



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 09.06.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P (MD) No.10091 of 2016

and

W.M.P (MD) Nos.7906 and 7907 of 2016

C.Chidambaram

..Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai.

2.The Joint Commissioner/Executive Officer,
Arulmighu Dhandayuthapani Swamy Thirukkivil,
Palani, Dindigul District. ..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records in pursuant to the impugned tender notification issued by the second respondent vide Na.Ka.No.1152/16/C2, dated 19.05.2016 and to quash the same insofar as condition Nos. 10 and 11 are concerned.

For Petitioner :Mr.G.Thalaimutharasu
for M/s.V.Natarajan

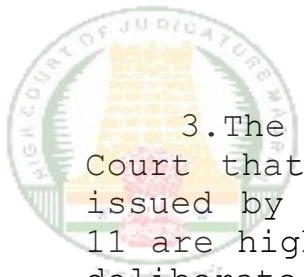
For Respondent-1 :Mr.V.Muruganandam
Addl.Govt.Pleader

For Respondent-2 :Mr.K.Govindarajan

ORDER

Heard both sides.

2.The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court to call for the records relating to the impugned tender notification issued by the Second Respondent/The Joint Commissioner/Executive Officer, Arulmighu Dhandayuthapani Thirukkivil, Palani, Dindigul District in reference in Na.Ka.No.1152/16/C2, dated 19.05.2016.



3.The Learned counsel for the Petitioner urges before this Court that in the impugned tender notification, dated 19.05.2016 issued by the Second Respondent/Temple, the condition Nos.10 and 11 are highly unjustifiable, unreasonable and furthermore, it is a deliberate one in order to have monopoly for the interested persons in the business of preparing and selling temple prasadam. Therefore, it is violative of Article 19(1)(g) of the Constitution of India.

4.The Learned counsel for the Petitioner contends that if the impugned tender conditions, dated 19.05.2016 are allowed to be continued in conducting tender process, un-doubtedly, huge revenue loss would be caused to the Government and that apart, the said conditions would cause revenue loss to the Government, besides affecting healthy competition. Therefore, the impugned notification, dated 19.05.2016 of the Second Respondent/Temple is liable to be quashed.

5.The Learned counsel for the Petitioner projects an argument that the impugned tender notification, dated 19.05.2016 relates to the preparation and selling of prasadam items as mentioned in condition No.40 and by seeing these items, it would clearly reveal that they do not involve any technical expertise and in the very nature of the tender, it requires no experience.

6.In effect, the pith and substance of the argument advanced on behalf of the Petitioner is that incorporation of the impugned conditions in the tender notification, dated 19.5.2016 of the Second Respondent/Temple is arbitrary and suffers from malice in Law.

7.per contra, it is the submission of the Learned counsel for the Second Respondent/Temple that the Writ Petitioner has challenged only the condition Nos. 10 and 11 of the auction-cum-tender notice, dated 19.05.2016 issued for the purpose of running prasadam stall in the Second Respondent/Temple for the period from 01.07.2016 to 30.06.2017.

8.The Learned counsel for the Second Respondent contends that the condition No.10 of the auction-cum-tender notice, dated 19.05.2016 pertains to the experience of the participants and condition No.11 related to the financial capacity of the participants and therefore, the two conditions are absolutely necessary considering the nature of the job.

9.The Learned Counsel for the Second Respondent/Temple proceeds to take an emphatic stand that one lakh devotees are visiting/coming to the Temple every day and therefore, only a <https://hccservicescourts.mil.in/services> such experience and such financial status alone capable of running the said job without any complaints can take part in the Auction. Apart from that, even a disturbance of the



running of prasadam stall for an hour will not only affect the administration but also affect the sentiments of the lakhs of devotees and keeping these things in mind, the temple administration has incorporated these conditions and the conditions are all not first time implemented, but implemented for the last four or five years.

10.The Learned Counsel for the Second Respondent/Temple contends that on an earlier occasion, auctions were conducted and bidders participated only after fulfilling the conditions. Moreover, the Petitioner is not an experienced person and therefore, he cannot insist the temple administration to relax the norms. In any event, the conditions imposed in the impugned tender notification, dated 19.05.2016 are not arbitrary nor against any rules or mala-fide.

