

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.4.2017
DELIVERED ON : 09.8.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.7749 of 2017

C.Karthikeyan .. Petitioner

Vs.

1. The Secretary to Government
Rural Development and
Panchayat Raj Department
Fort St. George
Chennai 9.
2. The Commissioner of Rural Development &
Panchayat Raj
Saidapet
Chennai 600 015.
3. The District Collector/Project Director
District Rural Development Agency
Tirunelveli District.
4. The District Collector/Project Director
District Rural Development Agency
Kanchipuram District.
5. The District Collector/Project Director
District Rural Development Agency
Kanyakumari District.
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Cuddalore District.
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Villupuram District.

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Vellore District.
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Tiruvannamalai District.
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Salem District.
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Namakkal District.
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Dharmapuri District.
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Krishnagiri District.
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Tanjore District.
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Nagapattinam District.

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Pudhukottai District.
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Madurai District.
- 27.The District Collector/Project Director
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Theni District.
- 28.The District Collector/Project Director
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Dindigul District.
- 29.The District Collector/Project Director
District Rural Development Agency
Ramanathapuram District.
- 30.The District Collector/Project Director
District Rural Development Agency
Virudhunagar District.
- 31.The District Collector/Project Director
District Rural Development Agency
Sivaganga District.

32.The District Collector/Project Director
District Rural Development Agency
Tuticorin District.

.. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records pursuant to the impugned technical bid general conditions issued by the respondents and quash so far as General Class 4 & 5 of Section 3 of technical bid as illegal and consequently direct the respondents to send the samples to any one of the NABL accredited laboratory to check all the desired tests as per bid documents.

For Petitioner: Mr.R.Subburaj

For Respondents: Mr.V.Ayyadurai
Addl. Advocate General
Assisted by
Mr.M.K.Subramanian
Government Pleader

O R D E R

Huluvadi G.Ramesh,J

This writ petition has been filed as a public interest litigation, seeking to quash the Clauses 3(4) and 3(5) of General Conditions as illegal and to direct the respondents to send the samples to any one of the NABL accredited laboratory to check all the desired tests as per bid documents.

2. A brief gist of the facts, which led to the filing of the writ petition, is as under:

The Government implemented LED Street light Scheme in Tamil Nadu. It is a Central Government funding scheme, involving an estimated cost of Rs.329 Crores. Tender notices for supply of huge number of 20W LED street lights fitting with complete set, with 5 years warranty, was issued by all the District Rural Development Agency/District Collectors, inviting bidders for the supply of 9,06,310 numbers of LED all over the State. As per Clause 3(4) of the General Conditions/Notification, the samples submitted along with test reports from a NABL accredited Laboratory, with the bid, will be tested at the field by the Electrical Department of Corporation of Chennai. As per Clause 3 (5), the bidder should submit proof for having satisfactorily completed similar type of work of not less than 50% of the value of the bid, under a single agreement for a State or Central Government Department / Boards / Government Undertaking / Local Bodies. Contending that imposition of such a condition is a

biased one and that it is against the welfare of the public, the petitioner, who is a member of Federation of Anti Corruption Team India, known as FACT India has come up with the above writ petition.

3. The learned counsel for the petitioner, assailing Clause 3(4) of the General Conditions/Notifications, contended that when the bidder has to submit the samples along with the test report of the samples obtained from the National Accreditation Board for testing and calibration Laboratories, at the time of opening of technical bids, there is no necessity for the respondents to send the samples for testing at the field by Electrical Department of Corporation of Chennai, as the same is illegal, particularly when the Electrical Department of Corporation of Chennai was not having any authorisation from NABL.

4. The learned counsel for the petitioner further contended that Clause 3(5) of the General Conditions/Notifications, namely the bidder has to submit proof for having completed similar type of work of not less than 50% of the bid value, under a single agreement, that too for a State or Central Government Department / Boards / Government Undertaking / Local Bodies, is without application of mind.

5. It is also contended by the learned counsel for the petitioner that though imposing general conditions of tender is the right of the Government, stipulation of the condition that the bidder should have undertaken similar type of work of not less than 50% of the value of the bid is to enable only the successful tenderers of the last tender to submit their bid, as they alone would be available to satisfy the above condition.

6. It is further contended by the learned counsel for the petitioner that in the notification issued in the Chennai District, such a condition is not stipulated and therefore, there is a discrimination in the notifications given by each District and that such a condition has been stipulated only by the authorities only to favour one of the bidders.

7. The learned counsel for the petitioner further contended that in view of recommendations, the samples were tested without any counter check on quality and the eligibility list was prepared and that it is only to accommodate a particular bidder.

8. It is the final contention of the learned counsel for the petitioner that the act of the respondents in imposing such conditions reflects the non application of mind and it is in violation of Article 21 of the Constitution of India and therefore, seeks to quash Clauses 3(4) and 3(5) of the General Conditions of the tender/Technical bid.

