

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. No.27611 of 2016

and

W.M.P. Nos. 23785 & 23786 and 24479 of 2016

M/s.Sumeet Synthetics,
Represented by its Authorized
Signatory Mr.S.Shanmuga Priyan,
No.65, Chairman Rathinasamy Street,
Shevapet, Salem - 636 002. ... Petitioner

Versus

1. Department of Handlooms and Textiles,
Represented by its Director,
Kuralagam, II Floor,
Chennai - 600 108.
2. The Tender Inviting Authority,
Joint Director (Uniforms),
Department of Handlooms and Textiles,
Kuralagam, II Floor, Chennai - 600 108.
3. Sri Balaji Yarns,
Represented by its Authorized Signatory,
Erode 600 001.
4. M/s.Avaneetha Textiles Private Limited,
Represented by its Authorized Signatory,
No.224A, Mettupalayam Road,
Coimbatore - 641 001.
5. M/s.Lucky Yarn Tex India Limited,
Represented by its Authorized Signatory,
No.7/33, K.R.P.Nagar, Komarapalayam Road,
Pallipalayam, Erode - 638 008.
6. M/s.S.K.Traders,
Represented by its Authorized Signatory,
A-38, Komarapalayam Housing Unit,
Erode - 638 002.
7. M/s.Sree Sundaram Synthetics Limited,
Represented by its Authorized Signatory,
No.63, 5th Corss Gandhipuram,
Pallipalayam, Erode.

...

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent culminating in his impugned proceedings bearing Sl.No.FDS-2017/DC/ 001 dated 04.08.2016 issued in respect of the Tender for supply of 60sC Dyed Cotton Warp Yarn for production of Polycot Sarees and Dhoties under cost-free distribution of Sarees and Dhoties Scheme Pongal - 2017 declaring the Petitioner as ineligible for opening of Cover B (Price Bid), quash the same and direct the 1st and 2nd respondents to open and consider the Petitioner's Cover B (Price Bid) and thereafter determine the award of the said Tender in accordance with law.

For Petitioner : Mr. Arun Anbumani

For Respondents: Mr. R. Muthukumaraswami
Additional Advocate General
assisted by Mr.A.N.Thambidurai
for R1 & R2
Mrs. Hema Sampath, Senior Counsel
assisted by Ms.Meenal for R3
Mr. Vijay Narayanan, Senior Counsel
for Mr. Rajmakesh R4
Mr. Silamabannan, Senior counsel
for Mr.K.V.Muthuvisakan for R5
Mr. M. Venkatachalapathy,
Senior Counsel
for Mr.N.Damodaran - R6
Mr. G. Masilamani, Senior Counsel
for Mr. Rajmakesh for R7

सत्यमेव जयते
O R D E R

This Writ petition has been filed by the petitioner challenging the order dated 04.08.2016 passed by the second respondent declaring them as ineligible in respect of opening of Cover B (Price Bid), quash the same and direct the 1st and 2nd respondents to open and consider the Petitioner's Cover B (Price Bid) and thereafter determine the award of the said Tender in accordance with law.

2. The petitioner is a trader in cotton yarn, polyester etc., and they submitted their application in response to the tender notification of the second respondent for supply of 60sC Dyed Cotton Warp Yarn for production of Polycot Sarees and Dhoties under cost-free distribution of Sarees and Dhoties Scheme Pongal - 2017. As per the tender notification, the tenderer has to supply 2,167 Metric tonne of 60sC Cotton Dyed (Warp quality) yarn. The tender document has to be obtained from the office of the first respondent from 04.07.2016 to 25.07.2016 and the last date for tender was fixed as 25.07.2016

