IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

Writ Petition No. 21501 of 2016
and
W.M.P. Nos. 18375, 18376 and 21285 of 2016
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1. V. Sankarasubramanian
2. K.V. Maharajan ... Petitioners

Versus

1. The Principal Secretary to Government
Religious Endowments Department
Saint Fort George, Chennai

2. The Commissioner
Hindu Religious and Charitable Endowments Department
Nungambakkam, Chennai

3. The Joint Commissioner/Executive Officer
Arulmighu Subramaniyaswamy Thirukoil
Thiruchendur - 628 215

4. Dr. M. Veera Shanmugha Moni, I.A.S.,
O/o. Hindu Religious and Charitable Endowments Department
Nungambakkam, Chennai

5. M. Moorthy (died)
6. M. Ramasubramanian
7. M. Ramanathasubramanian
8. M. Narayanan

(Respondents 6 to 8 are substituted as legal heirs of deceased 5th respondent as per order dated 08.09.2016 in WMP No. 27048 of 2016 in WP No. 21501 of 2016) ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records pertaining to the notification of the third respondent in Na.Ka.No.1790/2016/E2-1/dated 07.06.2016 for public auction/tender for fasli 1426 and quash the same and consequently directing the respondents to conduct a fresh public auction/tender by including the conditions No. 9, 10 and 11 in the earlier notification in Na.Ka.No.1790/2016/E2-1/ dated 20.05.2016 for public auction/tender for fasli 1426.

For Petitioners : Mr. B. Singaravelan, Senior Advocate
for Mr. V.S. Jagadeesan

For Respondent : Mr. R. Muthukumarasamy
Advocate General
assisted by Mr. M. Maharaja
Special Government Pleader (HR&CE)
for RR1 & 2
M/s. R.Thiagarajan for R6 to 8
Mr. R. Thiagarajan for R6 to 8

ORDER

In this writ petition, the petitioner calls in question the legality of the re-tender notification dated 07.06.2016 issued by the third respondent mainly on the ground that the in the earlier tender notification dated 20.05.2016, condition Nos. 9, 10 and 11 have been imposed, but by deleting those conditions, the present re-tender notification has been issued to show favouritism to a particular tenderer inter alia excluding the petitioner from participating in the tender process.

2. The petitioners were lessees in respect of the shops under the third respondent where they were selling coconut, banana, beetle leaf and other pooja articles to be offered by the devotees to the deity of Arulmighu Subramaniyaswamy Temple, Thiruchendhur. Earlier, the third respondent floated a tender for selling coconut and other pooja articles within the prescints of the temple in which the petitioners participated and they were declared as successful for running the shop for the period from 01.11.2015 to 30.06.2016. According to the petitioners, they are having 12 years of experience in running such stalls in the temple. Such licence issued to the petitioners expired on 30.06.2016 and in the meantime, the third respondent issued a tender notification on 20.05.2016 for awarding contract for running coconut and fruit vending shops within the temple prescints for the period from 01.07.2016 to 30.06.2017. The last date for submission of tender application was fixed as 06.06.2016.

3. It is brought to the notice of this Court that the tender notification dated 20.05.2016 issued by the third respondent was subjected to challenge by the fifth respondent

herein (since dead) by filing WP (MD) No. 9749 of 2016 before the Madurai Bench of this Court specifically questioning the imposition of condition Nos. 9, 10 and 11 of the tender notification dated 20.05.2016. As per condition No. 9 of the tender notification dated 20.05.2016, the tenderer must possess five years of experience in selling coconut and fruit in the primary temples. Condition No.10 is that the tenderer should submit income and expenditure documents to the tune of Rs.1,00,00,000/- (Rupees One Crore Only). The 11th condition is to the effect that the tenderer must produce permanent account number and should have submitted the income tax return to the department for the past five continuous years.

4. When WP No. 9749 of 2016 came up for hearing before the Madurai Bench of this Court, it was represented on behalf of the respondent Nos. 2 and 3 that they have revoked condition Nos. 9 and 10 from the tender notification and the same was also published in the newspaper to appraise the tenderers. However, according to the petitioners, when a similar tender was issued in respect of Thandayuthapani Swami Temple, Palani and it was challenged by filing WP (MD) No. 10091 of 2016, the respondents 2 and 3 have objected for removing the very same condition Nos. 10 and 11 in the tender notification and ultimately, the said WP No. 10091 of 2016 was dismissed on 09.06.2016. Thus, according to the petitioner, the respondents 2 and 3 have taken different stand with reference to imposition of condition Nos. 9 and 10 in respect of various temples within their administrative control.