11.Besides the above, the learned counsel for the Second Respondent/Temple submits that the tender bid was invited on 19.05.2016, but the present Writ Petition was filed by the Petitioner on 07.06.2016, two days before the closure of tender. Indeed, the conditions of the tender notification, dated 19.05.2016 are available to prasadam stall in all major temples. Continuing further, keeping in mind, the safety and health conscious of the devotees of the temple, the temple is seeking the participation of the experienced person. Furthermore, it is represented on behalf of the Second Respondent that the conditions in the tender notification are all administrative in nature and there is no unfairness on the part of the temple administration.

12.Finally, it is the stand of the Second Respondent/Temple that the conditions imposed in the tender notification, dated 19.05.2016 are meant only with a view to make sure that the participants have the capacity to execute the work and only for the smooth running of the administration, the conditions are imposed.

13.The Learned counsel for the Second Respondent/Temple cites a decision of the Honourable Supreme Court in the case of **Michigan Rubber(India) Limited .vs. State of Karnataka and others reported in (2012) 8 Supreme Court Cases 216** at special page 232, wherein at para 35, it is observed as follows:

''35.As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that



to have the best of the equipment for the vehicles, which ply on road carrying passengers, the second respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions 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. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala-fide.''

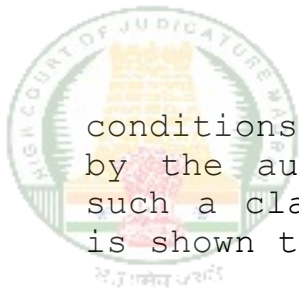
14. On behalf of the First Respondent, it is represented before this Court that the First Respondent adopts the arguments advanced on behalf of the Second Respondent/Temple.

15. By means of reply, the Learned Counsel for the Petitioner submits that in respect of Arulmighu Subramaniaswamy Temple, Thiruchendur, public auction slated on 07.06.2016 was cancelled as per the letter in Na.Ka.No.1790/2016/E2, dated 04.06.2016 of the Joint Commissioner/Administrative Officer of the said Temple and also in the said letter, it was also mentioned that the special condition Nos. 9 and 10 relating to sale of coconut and fruits was deleted etc.

16. At this stage, a cursory perusal of the impugned tender notification of the Second Respondent/Temple, dated 19.05.2016 indicates that totally in all, there are 47 conditions. Obviously, the Petitioner is very much concerned with condition Nos. 10 and 11 which speaks of five years experience in regard to the preparation of prasadam of the temple and further that for one year prasadam sale amount of the Temple should have gone beyond Rs.1,00,00,000/- and for that the participants must produce **three** years certificate.

<https://hcservices.ecourts.gov.in/hcservices/>

17. It is to be borne in mind that a Court of Law ordinarily/normally will not interfere in regard to any policy



conditions and in regard to the matters where the award of tender by the authorities concerned is assailed, barring/striking down such a claim of administrative/executive auction only when it is shown to be arbitrary or unreasonable one.

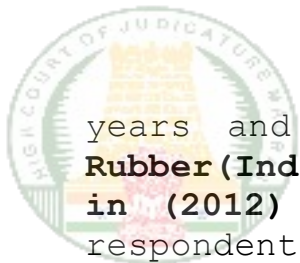
18. It is axiomatic principle in Law that the right to enter into contract pertaining to the property or business is a fundamental right guaranteed by Article.19(1)(f)(g) of the Constitution of India. But the rights arising under the contract are not fundamental rights guaranteed by our Constitution.

19. It is to be remembered that selecting one manufacturer through a process of open competition is not a creation of any monopoly in violation of Article. 19(1)(g) r/w Article.19(6) of the Constitution of India, as per the decision in **Association of Registration Plates .vs. Union of India and others reported in AIR 2005 Supreme Court 469.**

20. One cannot brush aside an important fact that the role of a Court of Law in 'Judicial Review' is very limited. In fact, no 'Judicial Review' does not sit as a Court of Appeal, but simply reviews the manner in which the conclusion is arrived at. Also that, the terms of tender notification is an open invitation and it is within the purview of contract. A Court of Law is not an expert to correct a administrative decision substituting its own decision without necessary expertise.