upto 11.am. As per the tender notification, two categories of bidders shall participate in it namely (i) yarn manufacturers with existing contract agreement with cotton yarn dyer and (ii) Yarn traders with existing contract agreement with Cotton yarn manufacturer. The petitioner participated under category 2 and submitted two covers viz., Cover - A (Pre-qualification bid) and Cover B relating to rate bid or price bid by submitting their application on 25.07.2016. A pre-bid meeting was conducted on 14.07.2016 in which the petitioner participated and brought to the notice of the tendering authority that Zero Liquid Discharge (ZLD) is in practice only in few mills in Tamil Nadu and that in other States, such facility is not in practice. The petitioner thereafter submitted their bids on 25.07.2016. Before opening of the tender, an inspection was conducted on 27.07.2016 and 28.07.2016 by the first respondent to assess the manufacturing unit and dying unit in Gujarat with whom the petitioner had entered into a contract. On 03.08.2016, the petitioner was informed that the Scrutiny Committee has completed the evaluation of bids and the names of the eligible and ineligible bidders for opening of cover B will be announced on 04.08.2016. Accordingly, on 04.08.2016, the respondents 1 and 2 published in which the respondents 3 to 7 were said to be eligible for opening of cover B and 8 other bidders were declared as ineligible including the petitioner. The reason for declaring the petitioner is ineligible is that the Yarn Dyeing Unit of the petitioner is not equipped with ZLD and therefore they are not eligible for the tender. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner would contend that if the respondents 1 and 2 are not convinced about the eligibility of the petitioner, they atleast ought to have given an opportunity to them before declaring them ineligible. The conditions in the tender states that the Zero Liquid Discharge facility is mandatory. The said Zero Liquid Discharge facility is in practice only in few Mills in Tamil Nadu and in other States of India, such Zero Liquid Discharge facility is not in practice and only the norms set out by the respective Pollution Control Boards are applicable. The manufacturing unit, in this particular case, is in Gujarat. As the Tender being floated at all India level, there is no bar for petitioner to participate in the tender. The certificate produced by the petitioner from the Pollution Control Board at Gujarat categorically states that if the plant is attached to the Common Effluent Treatment plant, that affluent plant is in compliance with the requirement and when ultimately water is treated, it is equivalent to Zero Liquid Discharge and in that view of the matter, the Order passed by the second respondent, without giving an opportunity to the petitioner, is not correct. In the tender pertaining to Polystern Yarn, none of the ten bidders identified as eligible having ZLD facility are in fact ineligible and it is not known as to how the respondents 1 and 2 have declared them as eligible. Therefore, the learned counsel for the petitioner submits that the process of tender adopted by the respondents 1 and 2 is arbitrary and discriminatory.

4. So far as clause 5 and 6 of the tender relating to possession of Minimum Qualification is concerned, such clauses are contradictory in nature. While clause 5 stipulates valid consent order from the Pollution Control Board, Clause 6 speaks about the ZLD facility as per the Judgment of the Supreme Court and this Court and as per the terms fixed by the Pollution Control Board in currency. The second respondent came to an erroneous conclusion in holding that the separable capacity offered by the petitioner namely 6 dyeing machines would work out to 234 MT/Month (7.8 MT/Day) as against the requirement of 250 MT/Month, whereas, dyeing unit of the petitioner offered by the petitioner is 350 MT/Month which is more than the requirement of the tendering authority. Similarly, the consent issued by the Gujarat Pollution Control Board clearly set out that for use of outlet for discharge of treated effluent and air emission to operate the industrial plant for yarn Dyeing was 600 MT/Month and that the quantity of trade effluent to be generated from the manufacturing process and other ancillary industrial operations shall not exceed 250 KL/Day. However, it is not clear as to on what basis the respondents concluded that the Consent was only for 93.75 MT/Month. Further, the respondents 1 and 2 have not mentioned the names of the Cotton Yarn Manufacturers and Cotton Yarn Dyer in respect of the respondents 3 to 7, who were declared eligible which shows arbitrariness in the tendering process.

5. The learned counsel for the petitioner submits that in the counter filed by the first respondent, it has been categorically stated that respondents 1 and 2 have unilaterally concluded that the dyeing capacity of the petitioner is only 24 MT as per Bombay Textile Research Association norms based on the inspection reports of the officials of the first respondent, which norms would be applied to mills/units in Maharashtra. Even assuming that such norms could be applied in Gujarat, there is nothing in the tender document that the capacity of the unit could be arrived at based on such norms. According to the counsel for the petitioner, the report served on the petitioner is different and the one produced before this Court contains tampered records with a view to prejudice to the petitioner. The modified inspection report assigns 6 machines out of the total 10 machines for the project and claims that the capacity of these 6 machines is only 234 MT/month. These machines are of varying capacities and the modified report of the Inspection Team has unilaterally chosen 6 machines for such calculation and that too only for 2 batches when the petitioner's contracting unit is capable of running 4 batches.

6. As regards the availability of alternative remedy against the order declaring the petitioner as ineligible, the learned counsel for the petitioner would contend that it is not an effective, alternative and efficacious remedy. Even in respect of the earlier order of rejection passed in the year 2013, the petitioner preferred an appeal section 11 of the Transparency in Tender Act, but till date, no order has been passed in such appeal.