9. Per contra, learned Government Pleader, before replying to the contentions of the learned counsel for the petitioner, submitted that the petitioner has no locus standi to file the writ petition as public interest litigation, since the petitioner's name is being used by the competing manufacturer of LED lights and that the petitioner has not produced any material to show his bona fide to file the writ petition as a public interest litigation.

10. The learned Government Pleader submitted that as per Section 110(b) of the Tamil Nadu Panchayats Act, 1994, the Village Panchayats are responsible for installation and maintenance of street lights in public places and in order to reduce the consumption of electricity, the Government decided to replace all the tube lights in the street with LED lights. Therefore, tenders were called for in the year 2015-16 and replacement of tube lights with LED lights had been completed in Phase I. Taking note of the difficulties faced in the implementation of the project in Phase I, the Government has amended some of the conditions for implementation of the project in Phase II, without any difficulty.

11. It is therefore contended by the learned Government Pleader that the conditions have been amended only to find out the potential bidder who is expert in handling this project for the supply of required quantity of lights and hence, the amendment to the conditions cannot be said to be against the welfare of the public.

12. The learned Government Pleader further contended that since the tender inviting authority does not have a dedicated electrical wing and that the Chennai Corporation has a Electrical Department which is engaged in Electrical Quality Control testing for the past 15 years, it has been stipulated in Clause 3(4) that the samples will also be tested at the field by the Electrical Department of Chennai Corporation and therefore, the contention of the petitioner that the Chennai Corporation does not have an Electrical Department has to be rejected.

13. The learned Government Pleader also contended that the samples submitted with the tender along with NABL report, are supposed to be tested again in the Electrical Department of the Chennai Corporation, to ensure the standard and quality of the products and that it is within the domain of the Government to ensure the quality and standard of the product and therefore, the petitioner cannot contend that there is no necessity to test the samples again.

14. It is the further contention of the learned Government Pleader that imposition of condition in Clause 3(5) that the bidder should submit proof for having satisfactorily completed similar type of work of not less than 50% of the value of the bid under a single agreement for a State or Central Government Department/Boards/Government Undertakings/Local Bodies, is not to favour the successful bidders of the last tender, as contended by the petitioner, but to ensure that the successful bidder is capable to supply the required quantity of LED lights without any interruption and that he should also be capable or be committed to replace any defective or non-functional LED lights till a period of five years of completion of installation, namely till the warranty period.

15. The learned Government Pleader submitted that imposition of such a condition in Clause 3(5) cannot be bluntly stated that it is only to favour the last successful bidders, as it would only show that the petitioner is not aware of such conditions being imposed by various Departments. In one of tenders called for by the Public Works Department for rehabilitation and improvement work of Soliyar Dam, it was stipulating that the bidder should have satisfactorily completed at least one similar work of value not less than 80% of the value of the bid and in another tender issued by the Chennai Corporation for the work of improvement of bus route roads, it was stipulated that the bidder should have satisfactorily completed at least one similar work of value not less than 50% of the value of the bid.

16. The learned Government Pleader further submitted that imposing a condition as in Clause 3(5) is within the domain of the Project Director and therefore, if such a condition is not imposed in other Districts will not give any right to the petitioner to contend that such a clause is arbitrary.

17. Thus, the learned Government Pleader submitted that the petitioner, only to stall the project which is a public welfare scheme, has come up with the above writ petition, especially at the verge of opening of the tenders and therefore, he seeks intervention of this Court to dismiss the writ petition.

18. Heard Mr.R.Subburaj, learned counsel appearing for the petitioner and Mr.V.Ayyadurai, learned Additional Advocate General appearing for the respondents.

19. Before going into the rival contentions of both the parties, it would be apposite to have a look at the following details.

Admittedly, the street lights in public places are maintained by the Village Panchayats. There are 23,04,820 street lights in rural areas as on 01.4.2015, out of which, 16,28,356

lights are tube lights. The electricity consumption charges for the street lights are being paid by the Village Panchayats. During the year 2014-15, approximately a sum of Rs.420 Crores has been paid by the Village Panchayats towards electricity consumption charges. Further, the Village Panchayats has paid a sum of Rs.230 Crores towards maintenance of the lights. Taking note of the amount being paid towards electricity consumption charges and maintenance, the Government decided to reduce the cost of electricity consumption and maintenance, by replacing the tube lights with LED lights within a period of two years.

20. Thus, the Government, by G.O.Ms.No.19, Rural Development and Panchayat Raj (SGS-3) Department, dated 02.02.2016, issued guidelines for implementing the Scheme. The said G.O. provides for constitution of a State Level Committee for finalising the specification and other technical details of LED Lights. Accordingly, after obtaining specifications from Tamil Nadu Energy Development Agency, specifications suitable for rural areas were identified. Accordingly, tenders were called for the year 2015-16 and 8.93 lakhs of tube lights were replaced with LED lights.

