

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.No.22412 of 2015

and

M.P.Nos.1 & 2 of 2015

Gallant Infosys
10 Luz Ginza Complex,
140 Royapettah High Road,
Mylapore, Chennai - 600 004.

...Petitioner

-Vs-

The Deputy Inspector General of Police,
Technical Services,
Office of the Director General of Police,
Mylapore, Chennai - 600 004.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to call for the records of the respondent relating to Tender Notice Rc.No.40598/MPF-2/2015 dated 20.03.2015 and to quash the same in so far as the Thanjavur and Kumbakonam Projects as illegal against the Tender Transparency Act 2000 and consequently directing the respondent to invite fresh tenders in so far as Thanjavur and Kumbakonam Projects.

For Petitioner : Mr.R.Venkatesulu

For Respondent : Mr.P.Sanjay Gandhi,
Additional Government Pleader

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O R D E R

The petitioner is one of the tenderer, who participated in the process pursuant to the tender notification dated 20.03.2015 for the purpose of installing CCTC Cameras at the control rooms and main traffic signals. A query was raised by some of the participants in the pre bid meeting held on 07.04.2015 and

08.04.2015 seeking consideration to participate in the tender through Consortium/Sister Concern, including the petitioner, which fact is disputed by the petitioner before this Court. It was clarified that a Consortium would not be considered. It was intimated to the prospective vendors through "tenders.tn.gov.in" website on 16.04.2015. The tender conditions in page -34 prescribes the pre qualification criteria as follows:

a) The bidder should have minimum average annual turnover of Rs.6.64 Crores for the last 3 audited financial years. Audited report for last 3 years must be submitted along with the bid.

b) The bidder should be in the business of CCTV surveillance for last 3 years. Relevant purchase order copies must be submitted along with the bid.

c) The participating firm should have undertaken similar type projects with minimum project cost of 50 lakhs of 2 projects and 1 crore of 1 project for any Government/ Government Undertaking/ Public Sector in the past 3 years. The User Satisfaction Certificate should also be enclosed."

2.The petitioner also signed the tender conditions with respect to the above three pre qualification criteria. Admittedly, after opening the tender documents, the quote of the petitioner was rejected for having not complied with the above three pre qualification criteria mentioned in the tender conditions. It is also not in dispute that the petitioner has not reached the above said norms as seen from the schedule of the annual turn over given by them in their Tender No.113155, having far below the tender condition of Rs.6.64 Crores for the last three years. Thus, the only question for consideration is as to whether the rejection made qua the petitioner without taking into consideration of the consortium is justified or not.

3.The learned counsel for the petitioner submitted that the participation of Consortium is permissible under The Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012. There is no prohibition under The Tamil Nadu Transparency in Tenders Act, 1998 read with The Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012. The tender document also does not specify so. No clarification has been sought for by the petitioner, but by the other tenderers. Thus, the Writ Petition will have to be allowed, more so, when the quote of the petitioner being lowest. The learned counsel for the petitioner further submitted that the successful tenderer has not complied with the tender condition viz., minimum average annual turnover of Rs.6.64 Crores for the last 3 audited

financial years.

4.Per contra, Mr.P.Sanjay Gandhi, the learned Additional Government Pleader submitted that the petitioner admittedly did not satisfy the tender conditions. The position has been made clear qua the participation of the Consortium in the pre mid meeting dated 15.04.2015. It is not as if the petitioner was discriminated. The petitioner has signed the tender document and agreed to comply with the tender conditions. Admittedly, the turnover of the petitioner did not reach the norms being way below. Thus, no interference is required.

5.Though, the learned counsel for the petitioner submitted that the petitioner did not raise any clarification, suffice it to hold that a clarification was indeed raised at the pre bid meeting held on 07.04.2015 and 08.04.2015. Pursuant to the same, the decision was published in the website on 16.04.2015. Such a decision made cannot be called arbitrary. When a question of arbitrariness or unreasonableness is raised, it is for the person concerned to demonstrate the same. The tender is merely an offer. The respondent cannot be forced to bring out a clause permitting Consortium. The reliance made on The Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012 cannot be accepted as the said Rules do not have application to the nature of the tender involved in the present case. In other words, there is no procurement involved. Similarly, the absence of Consortium being mentioned under The Tamil Nadu Transparency in Tenders Act, 1998 or the Rules would not give any right to the petitioner. The respondent has taken a conscious decision and informed the same to the participants, therefore, there is no selective discrimination involved. Admittedly, the petitioner has not complied with the pre qualification criteria. Having accepted the tender conditions and participated thereafter, it is not open to the petitioner to wriggle out of the same and challenge it thereafter.

6.The submission made by the learned counsel for the petitioner on the non compliance of the successful tenderer also cannot be accepted. The successful tenderer did reach the qualification norms for the year 2011-12, 2012-13 and 2013-14 as against the petitioner. Further more, such an issue is not required to be gone into at the instance of the petitioner, who has lost locus at the initial stage, after opening of the tender document for not having satisfied the pre qualification criteria. The petitioner cannot, as a matter of right, insist the respondent to include the condition regarding participation by Consortium. Admittedly, no other Consortium has been allowed to participate. In a matter pertaining to tenders, the power of judicial review is expected to be exercised rarely. This Court does not find any

unreasonableness or arbitrariness involved.

7. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Inspector General of Police,
Technical Services,
Office of the Director General of Police,
Mylapore, Chennai - 600 004.

1 CC to M/s. Usha Raman, Advocate SR.No. 49777

1 CC to the Government Pleader, SR.No. 49663

W.P.No.22412 of 2015
and M.P.Nos.1 & 2 of 2015

MG (CO)
PSI (18.09.2015)

सत्यमेव जयते

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