7. Per contra, the learned Advocate General appearing for the respondents 1 and 2 would contend that the scheme aims at the welfare of nearly 3.7 crores of people in Tamilnadu and of course it is a time bound contract. He would mainly contend that Zero Liquid Discharge facility is mandatory in Tamilnadu and without such facility the petitioner is not entitled for participating in the contract. Even assuming that if such condition is not mandatory, when the tendering authority expects such condition has to be fulfilled, the tenderer is under an obligation to comply with the same. He would also contend that once the petitioner submits his tender by agreeing with the terms and conditions imposed therein, it is not open to them to question the same by filing the present writ petition. In that view of the matter he would also very certificate issued by the manufacturer.

8. The petitioner submitted their bid under Category 2 - Yarn Traders with existing contract agreement with Cotton Yarn Manufacturer and Cotton Dyer. The petitioner must have capacity to produce and supply minimum quantity of 250 MT/Month and their annual business turnover shall not be less than Rs.30 crore in yarn business only in any one of the last three financial years. The bidder should not have been blacklisted by any Government Organisation in the last three years and they must possess a valid consent order from Pollution Control Boards. The petitioner also must have a complete ZLD facility as per the recent Judgment of the Honourable Supreme Court and this Court in identical matters. The petitioner is not having ZLD facility and therefore, they cannot claim parity with any issue which are irrelevant to the instant case.

9. According to the learned Advocate General, the petitioner, while submitting the tender, enclosed a copy of the letter dated 20.07.2016 given by M/s. Tanushree Internationals Pvt Ltd., wherein it is stated that their company is a registered member of New Palsana Industrial Cooperative Society and they do not have ZLD facility. This is evident that the petitioner has not satisfied the minimum qualification stipulated in the tender notification. Further, the petitioner participated in the tenders invited by the respondents 1 and 2 and they are fully aware of the conditions imposed by the Department in procurement of Cotton Cone Yarn and Polyester Texturised Yarn for various Government schemes. Even in the earlier tenders, the petitioner was declared ineligible as they have no polyester texturising machines and also did not comply with other norms indicated in the earlier tender. In any event, the insistence of ZLD facility is in vogue for number of years pursuant to the orders of this Honourable Supreme Court and this Court.

10. As regards the inspection reports, the learned Advocate General would contend that it is only a format containing some particulars recorded as stated by the companies before commencement of the inspection by the inspection officers. The document having signature of director of the Company would be only a record of information stated by the

petitioner company, therefore, the allegation of the petitioner that the inspection reports have been tampered with is highly improper. . In fact, the inspection report was never handed over to the petitioner and it was only submitted to the first respondent. In the inspection, nothing was recorded in favour of the petitioner by the inspecting authorities. There was no alteration made in the inspection report and there was no necessity to do so

11. The learned Advocate General would further contend that after careful evaluation of the tender submitted by the petitioner by the Tender Acceptance Committee, the tender of the petitioner was rejected and the petitioner was declared ineligible. The petitioner has not fulfilled the conditions imposed in the tender. As against the order declaration of the petitioner as ineligible, the petitioner has got an alternative remedy before the Government as per clause XV (2) of the tender notification. The Government will be competent to assess and evaluate the grievance of the petitioner, if any. The petitioner, without exhausting the same, has filed the present writ petition and therefore, the writ petition itself is not maintainable. The learned Advocate General would further contend that the respondents 1 and 2 could not take further course of action in implementing the Cost-free Distribution of Sarees and Dhoties Scheme, Pongal 2017 and the contract is aims to implement a scheme in a time bound manner. Above all, the learned Advocate General would contend that this Court, in exercise of the powers under Article 226 of The Constitution, cannot interfere in contractual matters unless it is shown that the process of tender and the conclusion arrived thereon are arbitrary, bias and based on irrelevant materials. In the present case, the petitioner was declared as ineligible for not having complied with the conditions of the tender and therefore, the learned Advocate General prayed for dismissal of the writ petition

12. The learned Senior counsel appearing for the respective respondent Nos. 3 to 7 would only contend that the tender is a time bound tender and it has to be completed at the earliest. As per the award of contract, the delivery of the handlooms should commence on the fifth day of the letter of acceptance of the tender and if that be the case, the weaving process has to be started immediately. Further, the Zero Liquid Discharge (ZLD) is a mandatory condition in Tamilnadu and the petitioner, without possessing such facility cannot be expected to get the tender awarded in their favour. Further, the petitioner, after participating in the tender cannot question the conditions of the tender and therefore, they would contend that the writ petition itself is not maintainable and the same is liable to be dismissed.

