

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

**WRIT PETITION NO. 7482 OF 2023**

**JUDGMENT:-**

1) Heard Sri. Sai Gangadhar Chamarty, learned Counsel for the Petitioner, learned Government Pleader for Municipal Administration and Urban Development for Respondent No.1, learned Government Pleader for Revenue for Respondent No. 2, Sri. G. Naresh Kumar, learned Counsel, representing Sri. M. Manohar Reddy, learned Standing Counsel for Respondent No. 3 and Sri. C. Raghu, learned Senior Advocate, assisted by Ms. V. Sesha Kumari, learned Counsel for Respondent No. 4.

2) The Petitioner has filed the present Writ Petition under Article 226 of the Constitution of India, for writ, order or direction in the nature of writ of mandamus challenging the auction proceedings for collection of market fee for the year 2023 – 2024 within the limits of Pedana Municipality, by the 3<sup>rd</sup> Respondent under auction notice published in Sakshi Telugu Daily Newspaper, dated 02.03.2023.

3) The facts as disclosed in brief are that, the 3<sup>rd</sup> Respondent – Pedana Municipality issued auction notification, publishing in Sakshi Telugu Daily Newspaper, dated 02.03.2023, and Andhra Jyothi Telugu Daily Newspaper, dated 03.03.2023, informing the public that the said Municipality in exercise of power under Sections 271, 277, 289(2) and 351 of the A.P. Municipalities Act, 1965, [for short the **‘Municipalities Act, 1965’**], is proposing to conduct auction for collection of market fee for sale of vegetables, fruits, flowers and fishes as also other market products for the year 2023 – 2034 with effect from 01.04.2023 to 31.03.2024. The paper publication was made pursuant to the Council Resolution No. 161, dated 02.03.2023.

4) The tender notice/publication in newspaper was made on 02.03.2023 and the auction was held on 04.03.2023, which has been confirmed in favour of the 4<sup>th</sup> Respondent.

5) The Petitioner who is the Ex-Vice Chairman of the 3<sup>rd</sup> Respondent as well as interested to protect the revenue of

the 3<sup>rd</sup> Respondent, raised grievance on 06.03.2023 through Spandana Portal, requesting to cancel the auction, to which the reply endorsement, dated 10.03.2023, was received informing that there were no infirmities in the procedure adopted in conducting the auction.

6) The challenge to the auction proceedings is mainly on the ground that the procedure adopted was contrary to G.O.Ms. No. 94, Irrigation and CAD (PW-COD) Department, dated 01.07.2003. The said G.O.Ms. No. 94 provided that, the time allowed from the date of publication of tender notice to the date of receipt of tender is 14 days for the first call and 7 days for the second call.

7) This Court *prima facie* finding that the auction was conducted contrary to the procedure envisaged in G.O.Ms. No. 94, as there was no time gap of minimum 14 days from the date of publication and date of auction, granted interim stay of further proceedings pursuant to the auction held on 04.03.2023, vide interim order, dated 27.03.2023, which is still continuing.

8) Learned Counsel for the Petitioner submitted that, in the auction held on 04.03.2023, due to lack of wide publicity only two [02] people participated. The 4<sup>th</sup> Respondent is declared as highest bidder for a sum of Rs.14,11,000/- against reserved price of Rs.13,99,889/-. It is submitted that, the reserve price so fixed was also contrary to the rules, as in the last auction, the 4<sup>th</sup> Respondent, for the year 2022 – 2023 succeeded at Rs.22,50,000/-.

9) Sri. G. Naresh Kumar, learned Counsel for Respondent No. 3, submitted that, the gazette rates were approved by the Municipal Council, Pedana, vide M.C.R. No.161, dated 27.12.2022, for the financial year 2023 – 2024. He submitted that the auction notification was duly published in Sakshi Daily Telugu Newspaper on 02.03.2023 and in Andhra Jyothi Newspaper on 03.03.2023, fixing the date of auction as 04.03.2023, in accordance with the provisions of the Municipalities Act, 1965. It is further submitted that, the Public Auction Notice Roc. No. 148/2011/A1, dated 21.02.2023, was

displayed in the Public Offices of Tahsildar Office Notice Board, Sub-Registrar Office, Mandal Praja Parishad Office Notice Board and in the Municipal Office Notice Board, informing the public that the public auction for the lease hold rights for collections of Pedana Municipality market Aseelu will be held on 04.03.2023. It is submitted that, wide publication was given through mike announcement for two [02] days on 27.02.2023 and 28.02.2023. Consequently, it is submitted that the auction notice time was sufficient. The auction procedure began on 21.02.2023 by displaying the auction notice in the Public Offices. He submitted that the G.O.Ms. No.94, dated 01.07.2023, is not applicable for auction of the market lease hold rights for collection of aseelu/fees in the Municipal markets.

