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W.P.No.34076 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE C.V. KARTHIKEYAN

W.P.No.34076 of 2024
and WMP.Nos.36898 & 36899 of 2024

M/s.Ourland Engineering Works Pvt Ltd.,
Rep. by its Director, Mr.P.S.Sivaguru
Present Office Address
3rd floor, Atandra Towers,
25, Thirumalai Road,
T.Nagar, Chennai – 600 017.

... Petitioner

Vs

1. Chief Administrative Officer,
Market Management Committee,
Koyambedu Wholesale Market Complex,
Chennai 600 107.
2. Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu – Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.
3. The Superintending Engineer, SE – 1,
Tower – III, CMDA Building,
First floor, Koyambedu,
Chennai 600 107.



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4. The Superintending Engineer, SE – 2
Tower – III, CMDA Building,
First floor, Koyambedu,
Chennai 600 107.

5. M/s.Srinivas Waste Management Services
No.33, 15th Avenue,
Ashok Nagar,
Chennai 600 083.

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for records of the decision of the 1st respondent declaring the result of the financial bid dated 06.11.2024 in Tender ID: 2024_ CMDAC _ 476691_1 in favour of the 5th respondent and quash the same as arbitrary and illegal and consequently direct the 1st respondent to declare the petitioner as L1 in the financial bid.

For Petitioner : Mr.V.Raghavachari
Senior Counsel for
M/s.M.Karthikeyan

For Respondents : Mr.J.Ravindran
Additional Advocate General
Asst.by M/s.P.Veena Suresh
Standing Counsel for R1, R3 & R4
Asst.by M/s.G.Mageswari
(CMDA) for R2
M/s.M.S.Krishnan
Senior Counsel for
M/s.D.Krishna Pradeep for R5

ORDER



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2. The entire issue surrounds examination of a tender which had been issued by the 1st respondent/Chief Administrative Officer, Market Management Committee, Koyambedu Wholesale Market Complex, Chennai. The learned Senior Counsel appearing for the petitioner had placed reliance on several precedents but uniformly all the precedents relied on by the learned Senior Counsel for the petitioner or by the learned Additional Advocate General appearing for the 1st ,3rd & 4th respondents or by the learned Senior Counsel appearing for the 5th respondent had very clearly placed an embargo on the Courts exercising jurisdiction under Article 226 of the Constitution to step into the shoes of the tender inviting authority or the tender opening authority and declare



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that a particular process should be reviewed. It had been consistently held that the Courts should not interfere in matters relating to commerce.

3. In the instant case, a tender was floated for removal of solid waste at Koyambedu Wholesale market. It is common knowledge that if there is a delay in examining the issue, the waste would only accumulate and this would only be a source affecting public health and hygiene. Therefore, viewed from that particular angle, it is only appropriate that a quick decision is rendered on the issues raised.

4. The writ petitioner is deeply aggrieved by the manner in which the technical bid has been examined by the 1st respondent. The petitioner had participated in a tender the terms of which are unambiguous, clear, straight forward and cannot be interpreted in any other manner.

5. The tender was for providing systematic and regular cleaning, sweeping, garbage collection and transport to the dumping yard of

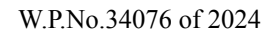


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approximately 200 tonnes every day of solid waste accumulated throughout the Koyambedu Wholesale Market Complex. This includes the vegetable market, fruit market, flower market and food grains market. It also includes the wastage which are left behind during the process of loading and unloading of such products from transport vehicles which brings in substantial amount of produce to the market and which take out substantial amount of produce out of the market.

6. The second aspect for which the tender was called was to convey or transport the garbage which is so collected in the first component and transfer it to the waste processing unit or what could be called as a landfill unit within the Greater Chennai Corporation limit. This would also include transporting approximately 200 tonnes every day.

7. The third component of the tender was to supply 70 numbers of 1100 litres heavy duty compactor bin made of galvanised sheet, thickness of 2.5mm for side and bottom 3mm.