13. Heard the learned Senior counsel for the petitioner and the learned senior counsel appearing for the respective respondents.

14. The petitioner was declared as ineligible inasmuch as he has not complied with the conditions imposed in the tender, particularly for not having the ZLD facility in the contracting manufacturing unit. The learned counsel for the petitioner would contend that before declaring the bid of the petitioner as ineligible, the respondents 1 and 2 did not give them an opportunity of hearing particularly with respect to non-possession of ZLD facility and had it been given, the petitioner would have produced materials to show that they in fact possess such facility or such facility is not required to be possessed. This argument cannot be accepted for the simple reason that as rightly pointed out by the learned Advocate General appearing for the respondents 1 and 2, in the letter dated 20.07.2016 given by M/s. Tanushree Internationals Pvt Ltd., with whom the petitioner has entered into an agreement, it is clearly indicated that their company is a registered member of New Palsana Industrial Cooperative Society and they do not have ZLD facility. When admittedly the petitioner did not possess the ZLD facility, the respondents 1 and 2 need not afford an opportunity to the petitioner to rectify such defect. In any event, it is one of the main conditions imposed in the tender notification and if it is not complied with by the petitioner, the bid of the petitioner only deserves to be invalidated. Further, as per the counter affidavit of the respondents 1 and 2, the petitioner participated in the tender invited by the respondents 1 and 2 and they are fully aware of the conditions imposed by the Department in procurement of Cotton Cone Yarn and Polyester Texturised Yarn for various Government schemes. Even in the earlier tenders, the petitioner was declared ineligible as they have no polyester texturising machines and also did not comply with other norms indicated in the earlier tender. Therefore, it is not open to the petitioner to challenge the conditions imposed in the tender notification by filing the present writ petition.

15. The learned counsel for the petitioner would contend that affluent treatment plant is attached with the manufacturing facility and it is equivalent to ZLD. Further, in Gujarat there is no Zero Liquid Discharging facility at all in vogue. The affluent is enough in Gujarat for their standard of discharge as recommended by the Gujarat Pollution Control Board. Even this argument cannot be meritoriously accepted. When the condition in the tender requires the manufacturing facility to have ZLD, it cannot be given up or compromised in any manner. Even though Gujarat Pollution Control Board may not have such norms, there is no bar for the respondents 1 and 2 to insist such a condition in the tender. The Honourable Supreme Court as well as this Court have time and again held that when a person participated in the tender, he cannot later challenge the conditions imposed in the tender. Applying the same principle, the contentions urged on behalf of the petitioner cannot be meritoriously countenanced.

16. The learned Counsel for the petitioner relied on the following judgments in support of his case

(i) 2009 (5) L.W. 858 - Consolidated Construction Consortium Ltd. Rep. by its Managing Director/Power of Attorney S.Sivaramkrishnan Vs. Tidel Park Coimbatore Ltd. and another wherein this Court held as follows :

"25. Therefore, in the light of the above, it cannot be held that the TTIT Act is self contained the Court of deciding disputes between the tenderer and the tender floating authority. The Government being the appellate authority cannot go into the complex issues raised by the parties as it lacks power of a civil court and it does not have any express power to record evidence. Further, the Government being the ultimate owner of the schedule mentioned organizations, cannot decide such lis as it would amount to an executive encroachment over Court's power. As found from the objects and reasons, the enactment has been made only to check executive interferences and to provide transparency in Tender decision making. Therefore, the objects raised by the first defendant to reject the plaint by raising a bar under Order VII Rule 11(d) is misconceived and accordingly, the application will stand dismissed."

(ii) In 1986 (3) Supreme Court Cases 247 - Harminder Singh Arora Vs. Union of India and others wherein the Honourable Supreme Court held as follows :

"It is contended for the appellant that the tender submitted by respondent 4 did not satisfy the requirement of para 2 of the tender notice. The tenders had been invited for the supply of pure fresh buffalo's milk or fresh cow's milk but the respondent had submitted tender for supplying pasteurized milk and therefore, the tender submitted by respondent 4 being not in conformity with the tender notice should not have been accepted by the authorities. In any case, if the tender of respondent 4 regarding supply of pasteurized milk was accepted and the original terms of the tender notice were changed, the appellant should have been given an opportunity to submit his tender in conformity with the changed terms but this was not done which has caused serious prejudice to the appellant. If the tender forms submitted by any party is not in conformity with the conditions of the tender notice the same should not have been accepted but the authorities concerned arbitrarily and in a fanciful manner accepted the tender of respondent 4. The State or its instrumentality has to act in accordance with the conditions laid down in the tender notice. In any case if the

authorities chose to accept the tender of respondent 4 for supplying pasteurised milk, the appellant should also have given an opportunity to change his tender. The authorities have however, given preference to the tender of respondent 4 for offering to supply pasteurized milk contrary to the terms contained in para 2 of the tender notice. We find considerable force in the contention of the appellant."

