

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.4504 of 2016

&

W.M.P.Nos.3835 and 3836 of 2016

M/s.Trans Ads
represented by its Chief Executive
K.Sekar
Flat No.1,33, Kesavaperumal east street
Mylapore, Chennai-4 ...Petitioner

Vs.

1.The Commissioner
Corporation of Chennai
Rippon Building, Chennai-3

2.The Superintending Engineer
Bus route roads department
Corporation of Chennai
Rippon Building, Chennai-3 ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records on the file of the second respondent relating to the tender notice dated published in "The New Indian Express" Newspaper dated 15.01.2016 bearing tender notification No.B.R.R.C.No.B3/0181/2016 for construction and maintenance of Modern Bus shelters in Chennai Corporation Area on BOT (built, operate and transfer basis) for 500 bus shelters and quash the same.

For Petitioner : Mr.Ar.L.Sundaresan, Senior Counsel
for
M/s. Sai Bharath and Ilan

For Respondents: Mr.P.H.Arvind Pandian, AAG
assisted by
Mr.P.V.Selvakumar, standing counsel

O R D E R

Heard Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mr.Bharathan Chakravarthy, learned counsel for petitioner and Mr.P.H.Arvind Pandian, learned Additional Advocate General, assisted by Mr.P.V.Selvakumar, standing counsel for the respondent Corporation.

2. Petitioner is engaged in the business of advertisements, publications and erection of hoardings. They have filed this writ petition seeking for issuance of a writ of certiorari to quash the tender notification issued by the respondent Corporation published in "The New Indian Express" dated 15.01.2016 bearing tender notification No.B.R.R.C.No.B3/0181/2016 for construction and maintenance of Modern Bus shelters in Chennai Corporation Area on BOT (built, operate and transfer basis) for 510 bus shelters.

3. Learned Senior Counsel for the petitioner raised two contentions challenging the impugned tender notification. Firstly, it is contended that the impugned tender notification is discriminatory as it has totally prevented people in the advertising line to participate in the tender process and insisting upon formation of a consortium or a joint venture. This according to the learned Senior Counsel, has absolutely no nexus with the object sought to be achieved for which the impugned tender notification has been called for. The second ground of challenge to the impugned notification is on the ground that the mandatory period of 30 days as required under the provisions of The Tamil Nadu Transparency in Tender Rules, 2000 and in particular, Rule 20 has not been followed. Referring to Sub Rule (1) of Rule 20 of the said rules, it is submitted that the Rules mandate that in respect of tenders in excess of rupees two crore in value, the time period to be provided shall be 30 days. In the instant case, it is stated that the publication in the news paper was effected on 15.01.2016 and the tender was to be called for on 05.02.2016 and 30 days period was not provided. Further, it is submitted that even though the tender was extended upto 16.02.2016, the said extension was not done after complying with the requirement under Rule 18. Learned Senior counsel would submit that Rule 17 (2) also has not been followed. This submission is based on the contention that the advertisement was uploaded in the website only on 29.01.2016 and even if the tender has been postponed to 15.02.2016, that does not satisfy the requirement under Rule 20.

4. The learned Additional Advocate General, submitted that the purpose for which the tender has been invited is to expedite the bus shelters to be constructed immediately within a period of three months and the laborious task of manufacture of bus shelters with quality steel with huge investment of around rupees

seventy crores can be achieved only by manufacturers which is evident from the past experience of the respondent corporation, since the respondent corporation has to erect 510 bus shelters within a period of three months, they have properly considered all aspects and invited the tender. Further, referring to the eligibility criteria in the tender document, it is submitted that a joint venture is eligible to participate and nothing prevents an advertising agency from being part of a joint venture or a consortium. Thus the eligibility criteria has the required nexus to the object sought to be achieved by the tender. Further with regard to publication and compliance of Rule 20, it is submitted that the time limit stipulated under sub Rule (1) of Rule 20 could be varied by the authority superior to the tender inviting authority in terms of Sub Rule (2) of Rule 20. Pointing out to the advertisement issued in the New Indian Express dated 15.01.2016, it is submitted that any subsequent corrigendum/addendum shall only be available in the website. It is submitted that several persons have participated in the tender and in the pre-bid meeting the participants requested for extension of time and therefore the tender was extended till 15.02.2016, and none of the advertisers were prevented from participating in the tender as it was always open to them form a joint venture or be part of a consortium. On the above ground learned Additional Advocate General seeks to justify the impugned tender notification.