10) Sri. G. Naresh Kumar, further submitted that, taking into consideration the bid amounts offered for the past three years, the reserve price was fixed at Rs.13,99,889/- and the Circular bid was fixed at Rs.14,00,000/-. In the public auction on 04.03.2023, two [02] persons participated, the 4<sup>th</sup> Respondent and one more person. The

bid offered by the 4<sup>th</sup> Respondent was the highest bid of Rs.14,11,000/-, which was accepted and approved by the Council, subject to the orders passed in the Writ Petition and final orders have not been issued to the 4<sup>th</sup> Respondent.

11) Sri. C. Raghu, learned Senior Advocate for Respondent No. 4, submitted that, the Writ Petitioner is not aggrieved from the process of auction conducted by the 3<sup>rd</sup> Respondent – Municipality and has no locus to challenge the same, as in his submission it is not the Petitioner's case that, because of improper or irregular notification, he was unable to participate in the auction.

12) Sri. C. Raghu, learned Senior Advocate, further submitted that the main ground of challenge is that the procedure is contrary to G.O.Ms. No.94, dated 01.07.2003, which contemplates 14 days time gap between the date of publication and the auction, but G.O.Ms. No.94 is not applicable, as it pertains to Irrigation and CAD Department and was issued in the context of simplification of the procurement procedures, achieving greater transparency in

procurement, reducing delay in procurement, improving quality of construction and ensuring timely completion of projects. G.O.Ms. No. 94 is not applicable to the subject auction relating to collection of market fee for the year 2023 – 2024 as it does not pertain to any project or procurement process.

13) I have considered the submissions advanced by the learned Counsels for the parties and perused the material on record.

14) In view of the submissions advanced, the following points arise for consideration:

- 1) Whether the Petitioner has the locus to challenge the auction, dated 04.03.2023?
- 2) Whether the impugned auction deserves to be quashed on the ground that the newspaper publication was made on 02.03.2023 & 03.03.2023 and the auction was conducted on 04.03.2023?

**Point No. 1**

15) The contention of the learned Senior Advocate for the 4<sup>th</sup> Respondent is that the Petitioner cannot challenge the auction proceedings as the Petitioner has not stated that

because of improper or irregular publication of notification, the Petitioner was unable to participate in the auction.

16) Learned Counsel for the Petitioner submitted that, due to lack of wide publicity, only two people participated and if wide publicity had been made through newspaper, the Petitioner could also have participated.

17) In paragraph 13 of the Writ Petition, the Writ Petitioner has pleaded as under:-

“.....since, there is no wide publicity no one including the petitioner had opportunity to participate in the auction proceedings and the auction was conducted among two people.....”.

18) Thus, there is a specific pleading that since there was no wide publicity, the Petitioner had no opportunity to participate in the auction proceeding. The submission of the learned Senior Advocate to the contrary is not acceptable. It cannot be said that the Petitioner is not an aggrieved person and has no locus to challenge the auction in question.



19) The writ petition is held to be maintainable at the instance of the Petitioner.

20) Point No. 1 is answered holding that the Petitioner has locus to challenge the auction proceedings.

**Point No. 2**

21) Coming to the point of validity of auction proceedings based on newspaper publication of the auction notice, the arguments advanced by the learned Counsels on both the sides, center around the time gap between the date of newspaper publication and the date of auction.

22) As per the initial contention of the learned Counsel for the Petitioner, 14 days time gap, between the date of publication in the newspaper of the tender notification and the date of auction, as in G.O.Ms. No. 94 was violated as in the newspapers, the publication was made on 02.03.2023 and auction was conducted on 04.03.2023.

