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: V. Chandrasekar, for the Appellant; K. Rajkumar, Advocate for Respondent No. 1., for the Respondent

Final Decision: Dismissed

Judgement

K.K. Sasidharan, J.

The Petitioner seeks a Writ of Mandamus, directing the First Respondent to confirm the auction/tender held on 19.02.2009 and to grant him the licence to collect the charges for using the toilet and bathroom situated in Anna Bus Stand (northern side), Kumbakonam for the period from 01.04.2009 to 31.03.2012. The First Respondent-Municipality has constructed a toilet and bathroom in Anna Bus Stand (northern side) in Kumbakonam. The Municipality has decided to auction the right to collect the charges for the usage of the toilet and bathroom and accordingly, a Notification was issued on 31.01.2009, whereby the public auction was scheduled to be held on 19.2.2009. As per the Auction Notification, intending participants have to submit their tender enclosing all the required documents along with the earnest money deposit.

2. In accordance with the Tender Notification, the Petitioner submitted a tender quoting a sum of Rs. 15,15,011/- . The tenders were opened on 19.02.2009 and the amount quoted by the Petitioner was found to be the highest. According to the

Petitioner, the tender was confirmed by the First Respondent. However, there was a commotion in the auction place, as several persons owing allegiance to the ruling party have created scenes and the First Respondent was only a silent spectator. The ruling party members prevented the First Respondent from preparing the required documents which made the Commissioner to return to his Chambers. Subsequently, on 23.02.2009, the Municipality served a copy of the notice dated 19.02.2009 to the Petitioner directing him to submit the original documents pertaining to the Solvency Certificate. On 23.02.2009, the Petitioner presented the original documents in the office of the First Respondent and an endorsement has also been made acknowledging the receipt of the documents.

3. While so, to the surprise of the Petitioner, the First Respondent has given a Notification in the "Dinathanthi" indicating a fresh public auction on 05.03.2009. According to the Petitioner, the amount quoted by her was found to be the highest and her bid was also accepted. In such circumstances, the First Respondent was bound to issue the order permitting her to conduct the business for the period from 01.04.2009 to 31.03.2012.

4. It was also the contention of the Petitioner that the order accepting her tender was not set aside in the manner known to law and as such, the First Respondent was not justified in issuing a fresh Notification. In such circumstances, the Petitioner seeks a direction to the First Respondent to confirm the bid in her favour.

5. The First Respondent has filed a Counter-Affidavit in answer to the contentions made by the Petitioner. According to the First Respondent, the terms and conditions of the auction was clearly stipulated in the Notification. As per Clause-28 of the Terms and Conditions, in case there was a better offer made within 24 hours of the conclusion of the original auction with a proposal to pay 25% of the highest amount disclosed in the tender opened earlier, Applications could be made by such intending participant, in case he deposits 25% excess amount as a condition precedent for re-auction. According to the First Respondent, the auction was conducted on 19.02.2009 and the amount quoted by the Petitioner was found to be the highest. However, within 24 hours, the Second Respondent submitted a representation on 20.02.2009 itself along with a demand draft for a sum of Rs. 18,94,000/- as provided under Clause-28 of the Terms and Conditions of the Auction. Since the offer made by the Second Respondent was 25% more than the amount quoted by the Petitioner, the Municipality was obliged to conduct re-auction. The First Respondent further contended that there was no confirmation in favour of the Petitioner and the bid submitted by her has to be placed before the Council, as the ultimate authority to take a decision in the matter was only the Council. However, even before the matter was placed before the Council, the Second Respondent submitted her offer and in the meantime, the Petitioner filed the Writ Petition and obtained an interim order and the same prevented in taking further auction in the matter.

6. The defence pleaded by the First Respondent in his Counter-Affidavit was supported by the Second Respondent. According to the Second Respondent, she made an offer which was much more than the offer made by the Petitioner and as per Clause-28 of the Terms and Conditions of the auction, the First Respondent was bound to cancel the initial auction and to proceed to conduct second auction, as she has complied with the requirements of Clause-28 of the Terms and Conditions of the Auction.

7. The Auction Notification published by the First Respondent was only in the nature of a proposal calling upon the intending participants to submit their bids. The auction has to be conducted only as per the terms and conditions of the Notification. The Petitioner participated knowing fully well the Terms and Conditions of the Auction including Clause-28, which provides that in the event of an offer received by the First Respondent within 24 hours of the auction to pay 25% in excess of the amount quoted by the highest bidder, re-auction would be conducted.

8. Though the amount quoted by the Petitioner was found to be the highest, the same was not accepted by the First Respondent. The authority to accept the bid and to issue the order of confirmation was only the Municipal Council. The First Respondent was only conducting the auction and it was only on behalf of the Council. Even before placing the matter before the Council, the Second Respondent offered a substantial amount which was more than 25% of the amount quoted by the Petitioner and as such, the First Respondent was obliged to proceed with re-auction. It was only in accordance with Clause-28 of the Terms and Conditions of the Auction that the First Respondent has decided to conduct re-auction. In such re-auction, the Petitioner was also permitted to take part and to make her offer. After all, the participants were only submitting their bids and in case there was no proposal as per condition No. 28, the matter has to be placed before the Council to take a decision with respect to confirmation.

9. There was no order of confirmation in favour of the Petitioner. Even before placing the matter before the Council, a better offer was given by the Second Respondent in accordance with Clause-28 of the Terms and Conditions of the Auction. When there is no order of confirmation in favour of the Petitioner, it cannot be said that the right of the Petitioner was prejudicially affected on account of the action taken by the First Respondent for re-auction. Unless and until there was a confirmation, no right would accrue to the Petitioner. The Petitioner submitted her bid in accordance with the Terms and Conditions of the Auction which provides for a re-auction in the event of receiving a better offer by quoting 25% in excess of the initial offer. When the Second Respondent has quoted 25% in excess of the offer made by the Petitioner, naturally the First Respondent has to go for re-auction. There was no challenge to the Clause-28 of the Auction Notification. So long as there is a provision for re-auction, it cannot be said that the First Respondent was not entitled to take steps for such re-auction.

10. In Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. and Others, the Supreme Court held that no right would accrue to a bidder, unless the sale was confirmed. The Supreme Court observed thus:

35. In the first case mentioned above, i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of title auction purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

11. In the present case, admittedly there was no confirmation and the very prayer made by the Petitioner was only to confirm the bid. The action taken by the First Respondent was in accordance with the Terms and Conditions of the Auction. In such circumstances, I do not find any merit in the contention of the Petitioner. In the result, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed. No costs.