5. Heard learned Senior counsel for the petitioner and the learned Additional Advocate General for the respondents and perused the materials placed on record.

6. The respondent Corporation has invited the impugned tender as a private sector participation for construction, operation and maintenance of modern bus shelters in Chennai Corporation Area (National Competitive Building) on Build, Operate and Transfer (BOT) basis. The tender invites National company/ LLP/joint ventures/Lead partners of consortiums interested in the project to submit their bids. The features of the tender is replacement of all existing old concrete/steel bus shelters on BOT basis; design parameters and specification of the proposed bus shelters shall be provided by Corporation of Chennai; bus shelters shall be constructed a specified locations as directed by the Corporation of Chennai and revenue from the bus shelters would be from advertisements and ATM. Scope of work has also been explained in the tender document which essentially involves dismantling of existing bus shelters at existing locations and necessary site preparation for all locations and construction of new bus shelters. In the instant case, we are concerned about the eligibility criteria and for better appreciation the said criteria as stipulated in the tender document is extracted herein above:

ELIGIBILITY CRITERIA:

1. This invitation is open to all national registered Limited Liability Partnership and Companies or as consortium of limited companies or limited liability partnership or joint venture of limited companies or limited liability partnership. The lead company shall have a minimum equity stake of 51% in the consortium.
2. The bidding LLP/company/consortium/joint venture must have experience in steel, fabrication having achieved minimum annual financial turnover of Rs.40 crore for any two (2) years during the preceding five (5) years. In the case of consortium/joint venture any one of the partner individual turnover must be more than Rs.40 crore for any two (2) years during the preceding five (5) years.
3. The bidding LLP/company/consortium/joint venture must have average total liquid assets/quick assets for a minimum of Rs.3 crore for any two (2) years during the preceding five (5) years. In case of consortium/joint venture any one of the partner individual turnover must be more than Rs.3 crore for the any two (2) years during the preceding five (5) years.
4. The bidding LLP/company/consortium/joint venture must have completed or under execution at least 25 number of bus shelters in India on Bot basis.
5. The bidding LLP/company/consortium/joint venture must have minimum experience in construction steel fabrication for a single contract value of gross realization of revenue from a single client of more than Rs.1.5 cores in an two (2) years over the preceding five (5) financial years. In the case of consortium/joint venture any one fo the partner individual single contract value or gross realization of revenue from a single client of more than Rs.1.5 crores in any two (2) years over the preceding five (5) financial years.
6. The bidding LLP/company/consortium/joint venture must submit solvency certificate

for Rs.1 crores either in the name of LLP/company/consortium/joint venture / partners of firm/Directors of company of lead consortium/joint venture

7. The bidder should apply and obtain inspection report for having atleast one own fabrication unit in state of Tamil Nadu from the Executive Engineer, Bus route road Departments Chennai Corporation before the tender and it should be submitted along with the tender. The tender would be deemed ineligible if it is not accompanied with this report.
8. The agreement period is for 10 years and renewable for another 5 years and thereafter the right of ownership will be transfer to Corporation of Chennai.
9. More than 3 packages will not be awarded to the same holder.
10. All the works should be commenced immediately on work order and completed within a period of 3 months time from the dare of handing over of the site by COC.
11. All the works in each package should be commenced simultaneously

Note: Please refer detailed Eligibility Criteria enclosed in Section B-1 "Eligibility Criteria".

7. Perusal of the above eligibility criteria, it is seen that the invitation is open to all national registered limited liability partnership and companies or as consortium of limited companies or limited liability partnership or joint venture of limited companies or limited liability partnership. The stipulation being that the lead company shall have a minimum equity stake of 51% in the consortium. Further the bidding LLP/ company/consortium/joint venture must have experience in steel fabrication having achieved minimum annual financial turnover of Rs.40 crore for any two years during the preceding five years and in case of consortium/joint venture any one of the partners individual turnover must be more than 40 crore for any two years during the preceding five years. The bidding LLP/company/consortium/joint venture must have experience in construction steel fabrication for a single contract value or gross realization of revenue from a single client of more than Rs.1.5 crores in any two years over the preceding five financial years. In the case of consortium/joint venture anyone of the partner individual single contract value or gross realization of revenue from a single client of more than Rs.1.5 crores in any two years over the preceding five financial years.