23) However, during arguments, learned Counsel for the Petitioner submitted that G.O.Ms. No. 94, dated 01.07.2023, may not be applicable, but there should be a

reasonable time gap between the aforesaid two dates and a period of just 1 – 2 days would not be a reasonable period to enable the public at large to participate in the auction. The auction is without due publicity, in that sense, and consequently, there were only two participants, out of which, Respondent No. 4 in whose favour the bid has been approved is the person who was also in the previous financial year.

24) Learned Counsels for the parties are now not on issue that G.O.Ms. No. 94, does not apply.

25) There is also no dispute that the publication was made in two newspapers.

26) The dispute is with respect to the time gap being, sufficient, reasonable, fair or otherwise. In other words, if publication of notice in two newspapers, dated 02.03.2023 and 03.03.2023, to conduct auction on 04.03.2023 is as per the procedure of publication in newspapers and is it fair and reasonable.

27) The Andhra Pradesh Municipalities (Regulation of Receipts and Expenditure) Rules, 1968, [for short the '**Rules 1968**'], have been filed by the 3<sup>rd</sup> Respondent along with counter affidavit and it was contended that those Rules are applicable in settlement of fees for markets etc.

28) Section 7 of the Rules, 1968, reads as under:

**Fees from markets, slaughter-houses and fisheries.**

"7. (1) Where the right to collect fees in respect of the use of any market, slaughter-house, fishery or sale of fish in fresh water tanks is proposed to be leased out by the Council, the Commissioner shall prepare preliminary notice setting forth the conditions and terms subject to which the lease will be granted.

(2) The conditions and terms set forth in the preliminary notice shall be approved by the authority competent to enter into a contract under Section 43 of the Act. Such authority shall, for the purpose of this sub-rule, be determined with reference to the amount of bid accepted for the previous year's lease:

Provided that the approval of the preliminary notice by such authority shall not be necessary, if it has previously been approved, unless there are any changes in its conditions and terms.

(3) The preliminary notice shall set forth the following conditions and terms subject to which the lease will be granted, namely: -

(a) the selection of the lessee shall vest in the authority competent to approve the lease;

(b) no person shall be permitted to bid at the auction unless he deposits as security such sum as shall be specified in the notice and files a solvency certificate of property worth the bid amount countersigned by an officer of the Revenue Department not below the rank of a Deputy Tahsildar in the case of landed property or by the Commissioner to the Municipality in the case of house property in the town.

(c) if the period of lease does not exceed one year:

(i) the lessee shall, within one week from the date of confirmation of the lease in his favour, deposit a sum which together with the security referred to in clause (b) would make up one-fourth of the total lease amount. This sum shall ordinarily be adjusted towards the instalments of the lease amount due for the last three months of the year, but it may be adjusted towards any instalment of the lease amount overdue from the lessee; and towards the loss, if any, sustained by resale or departmental management; and

(ii) the balance of the lease amount shall be paid in equal monthly instalments within a period of nine

months commencing on the 1st April of every year,  
on or before the date specified in the lease deed;

(d) where the period of lease exceeds one year: -

(i) the lessee shall, within one week from the date of confirmation of the lease in his favour deposit, a sum which together with the security referred to in clause (b) would be make up an amount equal to three instalments of the lease amount. This sum shall ordinarily be adjusted towards the last three instalments of the lease amount due, but it may be adjusted towards any instalment of the lease amount overdue from the lessee; and towards the loss, if any, sustained by resale or departmental management; and

(ii) the balance of the lease amount shall be paid in equal monthly instalments so as to pay it fully within such date as the authority competent to approve the lease may determine:

Provided that the date so fixed shall be such that there will be a gap of at least three months between the date of expiry of the period of lease and the date fixed for full payment;

(e) the lease deed shall ordinarily be executed and registered within fifteen days of the date of the confirmation of the lease by the authority competent under sub-rule (2) and no person shall

be allowed to exercise his rights as a lessee until he has executed the lease deed;