9. One crucial aspect in the tender so far as the collection of the garbage and of transportation of the same is that the tender inviting authority was not sure about the quantity of garbage which would be let out or which would have to be collected and transported. They had therefore stated that it could be approximately 200 tonnes. It could be more, it could be less, it could even be negligible on a particular day. It may not even be available if there is a public holiday called for various reasons. If it rains the nature of garbage would be muddy or it could be



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watery, still it has to be collected. Therefore, the quantity of the garbage would vary day by day. If there is a good produce in the agricultural field then the quantity of vegetables, for instance, which are brought to the market would naturally increase. In the days of festivals the quantity of flowers which are brought into the market would naturally increase. Specific vegetables would increase on specific days. Therefore there a cap cannot be specified over the actual number of tonnes of garbage which would be left out by the users in the market, as the solid waste would include unused vegetables, fruits, flowers and also food grains.

10. Quite apart from that, the respondents have to also take into consideration the waste that is generated during loading and unloading of the produce from the vehicles.

11. It is for that reason that while originally the tender was called to quote price for 72,000 tonnes, the tender was recalled and a fresh tender was issued seeking the price to be quoted for collection and removal of



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one tonne of garbage, for transporting one tonne from the market place to the designated place as stated by the Greater Chennai Corporation Limits and for providing of bins wherein the garbage could be dumped during the course of the day from the places where they are generated.

12. The learned Senior Counsel for the petitioner had assailed this re-tender which has been issued reducing the price to be quoted from 72,000 tonnes to one tone. The learned Senior Counsel placed reliance on what was specified namely approximately 200 tonnes. He therefore stated that what was to be quoted must be for 200 tonnes and not for one tonne. Even the very word “200 tonnes” has a prefix “approximate”. Therefore, the respondents have not stated that it is exactly 200 tonnes every day and that those who quote should not clear anything more than 200 tonnes and that they are not obliged to clear even a single tonne more than the 200 tonnes. They have only specified approximately 200 tonnes. Therefore they were conscious of the fact that it could be more or it could be less. It is only sensible that they have therefore reduced it to lowest common multiple which is one tonne. The rate has to be quoted keeping in mind



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that the probable removal of garbage or transportation of garbage could be 200 tonnes every day but business prudence is required before a rate is quoted for one tonne.

13. The tender was called for one tonne of such garbage. The petitioner has not raised any demur against the same. He had not protested against the issue of tender. He had willingly participated in the tender. He had submitted his quote for one tonne for collection of garbage and for transportation of such garbage and for provision of bins.

14. So far as the bins are concerned they are fixed at one place and they have to be kept in specified places across the market. They cannot be variable in number. They should be visible to the general public. They should be placed where the garbage accumulates so that the general public instead of littering them on the floor would put them in the bin. Therefore, there is no fluctuation in the number of bins which have to be supplied by the participants in the tender. The fluctuation would only be in the quantity of garbage which is generated day in and day out in the



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wholesale market dealing in flowers, vegetables, fruits and food grains.

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15. The petitioner having not raised any demur had quoted his amount for one tonne. The choice was entirely his. He could have participated. He need not have participated. It is not that he did not have the necessary business accumen to quote the rate for one tonne. Participation would only indicate that he had taken a conscious decision to abide by the terms and conditions. The conditions are very clear. The conditions are that the rates have to be provided for one tonne of garbage. Nothing more, nothing less. The actual quantity of garbage could be for more, but it would be multiplied by what had been quoted for one tonne.

16. The petitioner therefore should have done a study in advance to determine what would be the proximate rate to quote.

17. He had quoted his rate along with two other participants in the tender. He had not questioned or denied or disputed the amount quoted



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either by him or by the other participants. The amount quoted had also been produced by the petitioner himself.

18. There were three participants. The first one was P.Gopinatha Reddy, the second one was the fifth respondent – M/s.Srinivas Waste Management Services and the third one was the petitioner – M/s.Ourland Engineering Works Pvt Ltd. No arguments have been advanced that the other two participants should be disqualified for any particular reason. No arguments have been advanced that they have been invited suspiciously through the back door by the respondents. No arguments have been advanced that the petitioner's quote or tender was deliberately kept aside and thereafter the bid quoted by the other two participants were examined and then the petitioner's bid was opened to the disadvantage of the petitioner. It is contended that all the three bids were opened at the same time.

