

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

Writ Petition No. 35693 of 2016
and
W.M.P. Nos. 30679 and 30680 of 2016

M/s. Agarpara Jute Mills Limited
represented by its Director
No.21-A, Shakespeare Sarani
Third Floor, Kolkatta - 700 017 .. Petitioner

Versus

The Tamilnadu Civil Supplies Corporation
represented by its Managing Director
No.12, Thambusamy Road
Kilpauk, Chennai - 600 010 .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondents herein culminating in tender notification No.BS4/28026/2016, published on 09.07.2016 and quash the same and direct the respondent herein to issue fresh notification by providing mandatory time as contemplated under Rule 20 of the Tamilnadu Tender Transparency Rules, 2000.

For Petitioner : Mr. M.R. Sivakumar

For Respondent : Mr. Manishankar
Additional Advocate General
assisted by Mr.L.P. Shanmugasundaram

ORDER

The petitioner questions the validity of the tender notification dated 09.07.2016 published by the respondent on the ground that it was issued in violation of Rule 20 of the Tamilnadu Tender Transparency Rule, 2000 (hereinafter referred to as 'The Rule').

2. According to the petitioner, they are dealing with supply of jute bags to private sector, public sector as well as the Government agencies across the country for several decades and they have also participated in the tenders floated by the respondent herein for supply of gunny bags. According to the petitioner, on 09.07.2016, the respondent issued the impugned tender notification calling for applications for purchase of 50 lakhs gunny bags. As the value of the tender is more than Rs.2 crores, according to the petitioner, as per Section 20 (1) (b) of The Rules, the tender inviting authority must ensure that a minimum of 30 days is provided for submission of tender from the date of the tender notification till the date of submission of tender. The petitioner, by quoting Rule 20 of The Rules, would contend that the tender inviting authority must ensure that adequate time is provided for submission of the tenders and the minimum time is allowed between the date of publication of the tender notice and the last date for submission of tender. According to the petitioner, the requirement to give 30 days time is a mandatory requirement as contemplated under Rule 20 of The Rules which has to be strictly followed by the respondent. But contrary to the same, the tender notice in respect of the present tender was published on 09.07.2016, however, the tender documents were uploaded on the website of the respondent only on 18.07.2016. Further, the uploaded document were defective and therefore the respondent published a corrigendum after a week i.e., on 25.07.2016. However, the last date for submission of the tender was not extended as contemplated under Rule 20 (1) (b) of the Rules and it remained unaltered as 09.08.2016. Thus, between 25.07.2016 and 09.08.2016, there was only 15 days time available to the tenderers to submit their tenders, which is in violation of Rule 20 of the Rules. This, according to the petitioner, has deprived them from participating in the tender process. The petitioner therefore submitted a representation to the respondent on 26.08.2016 calling upon the respondent to issue a fresh tender notification. As there was no response to the representation sent by the petitioner, the petitioner caused a notice dated 19.09.2016 through their lawyer and thereafter they have filed the present writ petition before this Court.

3. The learned counsel appearing for the petitioner would contend that even though the tender notification was published on 09.07.2016, the tender documents were uploaded in the website of the petitioner only on 18.07.2016. Even such tender document uploaded in the website of the respondent was found to be defective and therefore, a corrigendum was published on 25.07.2016. However, the last date for submission of the tender document has not been extended and it

remained the same as 09.08.2016. Thus, between 25.07.2016 and 09.08.2016, 30 days time has not been given to the tenderers which is in contravention of Rule 20 of the Rules. According to the learned counsel for the petitioner, by reason of the non-compliance of the mandatory provisions contained in the Rule by the respondent, the petitioner was deprived of a valuable opportunity to participate in the tender. Therefore, the learned counsel for the petitioner prayed this Court to allow this writ petition.