- (f) if any installment due under the lease is not paid within one month of the date on which it becomes payable the Commissioner shall forth-with report the matter to the authority competent to enter into the contract which shall thereupon terminate the lease and order its management departmentally at the risk of the lessee till it is resold, if a resale is ordered; and
  - (g) the lessee shall maintain correct accounts and registers of collection made by him and produce before the Commissioner by 15th of each month and get the same affixed with the Municipal seal. The accounts shall also be made available by the lessee whenever required by the Commissioner.
- (4) **The preliminary notice shall, after approval by the authority referred to in sub-rule (2) where such approval is necessary, be published in one or more newspapers having a wide circulation in the locality. A copy of the notice shall also be affixed in some conspicuous place within the limits of the municipality [and to the notice board of Municipal Office].**

**Provided that the authority referred to in sub-rule (2) may, having regard to the anticipated income from, and the nature of the lease, determine whether the publication of the preliminary notice shall be**

**affected in the manner laid down in this sub-rule [or in any other manner to be specified by, it in addition to the affixing of the notice to the Notice Board of the Municipal Office].**

- (5) The Commissioner or a person duly authorised by him shall conduct the auction and shall not permit any person who fails to deposit as security such sum as may be specified in the preliminary notice, to bid at the auction.
- (6) The Commissioner shall, after the auction is completed, place before the authority referred to in sub-rule (2) a list of the bids at the auction together with a comparative statement of income during past three years with a recommendatory note. The latter authority shall determine which of the bids at the auction should be accepted. Where the bid accepted is not the highest bid, the reasons for rejecting the bid or bids higher than the one accepted, shall be recorded in writing [the bidder whose bid is accepted shall be informed of the acceptance as early as possible].
- (7) In exceptional cases where sales in public action have proved unsuccessful on at least two occasions owing to the want of bidders or to strong combination among them or to any other reason the Commissioner may invite sealed tenders for the lease and place such tenders before the authority referred to in sub-rule (2). The latter authority shall

determine which of the tenders shall be accepted. Where the tender accepted is not the highest tender, the reasons for rejecting the tender or tenders higher than the one accepted shall be recorded in writing.

- (8) On behalf of the authority competent to enter into a contract, determined with reference to the amount of the bid or tender that has been accepted, the Chairman shall enter into a written contract with the person whose bid or tender has been accepted in accordance with the terms and conditions of the preliminary notice.
- (9) The collection of amounts due from the lessee shall be watched through the Miscellaneous Demand Register.
- (10) In the case of every lease, a lease-deed shall be executed and it shall specify: -
  - (a) the duration of the lease;
  - (b) the amount of each instalment of the rent or fees and the date on or before which it shall be payable;
  - (c) the compensation payable in the case of payment of any instalment after the due date;
  - (d) the liability of the lessee to make good any loss caused to the Council on resale or through departmental management and re-



sale owing to default on the part of the lessee to fulfil the terms of his contract; an

(e) the rate of fees to be levied by the lessee in regard to markets, slaughter house, fisheries and sale of fish in fresh water tanks.

(11) (a) Every lease -deed shall contain an express condition that the lessee shall be liable to pay such ground rent as the Collector may fix from time to time.

(b) No person shall be allowed to exercise his rights under the lease until he has executed the lease deed.

29) Rule 7 (1) of the Rules 1968, therefore provides that, the Commissioner shall prepare a preliminary notice setting forth the conditions and terms subject to which the lease will be granted, with respect to the right to collect fees in respect of use of any market, slaughter-house, fishery or sale of fish in fresh water tanks proposed to be leased out by the Council.

30) Sub-rule (2) of Rule 7 of the Rules, 1968, provides that, the conditions and terms set-forth in the preliminary notice shall be approved by the authority competent to enter into a contract under Section 43 of the Act. Such

authority shall, for the purpose of sub-rule (2), be determined with reference to the amount of bid accepted for the previous year's lease. The provision says that, the approval of the preliminary notice by such authority shall not be necessary, if it has previously been approved, unless there are any changes in its conditions and terms.

31) Sub-rule (4) of Rule 7 of the Rules 1968,, provides that the preliminary notice shall, after approval by the authority referred to in sub-rule (2) where such approval is necessary, be published in one or more newspapers having a wide circulation in the locality. A copy of the notice shall also be affixed in some conspicuous place within the limits of the municipality and to the notice board of Municipal Office.