(iii) In 1991(3) Supreme Court Cases 273 - Poddar Steel Corporation Vs. Ganesh Engineering Works and others wherein it has been held as follows :

"It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the Tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be hld that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories - those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in C.J.Fernandez v. Stae of Karnataka a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has in the impugned decision, relied upon Ramana Dayaram Shetty v. International Airport Authority of India but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the court closely examined the nature of the condition which could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs."

(iv) In 1997(1) Supreme Court Cases 53 - Dutta Associates Pvt. Ltd. Vs. Indi Merchantiles Pvt. Ltd. and others wherein it has been held that

"In this case, the entire procedure followed by the Commissioner and the Government of Assam in accepting the tender of the appellant is unfair and opposed to the norms which the Government should follow in such matters, viz., openness, transparency and fair dealing for the following reasons :

Firstly, the tender notice did not specify the "viability range" nor did it say that only the tenders coming within the viability range will be considered. More significantly, the tender notice did not even say that after receiving the tenders, the Commissioner/Government would first determine the "viability range" and would then call upon the lowest eligible tenderer to make a counter-offer. The exercise of determining the viability range and calling upon the lowest tender, the appellant, to make a counter-offer. The exercise of determining the viability range and calling upon the lowest tender, the appellant, to make a counter-offer on the alleged ground that he was the lowest tenderer among the eligible tenderers is outside the tender notice. Fairness demanded that the authority should have notified in the tender notice itself the procedure which they proposed to adopt while accepting the tender. They did nothing of that sort.

Secondly, it is not possible to appreciate the concept of "viability range, its necessity and/or its real purpose. The tenderers are all hard-headed businessmen. They know their interest better. If they are prepared to supply rectified spirit at a lower rate, it is inexplicable why should he Government think that they would not be able to do so and still prescribe a far higher viability range.

Thirdly, having determined the "viability range", the Government called upon only the appellant to make a counter-offer to come within the "viability range" and his revised offer at the higher limit at the "viability range" was accepted. No such opportunity to make a counter-offer was given to any other tenderer including the first respondent."

17. The learned Advocate General appearing for the respondents 1 and 2 relied upon the following judgements of the Apex Court :

(i) 2015 SCC OnLine SC 1370 - Indian Oil Corporation Ltd. And Ors Vs. Arti Devi Dnagi and Anr. with Indian Oil Corporation Ltd. and Ors Vs Monhan Singh Parmar wherein it has been held that

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"8. If the clauses in the advertisement required a tenderer to fulfill all the requirements under the rules and sub-rules of P.W.D. and if what was suggested/recommended by the I.R.C. Has been adopted by the State P.W.D. and the said norms are in the interest of public safety and would facilitate smooth movement of traffic, it will be difficult to hold that the rules and sub-rules of P.W.D. contemplated in the advertisement do not embrace the I.R.C. Guidelines either because there was no specific mention thereof in the tender documents or the same do not have a statutory flavour. We, therefore, hold that the fulfillment of the requirements spelt out by the I.R.C. Guidelines relevant to the present cases to be a mandatory requirement of the tender conditions. Coupled with the above what we find is that the action of the appellant Corporation cannot be said to be either arbitrary or unreasonable in as much as a uniform standard has been applied to all the applicants and in the present two appeals in question no candidate has been found to be eligible upon application of the said uniform standard i.e. The I.R.C. Norms. The action of the appellant corporation, therefore, not being in any manner arbitrary or unreasonable the power of judicial review vested in the High Court ought to have been exercised with due circumspection."

(ii) In 2012 (8) Supreme Court Cases 216 - Michigan Rubber (India) Limited Vs. State of Karnataka and others it has been held as follows:-

"23. From the above decisions, the following principles emerge :

(a) The basic requirement of Article 14 is fairness in action by the State and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering

authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State of its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions :

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? And

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226.

(iii) In 2009 (6) Supreme Court Cases 171 - Meerut Development Authority Vs. Association of Management Studies and another with Pawan Kumar Agarwal Vs. Meerut Development Authority and Another

"26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a

matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiation."

