

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1792 of 2015

R.Kalyanasundaram ...Appellant/Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Special Secretary,
Department of Agriculture,
Fort St.George, Chennai - 600 009.

2.Agricultural Engineering Department,
Rep. by its Chief Engineer,
487, Anna Salai, Nandanam,
Chennai - 600 035.

3.V.Lakshminarayasamy ...Respondents/Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order made in W.P.No.26214 of 2015 dated 18.11.2015.

Prayer in WP.26214/2015:-Petitions filed under Article 226 of
the Consitution of India for issuance of a Writ of Ceritiorari
to call for the records of the 2nd Respondent proceedings
bearing No. AED/SC5/ 26147/SPV Pump/2015-2016 dated 29.07.2015
and quash the tender eligibility criteria set out at page 10/80
therein in so far as it seeks to permit only companies to
participate in the tender process as arbitrary illegal and
unconstitutional.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.V.Anandamoorthy
Addl. Govt.Pleader for R1 and R2
Ms.S.Harini
for M/s.Avinash Wadwani for R3

J U D G M E N T

K.K. SASIDHARAN, J.

The Agricultural Engineering Department, Government of Tamil Nadu, issued a tender notification dated 29 July, 2015, calling for tenders for supply, installation, commissioning and comprehensive maintenance of 500 Nos. of 5 HP AC Solar PV Pumping Systems (with Borewell submersible pumpsets) of 4800 Wp capacity each with automatic tracking facility at various places in Tamil Nadu.

2. The eligibility criteria prescribed that the bidder should either be a Registered Company or a Consortium not exceeding three partners. Since the partnership firms and individuals were not allowed to participate in the tender, the appellant filed a writ petition in his capacity as the President of the Tamil Nadu Pumps and Spares Manufacturers Association. The writ petition was dismissed by the learned single Judge primarily on the ground that it is the prerogative of the tender floating authority to decide as to who are all eligible to participate in the tender. The order is under challenge in this intra court appeal.

3. The learned counsel for the appellant submitted that there are several firms and even individuals manufacturing pump sets in and around Coimbatore and they are in a better position to supply and install Solar PV Pumping systems. According to the learned counsel, in case, the need for comprehensive maintenance for a period of 5 years is taken as a ground to permit only the registered companies to take part in the tender, such maintenance can also be undertaken by the private firms and as such, there was no rationale in fixing the eligibility criteria.

4. We have also heard the learned Additional Government Pleader on behalf of the respondents 1 and 2.

5. The tender notification issued by the second respondent on 29 July, 2015 contained the details about the eligibility criteria. According to the tender notification, the minimum eligibility criteria is that the bidder should either be a registered company or a consortium not exceeding three partners. The criteria further says that a partner of the consortium should be a registered company. In other words, except companies, no other person, association or partnership firm are eligible to submit the bid.

6. Since there was no stay of the notification, nothing survives for adjudication in the present writ appeal. However,

taking into account the submission made by the learned counsel for the appellant that in the future also, similar conditions would be imposed with regard to eligibility criteria, we are constrained to observe that there appears to be no rationale in fixing the eligibility criteria. In case, the respondents 1 and 2 are of the view that the status of the registered company would enable them to undertake comprehensive maintenance for five years, such maintenance could also be undertaken by partnership firms or individuals. It is always open to the respondents 1 and 2 to ensure that only financially sound person submits the bid for the contract. Even to allow the firms to participate, stringent conditions could be imposed taking into account the fact that contract is not only for installation and commissioning, but also for a comprehensive maintenance for 5 year. We are therefore of the view that the issue requires consideration by the respondents 1 and 2, while issuing the notification henceforth.

7. The intra court appeal is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The Special Secretary,
The State of Tamil Nadu,
Department of Agriculture,
Fort St. George, Chennai - 600 009.

2. The Chief Engineer,
Agricultural Engineering Department,
487, Anna Salai, Nandanam,
Chennai - 600 035.

+1cc to Mr.V.Raghavachari, Advocate SR.No.80007

W.A No.1792 of 2015

MR (CO)
GN (19/12/2017)