21. It is true that a citizen has no fundamental right whatsoever to insist upon the Government or any other individual for doing business with him. Really speaking, imposing of necessary conditions or qualifications in the tender notification are meant only to make sure that a perspective participant has the ability, capability and has necessary wherewithal to complete/execute the work in a successful fashion. Moreover, a Court of Law cannot interfere in the tender notification/Public Auction, because it feels some other conditions/terms in the tender would be appropriate, wiser or fairer or reasonable or a logical one, as the case may be.

22. In the instance case on hand, the Petitioner comes out with a categorical plea that the condition No. 11 of the impugned tender notification, dated 19.5.2016 namely that the participants must produce the Experience Certificate in preparing and selling prasadam in temple for the period of five years and further, that the participants must have the yearly turn-over for more than 1,00,00,000/- in preparing the prasadam are only incorporated with a view to keep him out of race and to enable the existing contractors to continue in such business. In this connection, the Petitioner takes a stand that the Petitioner is running a private catering service for the past ten



years and furthermore, the decision in the case of **Michigan Rubber(India) Limited .vs. State of Karnataka and others reported in (2012) 8 Supreme Court Cases 216**, relied on by the second respondent/temple is not applicable to the facts and circumstances of the present case.

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23.This Court has given its anxious consideration to the contentions advanced on either side and noticed the same.

24.As far as the present case is concerned, this Court on going through the condition Nos.10 and 11 of the tender notification, dated 19.05.2016 of the Second Respondent/Temple is of the considered view that the said conditions are incorporated in the notification only to enable the concerned participants who are possessing enough/adequate experience in preparing the prasadam and possessing necessary experience thereafter. Apart from that, this Court is of the considered view that the condition No.11 of the impugned notification, dated 19.05.2016 of the second respondent/temple whereby and where-under, it is mentioned in crystalline terms that the participant should have sold the prasadams for well over a sum of Rs.1 crore in a year and to that effect he is to furnish a certificate for three years cannot be said to be unreasonable, arbitrary, capricious one. In fact, this Court opines that the condition Nos.10 and 11 imposed in the tender notification of the Second Respondent/Temple, dated 19.5.2016 are meant only to enable the eligible, fit/competent persons to take part in the public auction scheduled to be held on 10.6.2016 at 11.00 a.m by the Second Respondent/Temple. In this regard, this Court very pertinently points out that condition Nos.10 and 11 of the impugned tender notification, dated 9.5.2016 would not in any way pave way for creation of any monopoly for the interested persons, as projected on the side of the Petitioner. Per contra, the condition Nos. 10 and 11 of the impugned tender notification, dated 19.5.2016 of the Second Respondent/Temple will provide an atmosphere for a healthy competition in the proposed auction to be conducted on 10.6.2016 at 11.00 a.m. Apart from the above, conditions Nos. 10 and 11 of the impugned tender notification, dated 19..5.2016 though it is projected on the side of the Petitioner that it is in violation of Article 19(1)(g) of the Constitution of India, yet this Court is of the considered view that the authority concerned is well within its domain and to impose necessary restrictions/conditions. Suffice it for this Court to relevantly points out that condition Nos.10 and 11 of the impugned tender notification, dated 19.5.2016 are quite fair, reasonable and valid one in the eye of law. In short, it does not suffer from any bias or malice in Law. Viewed in that perspective, the impugned tender notification, dated 19.5.2016 of the Second Respondent/Temple is free from any flaw.

<https://hcservices.ecourts.gov.in/hcservice/> Consequently, the Writ Petition fails.



25. In fine, the Writ Petition stands dismissed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are dismissed.

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Sd/-

Assistant Registrar (As)

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai.
2. The Joint Commissioner/Executive Officer,
Arulmighu Dhandayuthapani Swamy Thirukkovil,
Palani, Dindigul District.

+1cc to special Government Pleader SR.No.29424

vsn

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