8. Thus a perusal of the eligibility criteria, it clearly reveals that the impetus is of steel fabrication construction so as to achieve the object for which the tender has been called, which is to dismantle the existing bus shelters at existing locations and to construct new bus shelters as per the approved design of the Corporation. Therefore, it cannot be stated that these bus shelters cannot be maintained without an advertisement and therefore the advertisement agency should be permitted to participate in the impugned tender on a stand alone basis. As stated above, the scope of the tender and the object for which tender has been invited is for construction, operation and maintenance of modern bus shelters. Therefore, the respondent Corporation has thought fit to stipulate the experience criteria in steel fabrication fixing a minimum annual financial turnover. From the counter affidavit, it is seen that there is no prohibition for an advertising agency to be part of the joint venture and in the event they are partners of a joint venture along with a steel fabricator, it would suffice that if one of the joint venture partner has achieved the minimum financial turnover and other requirements as stipulated in the eligibility criteria. Therefore, this court is unable to accept the submission of the learned Senior counsel that the impugned tender is discriminatory nor can it be said that the conditions of eligibility criteria have no nexus to the objects sought to be achieved in the impugned tender. Therefore, the first contention raised by learned Senior counsel does not merit acceptance. Having held that the petitioner cannot participate in the tender as a stand alone advertising agency.

9. The second issue cannot be raised by the petitioner as there is no locus standi for the petitioner to question the same. Nevertheless, from the counter affidavit the factual position is clear. Further more, the paper publication also clearly states that subsequent corrigendum/addendum if any shall be available only in the website as indicated. Admittedly, the petitioner being a stand alone advertising agency will not be qualified to participate in the impugned tender. Therefore, the question of he being aggrieved on account of the date having been fixed as 15.02.2016 for consideration of tender does not arise. That apart, it has been stated in the counter affidavit that as per the request made in the pre-bid meeting by the participants, the tender time has been extended till 15.02.2016. Thus none of the persons who are eligible to participate in the tender have raised any grievance about the same. Further Sub Rule (2) of Rule 20 also provides reduction of time, provided under Sub Rule (1) of Rule 20. It is not the case of the petitioner that the authorities superior to the tender inviting authorities have not exercised such power. In any event, that cannot be a ground of challenge at the instance of the petitioner as they being ineligible to participate in the tender. Further, with regard to the submission made by placing reliance on Rule 18 of the rules,

the same also does not merit acceptance, as the tender notification/publication in the newspaper clearly indicates that subsequent corrigendum/addendum will be only available in the website. Therefore, in the absence of any challenge to such a condition, it is not open to the petitioner to raise such a submission placing reliance on Rule 18. Therefore, the second ground raised by the learned Senior counsel for the petitioner also does not merit acceptance for more than one reason, and more so on the ground that the petitioner has no locus standi to question the same. Apart from that there is no infraction or infringement of the rule. In addition to the reasons assigned by this court on issue number one, it is pointed out that in the counter affidavit the object for keeping the tender open for manufacturers is because 510 bus shelters have to be erected within a period of 3 months and this has to be done throughout the city and the respondent Corporation would state that if the advertisers only get selected during the tender process, they would be interested in putting up shelters only where there is an advertising potential, commercial area and will not be interested to construct shelters at the economically unviable areas like Zone I,II,III, IV etc.

10. Hence for all the above reasons, no grounds have been made to interfere with the impugned tender. Accordingly, Writ petition fails and is dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The Commissioner
Corporation of Chennai
Rippon Building, Chennai-3

2.The Superintending Engineer
Bus route roads department
Corporation of Chennai
Rippon Building, Chennai-3

1 cc to M/s. Sai Bharath & Ilan, Advocate, Sr. 9491
1 cc to M/s.P.V. Selvakumar, Advocate, Sr. 9755

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