18. By analysing the above decisions cited on behalf of both sides, it has to be held that this Court would not normally interfere with the policy decision of the administrators especially in contractual matters. For interference, it must be shown that the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached and there must be an element of public interest. Further, as noted in various decisions mentioned supra, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere.

19. In the present case, the scheme aims to distribute cost-free dhoties and sarees to the public and for procuring the same, the respondents 1 and 2 have thought it fit to impose certain conditions. When the petitioner did not satisfy the conditions and participated in the tender process, then, it shall not be open to them to question the conditions of the tender or the process of the tender. Further, this Court cannot interfere with the terms of the tender prescribed by the Government and to hold that some other terms in the tender would have been fair, wiser or logical. Even though the State of Gujarat may not have ZLD compliance, there is no bar for the respondents 1 and 2 to fix such a criteria as far as Tamilnadu is concerned.

20. Further as the contract is a time bound contract, the tenderer should be ready in all aspects and should commence the work immediately. The petitioner, if at all is aggrieved, ought to have questioned the grant of award of tender in favour of the private respondents before the Government as contemplated under the tender conditions, but the petitioner has not chosen to do it. The petitioner has not challenged the order of allotment in favour of the private respondents but merely challenging the rejection of his tender. Further, the various other factual disputes raised by the petitioner in this writ petition cannot be gone into by this Court in exercise of powers under Article 226 of The Constitution of India.

21. For all the above reasons, this Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

vrc/rsh

To

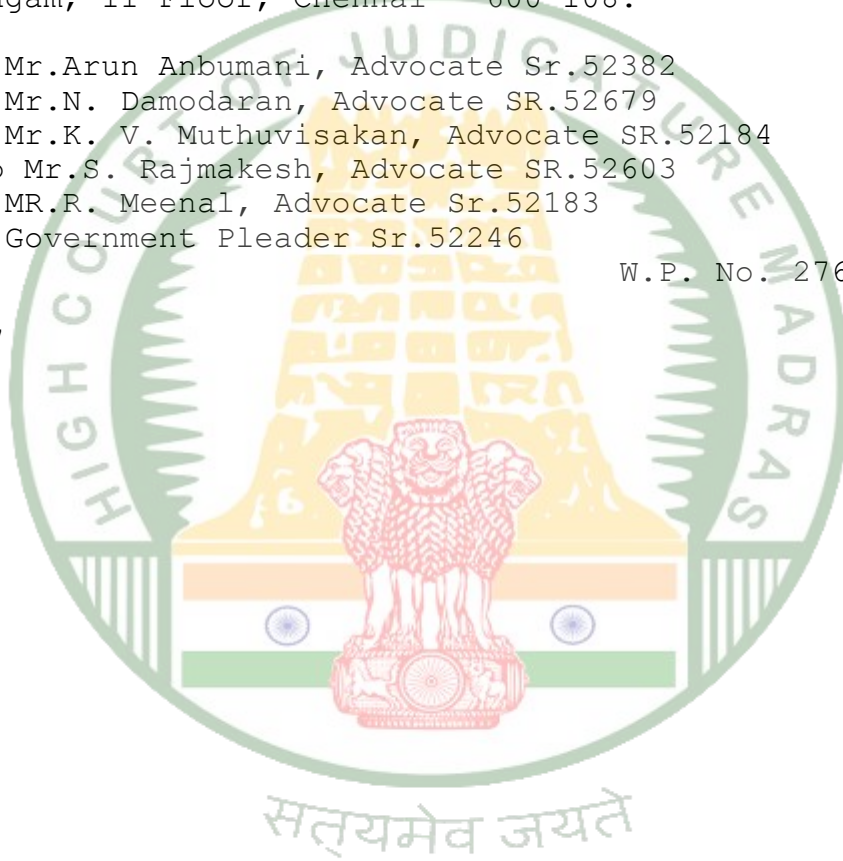
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+ 1 cc to Mr.Arun Anbumani, Advocate Sr.52382
+ 1 cc to Mr.N. Damodaran, Advocate SR.52679
+ 1 cc to Mr.K. V. Muthuvisakan, Advocate SR.52184
+ 3 ccs to Mr.S. Rajmakesh, Advocate SR.52603
+ 1 cc to MR.R. Meenal, Advocate Sr.52183
+ 1 cc to Government Pleader Sr.52246

W.P. No.27611 of 2016

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