19. When the bids were opened it was found that P.Gopinatha Reddy had quoted Rs.1692/- for clearing and sweeping and collecting one



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tonne of garbage. The fifth respondent, M/s.Srinivas Waste Management Services had quoted Rs.998/- for one tonne of garbbage. The petitioner, Ourland Engineering Works Pvt. Ltd., had quoted Rs.980/-. It is thus seen that till that point namely for collection of garbage the petitioner was L1 or the lowest tenderer.

20. The next aspect is transporting this particular collected garbage to the landfill area or to the waste processing unit. It must be kept in mind that merely collecting the garbage would not suffice. Those who participate will have to carry it outside the market area to the designated place.

21. P.Gopinatha Reddy had quoted Rs.567/- for such transportation of one tonne of garbage. The 5th respondent, Srinivas Waste Management Services had quoted Rs.198/- for transportation of one tonne of garbage. The petitioner had quoted Rs.210/- for transportation of one tonne of garbage. The petitioner was No.2 in the list so far as transportation of



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garbage is concerned.

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22. The third aspect is supply of 70 numbers of 1100 litres compactor bins. P.Gopinatha Reddy had quoted Rs.22,500/- for one bin and had multiplied the same at 70 bins. The 5th respondent had quoted Rs.22,000/- for one bin. The petitioner had quoted Rs.27,000/- for one bin. Naturally when the petitioner's quote is multiplied by 70 then the amount quoted by him would increase much more than the others.

23. It must also be kept in mind that it was one compact tender and not a tender which can be separated into separate parts. It is not that the tender was called independently for collection of garbage, independently for transportation of garbage and independently for supply of bins. One tender was called. The lowest tenderer would be determined on the basis of the quote given for collection of one tonne of garbage added to the quote given for transportation of that one tonne of garbage and for supply of 70 number of 1100 litre bins. It is one total calculation. When that is done P.Gopinatha Reddy had quoted Rs.15,77,259/-. The 5th respondent,



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M/s.Srinivas Waste Management Services has quoted Rs.15,41,196/-. The petitioner had quoted Rs.18,91,190/-. By no stretch of imagination, even going by the mathematics which is taught to everyone right from nursery class can it be stated that the quotation quoted by the petitioner was lower than what was quoted by the 5th respondent.

24. The learned Senior Counsel for the petitioner argued that the amount should be calculated at 200 tonnes for collection of garbage and transportation of garbage. But primarily for supply of 70 bins the quotation quoted by the petitioner is Rs.18,90,000/- whereas the quotation quoted by the 5th respondent for the same number of 70 bins was Rs.15,40,000/- which is again lower than the petitioner's quotation. This quotation was for a fixed number of bins namely 70. The other two aspects, removal of garbage, collection of garbage and transportation of garbage were variable in nature. This supply of bins is one component wherein the bid of all the three bidders can be uniformly compared. The petitioner is not the lowest bidder so far as the supply of compact bins are concerned.



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25. The attempt made to multiply the quote by 200 tonnes will have a serious impact on extraction of work from the successful bidder. There could be a possibility that those who had quoted for 200 tonnes would demand that every day they would clear or transport only 200 tonnes, nothing more or less. If less garbage is discharged every day then they could raise a dispute. If more garbage is discharged every day they would again raise a dispute. To avoid that, it is only prudent that the quotation was called for one tonne and then depending on the variable nature of the garbage calculation could be made on the number of tonnes actually cleared and actually transported at the rate of one tonne which had been quoted.

26. I am deeply conscious that this Court is not sitting in the arm chair of the tender inviting committee or tender processing committee to determine which is commercially viable and which is not commercially viable. Therefore, I am not entering into any discussion on the amount quoted but rather examining the discharge and accumulation of garbage



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which will certainly vary every day depending on the amount of produce which is brought into the market and which is sold out in the market and which remains unsold which forms garbage the next day or the day after. These are figures which can never be predicted. On a rainy season there will be less foot fall in the market leading to less purchase of flowers. The unsold flowers would turn out to be garbage the next day.