5. As far as the WP (MD) No. 9749 of 2016 filed by the fifth respondent is concerned, according to the petitioners, the respondents 2 and 3 have withdrawn condition Nos. 9 and 10 inasmuch as they have colluded with the fifth respondent who has filed the writ petition especially when the fifth respondent has no experience in running coconut and fruit stall. Thus, only to enable the fifth respondent to get the tender awarded in his favour, the earlier tender notification dated 20.05.2016 was cancelled and the impugned re-tender notification dated 07.06.2016 was issued. It is further stated that in addition to removal of condition Nos. 9 and 10, the respondents 2 and 3 have also removed condition No.11 in the re-tender notification dated 07.06.2016. Therefore, it is contended by the petitioners that the withdrawal of condition Nos. 9, 10 and 11 of the tender notification dated 20.05.2016 by the respondents 2 and 3 is arbitrary, unreasonable, illegal and it was withdrawn only to show favouritism in favour of the above fifth respondent.

6. Mr. Singaravelan, learned Senior counsel for the petitioners would mainly contend that the withdrawal of the conditions in the tender notification dated 20.05.2016 is

arbitrary and uncalled for, as it poses serious hardship to the petitioners. According to the learned senior counsel for the petitioners, the existing licence issued in favour of the petitioners expired on 30.06.2016 and therefore, the petitioners had a legitimate expectation to participate in the tender and to get the contract awarded in their favour. However, by reason of the withdrawal of the condition Nos. 9, 10 and 11 in the tender notification, they could not participate in the tender. Further, in the earlier tender notification issued by the official respondents, which was challenged in WP (MD) No. 10091 of 2016, the official respondents have objected to the removal of similar condition. In such circumstances, according to the learned Senior counsel for the petitioners, there is no justification on the part of the official respondents to withdraw the impugned condition Nos. 9 to 11 of the tender notification dated 20.05.2016. Such a course has been adopted by the official respondents only to show favouritism to the fifth respondent. In support of his contentions, the learned Senior counsel for the petitioners relied on the decision of the Honourable Supreme Court in (M/s. Michigan Rubber (India) Limited vs. The State of Karnataka and others) 2012 5 Law Weekly 880 to contend that when the process adopted is mala fide or intended to favour some one or when the process adopted or decision made is arbitrary, this Court can interfere with such decision of the administrators in contractual matters.

7. On the contrary, the learned Advocate General appearing for the State would contend that the withdrawal of the tender condition Nos. 9 to 11 is only to ensure that more and more number of persons participate in the tender floated by the official respondents and it was not intended to show any favouritism to any one, as alleged by the petitioners. The tender issuing authority has every right to either withdraw or alter the terms and condition as and when exigencies arise to do so in the best interest of augmenting the revenue of the exchequer. The learned Advocate General also brought to the notice of this Court the order dated 06.06.2016 passed in WP (MD) No. 9749 of 2016 filed by the fifth respondent (since died). The said writ petition was filed by the fifth respondent seeking to quash the tender notification dated 20.05.2016 issued by the second and third respondents therein in so far as it relates to condition Nos. 9 and 10 relating to item No.2 in page No.8 of the tender notification. In the said order dated 06.06.2016, this Court recorded the submissions of both sides that the auction relating to license as regards coconut and fruit sale license and also the special condition Nos. 9 and 10 were cancelled.

8. The learned Advocate General appearing for the

respondents would contend that there were five tenderers who have submitted their application in response to the tender notification dated 20.05.2016, including the petitioners. The tendering authority, in order to extend the scope of tenders and to enable more tenderers to participate in the tender, has withdrawn the conditions imposed in the tender. The learned Advocate General specifically would contend that upto fasli year 1423, there was no condition with regard to possession of five years experience or for turnover of Rs.100 crores. For Fasli year 1424, the temple managed to run the shops on its own without inviting any tender. Thereafter, for the Fasli year 1425, the temple floated tender for supply of various items on a whole sale basis and therefore included the conditions relating to possession of experience and turnover to ensure the credit worthiness and track record of the vendors. By imposing such conditions only for sale of pooja articles, the tender notification dated 01.11.2015 was issued in which the first petitioner emerged as a successful bidder. Therefore, for the first time when the temple decided to run the shop by giving contract, such a conditions were imposed and thereafter, it was decided to withdraw the conditions as it would prevent several persons from participating in the bid. Thus, according to the learned Advocate General, the conditions, which were withdrawn, were not imposed from time to time and only for the first time when auction was sought to be made, they were imposed and subsequently it was felt that such condition is onerous and therefore they were withdrawn.