32) The proviso to sub-rule (4) of Rule 7 provides that the authority referred to in sub-rule (2) may, having regard to the anticipated income from, and the nature of the lease, determine whether the publication of the preliminary notice shall be affected in the manner laid down in sub-rule (4) or in any other manner specified by it, in addition

to the affixing of the notice, to the Notice Board of the Municipal Office.

33) Sub-rule (4) of Rule 7 refers to the authority and the approval if necessary of such authority, as in sub-rule (2).

34) It is not the submission of any of the learned Counsels that the authority referred to in sub-rule (2) of Rule 7, exercised the power under the proviso of sub-rule (4), for publication of the preliminary notice to be affected in any manner, other than the manner provided under sub-rule (4), in addition to the affixing of the notice on the Notice Board of the Municipal Office.

35) Consequently, the publication of the preliminary notice/tender intimation notice, in one or more newspapers having a wide circulation in the locality was must.

36) It was submitted by Sri. G. Naresh for Respondent No. 3 that the auction procedure began on 21.02.2023 by displaying the auction notice in the Public Offices notice boards. The mike announcement for two days on 27.02.2023 and 28.02.2023 by Rickshaw of the 23 Wards

of Pedanna was made. The newspaper publication was also made in two newspapers, Sakshi Telugu Daily Newspaper and Andhra Jyothi Telugu Daily Newspaper, on 02.03.2023 and 03.03.2023 respectively. He, therefore, submitted that, the publication was made as per the Rules 1968.

37) From the Rules 1968, it is evident that, Rule 7, specifically provide for publication in one or more newspapers having a wide circulation in the locality. Such publication, is in addition to the affixing of the notice to the notice board of the Municipal Office. So, even if, as per the submission of the learned Counsel for the 3<sup>rd</sup> Respondent, the notice was posted on the notice board of the Municipal Office and the mike announcement was made on 27.02.2023 and 28.02.2023 by a Rickshaw, though to prove such affixation on the notice board of the Municipal Offices as also the mike announcement on the date mentioned, no document has been annexed to the counter affidavit, that cannot be considered as a substitute of the due newspaper publication dispensing with the requirement of publication in the daily newspapers having

wide circulation in the locality. The Rule provides for all such modes as mentioned therein to be adopted.

38) Rule 7 (4) of the Rules 1968, does not provide for the period i.e., the time gap between the date of publication and the date of auction. Any other Rule has also not been brought to the notice of the Court on the said point.

39) Consequently, in the absence of any such time period for notice, between newspaper publication and the date of auction, in the view of this Court, it should be of sufficient and reasonable duration to make the procedure fair and transparent.

40) A reasonable time gap is must to enable the public to apply by completing the requisite formalities. Such reasonable period may differ in different kinds of auction and an universal time period may not be laid down by this Court, but in the facts of the present case, the period of just one or two days, between the date of publication of notice in the newspapers and holding of the auction, cannot be considered to be a reasonable period.

41) At this stage, the conditions of the “Public Auction Notification” also deserve mention. The same are being reproduced as under:

**“Auction Conditions:**

- 1) Those who wanted to participate in the public auction must have Bank Account in his name with cheque book facility.
- 2) When the public auction lease was confirmed either by the Municipal Council, Pedana or by the contract committee, the Lessee should make payment of  $\frac{1}{4}$  of the highest bid amount including already paid deposited amount within 7 days from the date of confirmation of lease hold rights and to get execute the register lease agreement in the Registrar Office and the lessee should issue 9 post dated cheques towards the remaining 9 months payments of kistis in favour of the Commissioner, Pedana Municipality without fail.
- 3) It is informed to the lessee that the lessee should execute registered lease agreement on his own costs within 7 days from the date of confirmation of his lease hold rights and should hand over the registered lease agreement in the office of the Pedana Municipality. Only then, the Municipal Authorities hand over the Possession of the Municipal Markets of the lessee and the lessee will have the right to collect aseelu/daily fees from the vendors of the Municipal Markets. Failing which the Pedana Municipality will have the right to cancel the lease and to conduct the public auction again for such lease hold rights.