27. Therefore, I hold that the respondents had correctly called for quotation for just one tonne and not for any specified number of tonnes.

28. The arguments advanced by the learned Senior Counsel for the petitioner surrounded this particular fact. The learned Senior Counsel also stated that calling for a second tender was arbitrary. If it had been so, then a protest should have been raised at the earliest stage when the tender was called for. The petitioner had participated in the tender. He had given his quotation for one tonne. He had known that what was asked was for a quotation for one tonne and not more and not less. He had not raised any protest at that initial stage. There was a pre-bid meeting before the tenders



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are opened. Even at that time it is not the case of the petitioner that he had raised a protest at the cancellation of the earlier tender and calling for a tender again asking for quotation for one tonne. He had not protested. He has not produced any material to show that he had protested in writing. There are no arguments advanced that he had raised an oral protest. He had been a silent spectator. He had been a participating spectator. He willingly participated. Having participated it does not lie in the mouth of the petitioner to turn around after the bids had been opened to raise issues about the manner in which the bids were called. That is an extreme stand taken by the petitioner and is rejected at the thrush hold.

29. The learned Senior Counsel further pointed out a calculation submitted by the petitioner about the loss which would accrue if the collection of garbage and transportation of garbage is worked out to 200 tonnes. The petitioner is a participant in the tender invited by the respondents. It is not for him to impose conditions on the respondents. It



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is not for him to state that the quotation should be called for in a particular manner which is advantageous to him and should be adopted by the respondents. If the petitioner is not satisfied or has any reservation over the manner in which the respondents had called for the tender he could have very well withdrawn from participation. Having participated, he has no right and no authority to raise objections.

30. Judgments had been cited across the bar both by the learned Additional Advocate General and by the learned Senior Counsel for the petitioner and by the learned Senior Counsel for the 5th respondent. The thrust of the judgments uniformly were that the Courts should be very vain in interfering under Article 226 in matters of commerce, in matters of tender and in matters where there is an appellate authority available to examine the issue.

31. The issues raised falls within the scope of the Tamil Nadu Tender Transparency Act, 1988. The petitioner questioned the order issued by the tender inviting authority. There is an appeal provision under



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Section 11 of the said Act. The tender inviting authority had declared the quotes of the petitioner and the 5th respondents and the third party who is not before this Court. It had been very specifically provided in the said Act that an appeal would lie if aggrieved by any order passed by the tender accepting authority.

32. In the affidavit filed in support of the writ petition, the petitioner had not stated that there is no efficacious alternate remedy. He had not given any reason for not resorting to such alternate remedy. He had come to the Court immediately straight away. The impugned order was passed on 06.11.2024 and the writ petition had been filed on 07.11.2024.

33. Section 11 of the Act provides that an appeal should be filed within a period of 10 days. Even when the period for filing an appeal was available, the petitioner had come to Court. At the time when he filed the writ petition, the appellate remedy was still available. The petitioner had a right to approach the authority. They would have been in a position to determine, whether calling for a tender for one tonne was judicious or



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calling for tender for 200 tonnes was judicious. They could have substituted themselves for the tender inviting authority and placed conditions and regulations and put in place various stipulations for examining the bids of the petitioner and the 5th respondent and the other participant.

34. The Court cannot substitute itself for the tender inviting authority and issue directions to the respondents regarding the manner in which the tender should be called for, opened, accepted and rejected.

35. The facts are clear, the facts are straight forward. The quote was for just one tonne. For one tonne the petitioner had given a higher amount. The petitioner stood disqualified. It need not be multiplied by just 200 tonnes. It could be multiplied by 300 tonnes. It could also be multiplied by 100 tonnes. It could be multiplied by any arbitrary number. Arbitrariness enters when determining the number of tonnes per day. It does not while in reducing it to the least common multiple namely one tonne.



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36. I have examined the issues on facts. Though the decisions cited were very instructive and very thought provoking, on facts, the petitioner falls.

37. I find no merit in the writ petition. It stands dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

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dpq
Index: Yes/No
Speaking order / Non speaking order

C.V.KARTHIKEYAN, J.

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