4. Opposing the writ petition, the learned Additional Advocate General appearing for the respondent would contend that first of all, the petitioner did not participate in the tender. He did not even purchase the tender applications which was made available in the office of the respondent soon after the date of publication of the tender notification in newspaper. The tender notification has been uploaded in the website of the respondent to facilitate more number of participants who could not obtain the physical copy of the tender application was made available in the office of the respondent. In other words, the publication of the tender notification in the website of the respondent cannot be construed to be the date of publication of the tender notification inasmuch as physical copies of the tender documents were made available in the office of the respondent immediately after publication of the tender notification in newspapers on 09.07.2016. The petitioner could have obtained a physical copy from the office of the respondent even from 09.07.2016 or downloaded the tender document from the website of the respondent, but they did not take any steps to procure the tender document. The petitioner, having not participated in the tender process, is estopped from filing the present writ petition. Further, the tender process have been completed and only thereafter, the petitioner had sent a representation on 26.08.2016 followed by a notice through their lawyer on 19.09.2016. In the meantime, the tender process itself has been completed and tender was awarded in favour of two successful tenderers by splitting the total quantity of the supply of New Bale Gunny bag in 25 lakh number of 50 KGs capacity of bags. The successful tenderers were also called upon to remit the security deposit by means of demand draft on or before 08.11.2016 and thereafter to execute an agreement with the corporation on or before 09.11.2016. Therefore, according to the learned Additional Advocate General appearing for the respondent, the tender process itself has been completed and tender was awarded in favour of two successful tenderers, while so, the relief prayed for by the petitioner need not be considered. At any rate, the respondent has adhered to the provisions of Rule 20 of the

Rule by giving 30 days clear time from the date of publication of the tender notification in the newspaper. Therefore, according to the learned Additional Advocate General, there is no violation of any of the procedure contemplated under the Rule and he prayed for dismissal of the writ petition.

5. I heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondent. At the outset, this Court is not inclined to entertain this writ petition at the instance of the petitioner for the simple reason that the petitioner did not even get the tender document to participate in the tender process. The grievance of the petitioner is that the respondent has not given clear 30 days time for submission of the tender as contemplated under Rule 20 of the Rules. According to the petitioner, the tender notification was uploaded in the website of the respondent on 18.07.2016 and thereafter, a corrigendum was published on 25.07.2016, however, the last date for submission of the tender document has not been extended by giving 30 days time from the date of corrigendum on 25.07.2016. However, this submission made on behalf of the petitioner has been countered by the learned Additional Advocate General appearing for the respondent by stating that from the date of issuance of the tender notification on 09.07.2016 in the newspapers the physical copies of the tender documents were made available in the office of the respondent. Further, the tender document has been uploaded in the website of the corporation to enable more tenderers to download the tender document and to participate in the tender. As far as the corrigendum is concerned, it was issued to clarify certain clauses and it cannot be reckoned as the date of publication of the tender notification. In any event, the tender process has been completed and the contract has been awarded in favour of two successful bidders.

6. Thus, it is clear from the submission of the learned Additional Advocate General that physical copies of the tender notification have been made available in the office of the respondent from 09.07.2016 but the petitioner did not even obtain the same. The petitioner has not produced any document to show that the copy of the tender documents were not made available in the office of the respondent from 09.07.2016. It is also evident that the tender notification was published in the website of the respondent corporation only to ensure that more number of participants participate in the tender and it was not the date of publication of the tender notification. Merely because the tender notification was published in the website of the respondent on 18.07.2016, it cannot be construed to be the date of publication of the tender notification. In any event, only for the first time on

26.08.2016, the petitioner sent a representation to the respondent calling for issuing a fresh tender notification for alleged non-compliance of Rule 20 of the Rules, whereas, the last date for submission of the tender form itself was on 09.08.2016. The petitioner, much after the last date on 09.08.2016, has submitted a representation on 26.08.2016 and thereafter sent a notice through his lawyer on 19.09.2016. In the meanwhile, the respondents have declared the successful tenderers and awarded the contract in their favour by splitting the quantum of supply to be effected into two. Thus, the entire tender process has been completed and at this stage, the relief sought for by the petitioner cannot be considered by this Court. This Court also takes note of the fact that even as per the averments of the petitioner, he has participated in the tender issued by the respondent earlier and he is not a new person in the field. Therefore, it is not known as to what prevented the petitioner from getting the tender documents which was made available in the office of the respondent at the earliest point of time. The fact remains that the petitioner did not participate in the tender process and the tender process itself has been completed by awarding contract in favour of two successful bidders. Therefore, the writ petition deserves only to be dismissed.

7. In the result, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Register

//True Copy //

Sub Assistant Register

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To

The Managing Director
The Tamilnadu Civil Supplies Corporation
No.12, Thambusamy Road
Kilpauk, Chennai - 600 010

+ 1 cc to Mr.L.P. Shanmugasundaram, Advocate sr.64867

WP.No. 35693 of 2016

KSJ[CO]

VS 30/12/2016