- 4) **The person who wanted to get solvency certificate on the property of his Residential House should apply in the form of application on 03.03.2023 within 11:00 A.M., only along with attested copies of Registered documents of his residential house, latest encumbrance certificate. It is informed that the applications received after the date of 03.03.2023 will not be accepted.**
- 5) In case of solvency certificates produced from outside basing on the property of vacant lands and Agriculture lands the such solvency certificates should have been issued by the Tahasildar, Pedana and **such solvency certificates should be submitted on 03.03.2023** along with the attested copy of the land /Agriculture land registered documents, copy of Encumbrance Certificate, and Attested copy of Pattadar Pass Books of the Agriculture Land owner. **It is specifically informed that the solvency certificate submitted on the date of public auction i.e., 04.03.2023 will not be accepted and such persons are not allowed for the public auction.**
- 6) **The Public auction participant should purchase auction conditions Gazette prior to the date of 04.03.2023 and should get attested on it by the Gazetted Officer and to submit the same prior to auction date 04.03.2023. The Gazette copies attested on the day of 04.03.2023 will not be allowed for the public auction.**
- 7) It is informed that the Public auction participants should pay all the taxes to the Pedana Municipality without having any dues. If the participants are

recognized as defaulters in payment of property taxes, water charges and shop room rents if any dues they are not entitled to participate in the public auction.

8) It is informed that, in whose name the property of solvency certificate was issued by the competent authority, that particular person is only entitled and eligible to participate in the said Public auction, and other individuals will not be allowed to the public auction.

(Sd/- M. Anjaiah)  
Commissioner,  
Pedana Municipality.”

42) Thus, as per the auction **condition No.4**, the solvency certificate on the property of the applicants' residential house was required to be applied on 03.03.2023 within 11.00 A.M., only along with the attested copies of the registered documents of residential house and latest encumbrance certificate, with the further condition that the application received after the date 03.03.2023, will not be accepted.

43) Similarly, as per **condition No. 5**, in case of solvency certificates produced from outside basing on the property of vacant lands and agriculture lands, such solvency certificates should have been issued by the Tahasildar,



Pedana, and should have been submitted on 03.03.2023 along with the attested copy of the land /agriculture land registered documents, copy of encumbrance certificate, and attested copy of pattadar passbooks of the agriculture land owner. This condition also provided further that, the solvency certificate submitted on the date of public auction i.e., 04.03.2023 will not be accepted.

44) Further, as per **condition No. 6**, the public auction participant should purchase auction conditions Gazette prior to the date of 04.03.2023 which should be attested on it by the Gazetted Officer and was required to be submitted prior to auction date 04.03.2023 and any such gazette copies attested on the date of auction i.e., on 04.03.2023, was not to be allowed, for the public auction.

45) From the aforesaid auction conditions, it is evident that the applicant had to fulfill the requirements, as mentioned therein, of solvency certificate, attestation of the documents, latest encumbrance certificate, purchase of auction conditions Gazette, its attestation, all before 04.03.2023. For Solvency Certificate under condition No.4,

it was required to be applied on 03.03.2023 within 11.00 A.M. The paper publication in one newspaper is on 02.03.2023 and in another is on 03.03.2023 itself. Such short duration to complete all the aforesaid formalities, after the paper publication, in the view of this Court, is not a reasonable period, to enable the applicant to complete all such formalities and become an applicant in the public auction.

46) In ***State of Madhya Pradesh and Another Vs. Shri Ram Ragubir Prasad Agarwal and Others***<sup>1</sup>, the Hon'ble Apex Court held that, "Contextually speaking, we are satisfied that 'Publication' means more than mere communication to concerned officials or departments. To publish a news item is to make known to people in general; "an advising of the public or making known of something to the public for a purpose". In our view, the purpose of Section 3 animates the meaning of the expression 'publish'. 'Publication' is "the act of publishing anything; offering it to public notice, or rendering it accessible to public

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<sup>1</sup> (1979) 4 SCC 686

scrutiny.....an advising of the public; making known of something to them for a purpose”.

47) In ***ICICI Bank and Another Vs. Municipal Corporation of Greater Bombay and Others***<sup>2</sup>, the Hon'ble Apex Court, held that an advertisement is a matter that draws attention of the public or segment of public to a product, service, person, organization or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organization or line of conduct intended to promote sale or use of product or range of products.