9. In support of his contentions, the learned Advocate General relied on the decision of the Honourable Supreme Court in the case of (Meerut Development Authority vs. Association of Management Studies and another) (2009) 6 Supreme Court Cases 171 to contend that imposition of conditions in the tender by the tendering authority are not open to judicial scrutiny unless action of tendering authority is found to be malicious and misuse of statutory powers. In the present case, according to the learned Advocate General, the respondents have withdrawn the conditions imposed in the tender only to ensure more number of participants take part in the tender process and to augment the income of the temple. In such circumstances, the learned Advocate General prayed for dismissal of the writ petition.

10. I heard the learned Senior counsel appearing for the petitioners, the learned Advocate General appearing for the official respondents and the learned counsel appearing for the respondents 6 to 8. I also perused the materials produced before this Court.

11. It is seen from the records that the earlier tender

notification dated 20.05.2016 was challenged by the fifth respondent herein (since dead) before the Madurai Bench of this Court in WP (MD) No. 9749 of 2016 on the ground that the impugned tender conditions would create monopoly and it would deprive small traders from participating in the bid. It was also contended that the supply of fruits and flowers does not require any technical expertise and therefore, the official respondents were not justified in imposing the conditions relating to possession of five years experience and for production of records to show their annual turnover. During the pendency of WP (MD) No. 9749 of 2016, the official respondents withdrew the impugned conditions and it was recorded by this Court in the order dated 06.06.2016. The withdrawal of such conditions is questioned by the petitioners in this writ petition on the ground that they were withdrawn only to show favouritism to the fifth respondent herein. Pending this writ petition, the fifth respondent died and his legal heirs were brought on record.

12. It is well settled proposition of law that in contractual matters, judicial review is impermissible unless it is shown that the decision made to impose a condition or withdraw a particular condition is arbitrary and mala fide. In the present case, the tender conditions were withdrawn not only pursuant to the order passed in WP (MD) No. 9749 of 2016 filed by the fifth respondent (since dead) before the Madurai Bench of this Court, the official respondents themselves felt that the conditions imposed would deprive the bonafide participants to participate in the tender. Therefore, this Court is of the view that the intention of the official respondents to withdraw certain conditions in the tender is only to ensure that more number of participants take part in the tender process and to inter alia augment the income for the temple. When such being the case, this Court do not find that the decision made by the official respondents to withdraw certain conditions in the tender cannot be said to be arbitrary and illegal.

13. The learned Advocate General appearing for the official respondents would rely on the decision of the Honourable Supreme Court in (Meerut Development Authority vs. Association of Management Studies) (2009) 6 Supreme Court Cases 171b wherein in para No. 40, it was held that the administrative authorities owe a duty to act fairly, but it is equally well settled that while exercising judicial review, the Court is not concerned with the merits or correctness of the decision, but the manner in which the decision was taken or the order was passed. It was further held that the Court cannot substitute its own opinion for the opinion of the authority deciding the matter. Applying the above said decision to the facts of this case, in this case, the

official respondents have withdrawn certain conditions in the tender notification only to enable more number of participants take part in the tender process. In such process, the petitioners are not in any way restrained and it is well open to them to participate along with others. It is also note worthy to mention that as on date, the petitioners are not carrying on any business as the licence issued to them already expired and the temple is running the stalls for selling fruits, flowers and other pooja articles with their staff. Therefore also, by allowing this writ petition, no prejudice will be caused to the petitioners in any manner as it would only enable the official respondents to invite fresh tenders in which all eligible bidders, including the petitioners, can participate. In such view of the matter, I see no reason to interfere with the withdrawal of the tender conditions imposed by the official respondents.

14. The writ petition is therefore dismissed. No costs. Consequently, connected miscellaneous petitions are closed. The official respondents are directed to issue a fresh tender notification and to proceed further in accordance with law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government
Religious Endowments Department
Saint Fort George, Chennai

2. The Commissioner
Hindu Religious and Charitable Endowments Department
Nungambakkam, Chennai

3. The Joint Commissioner/Executive Officer
Arulmighu Subramaniyaswamy Thirukoil
Thiruchendur - 628 215

+1cc to Mr.Thiagarajan, Advocate, S.R.No.61080
+1cc to Mr.Jagadeesan, Advocate, S.R.No.60909
+1cc to Mr.Kailasam, Advocate, S.R.No.61067
+1cc to the Government Pleader, S.R.No.60996

RSK(CO)
RS(30/01/2017)