48) Paragraphs, 14 and 15 of the ***ICICI Bank*** (supra) are quoted as under:

“14. ....The dictionary definitions of the word 'advertisement' are as under :-

**BLACK'S LAW DICTIONARY, 8TH EDITION**

Advertising -1. The action of drawing the public's attention to something to promote its sale. 2 The business of producing and circulating advertisements

**LAW AND COMMERCIAL DICTIONARY**

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<sup>2</sup> (2005) 6 SCC 404

Advertisement - Notice given in a manner designed to attract public attention. *Edwards v. Lubbock Country*, Information communicated to the public, or to an individual concerned, as by handbills, newspaper television, bill-boards, radio. *First Nat. Corporation v. Perrine*.

#### **NEW ENCYCLOPAEDIA BRITANNICA VOLUME-I**

Advertising.- the techniques used to bring products, services, opinions, or causes to public notice **for the purpose of persuading the public to respond** in a certain way toward what is advertised. Most advertising involves promoting a good that is for sale, but similar methods are used to encourage people to drive safely, to support various charities, or to vote for political candidates, among many other examples.

#### **COLLINS DICTIONARY OF ENGLISH LANGUAGE**

Advertisement- any public notice, as a printed display in a newspaper, short film on television, announcement on radio, etc designed to sell goods, publicize an event, etc. Advertising -(1) the action or practice of drawing public attention to goods, services, events etc., as by the distribution of printed notices, broadcasting. etc. 2) the business that specializes in creating such publicity, 3) advertisements collectively: publicity.

#### **THE CHAMBERS DICTIONARY**

Advertisement - the act of advertising; a public notice with the purpose of informing and / or changing public attitudes and behaviour; a short performance recorded for radio, T.V. etc. to advertise goods or services; news.

15. An advertisement is a matter that draws attention of the public or segment of public to a product, service, person, organization or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organization or line of conduct intended to promote sale or use of product or range of products. An advertisement is an information that producer provides about its products or services. **An advertisement tries to get consumers to buy a product or a service**. An advertisement is generally of goods and services and is an information intended for the potential customers and **not a mere display of the name** of the company unless the same happens to be a trade mark or trade name.”

49) In view of the aforesaid judgments, publication in newspaper should not be an empty formality. The purpose is to make publicly known an information and to attract the attention of the public/individual concerned to such information for the purposes for which such publication is made. In the context of the public auction, as in the present case, the purpose of publication is to make public know that on a particular date the public auction is to take place and to enable them to participate, giving sufficient time to fulfill the requisite formalities as provided under the terms of the publication.

50) The procedure as followed in the present auction is faulty. It is not as per the spirit of Rule 7 of the Rules 1968, even though Rule does not provide for any specific time gap. A 'reasonable period' as of necessity and to ensure fairness, is to be read in Rule 7 (4) of the Rules 1968.

51) There was no reasonable or fair opportunity to the public to participate in the public auction in such short notice through paper publication.

52) The question is not, who could have participated or could not have participated, in spite of a reasonable period notice through publication in the newspapers, but, certainly if wide publicity was given by newspaper publication giving sufficient time, it could have fetched more persons to participate. Such possibility cannot be ruled out. It is a public auction and revenue to the Corporation being involved, the requirement is, adopting the fair and transparent procedure. State largess can be granted only by following that procedure.

53) On point No. 2, it is held that the impugned auction deserved to be quashed.

54) The public auction as in the present case is held annually, ending with 31<sup>st</sup> March of the following year. Consequently, newspaper publication in terms of Rule 7, can afford a reasonable period of 14 days between the newspaper publication date and the date of auction at the first call of auction, which can be very well provided in newspaper publication, so long as there is no contrary period prescribed by the Respondent either by amendment in the Rules 1968 or by government order supplementing the Rules, 1968. **It is ordered accordingly.**

55) The Writ petition is **allowed**. The impugned auction proceedings, dated 04.03.2023, are hereby quashed, granting liberty to the Respondent No. 3 to proceed for auction afresh in accordance with law under the Rules 1968 in the light of the observations and the directions made herein above.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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**RAVI NATH TILHARI, J**

Date: 19.06.2023.

**Note:**

L.R. Copy to be marked.

B/o. SM../



**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

**WRIT PETITON NO. 7482 OF 2023**  
**Date: 19.06.2023**

SM.