21. The notification calling for tenders has been issued, admittedly with certain amendment in the conditions imposed in the earlier tender notification issued in the year 2015-16, after taking note of the difficulties faced by the Project Directors during the implementation of the project of replacing tube lights with LED lights in Phase I.

22. According to the petitioner, two of the conditions so amended in the present tender notification are illegal and arbitrary. The two of the conditions, by which the petitioner is aggrieved, are (i) Clause 3(4) of the General Conditions/Notifications, and (ii) Clause 3(5) of the General Conditions/Notifications.

23. In this regard, it would be pertinent to refer to Clauses 3(4) and 3(5) of Section 3 of the General Conditions/Notifications. They are extracted as under:

Clause 4:

The bidder shall submit 3 samples of 20W of LED street light fitting unit along with test reports from a NABL accredited Laboratory at the time of opening of technical bids. The samples shall be embossed with brand name/ISI marking. The samples will also be tested at the field by the electrical department, corporation of Chennai, to check illumination levels. The test results should be satisfactory for the bidder to qualify in the technical bid evaluation. The financial bids of

the bidders who qualify in the technical bid will alone be opened.

Clause 5:

The Bidder should submit proof for having satisfactorily completed similar type of work of not less than 50% of value of the bid under a single agreement for State or Central Government Departments/ Boards/ Government Undertakings / Local Bodies.

24. As per Clause 3(4), the samples submitted by bidder, along with the test reports from a NABL accredited Laboratory, will be tested again at the field and the same will be done by the Electrical Department of Corporation of Chennai. According to the petitioner, when the samples having been already tested by a NABL, there is no necessity to test the said samples again at the field, especially when the Electrical Department of Chennai Corporation was not authorised by NABL. In this regard, it is to be noted that the Electrical Department of Chennai Corporation is a well equipped laboratory and that it is testing the electrical quality control for more than 15 years. Further it is to be pointed out that the provision of test reports along with samples at the time of submission of the bids is a condition for entertaining the bid for the next stage of process. The report of NABL would not in any way preclude the Government from carrying out its own testing for the purpose of coming to a conclusion as to the quality of the particular product for which the bid is sought to be approved. Moreover, it is the prerogative of the Government to test the samples at the field, particularly when the fact remains that such testing of the samples at the field is only to ensure the quality of the lights to be supplied by the bidder. Therefore, the contention of the petitioner that only if the Electrical Department is authorised by NABL, it can test the samples, cannot be accepted.

25. As regards Clause 3(5), namely the bidder should submit proof for having satisfactorily completed similar type of work of not less than 50% of the value of the bid, that too under a single agreement for State or Central Government or Board or Undertakings or Local Bodies, such a condition was stipulated in view of the fact that the successful bidder should be capable of supplying such a huge quantity of LED Lights within the stipulated time and without any interruption and also to ensure that the successful bidder be committed to replace the LED lights, if any LED light has become defective or non-functional, during the warrant period of five years from the date of installation, as otherwise, the inability on the part of the successful bidder to supply the required quantity of LED lights would defeat the very purpose of the Scheme.

26. Furthermore, one of the conditions in the tender notification relates to satisfactory completion of at least 50% of the value of the bid by the bidder in its previous project. Though it is the contention of the petitioner that the percentage of 50 quoted is on the far higher side and it is for the particular purpose of favouring one of the bidder, it is placed on record by the respondent authorities that in one of the tender process floated by the Public Works Department, value to the tune of 80% of the bid of the particular project should have been completed by the bidder for the purpose of qualifying himself for submitting the tender. That being the case, when there has been similar circumstance when such conditions have hitherto fore been put by the Government in some of its previous tender notifications, it cannot be contended that Clause 3(5) is illegal and it is only to favour the bid of the previous successful bidder.

27. At this juncture, it would be apt to refer some of the decisions of the Apex Court in this regard.

28. In *B.S.N. Joshi and Sons Ltd. v. Nair Coal Services Ltd.* [(2006) 11 SCC 548], the Apex Court held that tender conditions may have to be construed differently having regard to fact situation obtaining in each case and no hard and fast rule can be laid down therefor in Government contracts/tender.

29. In *Meerut Development Authority v. Association of Management Studies* [(2009) 6 SCC 171], the Apex Court held that the terms of invitation to tender are not open to judicial scrutiny as they lie in realm of contract. But, a limited judicial review is available if it is established that it is to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

30. In *Michigan Rubber (India) Ltd. v. State of Karnataka* [(2012) 8 SCC 216], the Apex Court held that the Government and their undertakings shall have free hand in setting 'terms of Tender' and only if it is arbitrary, discriminatory, malafide or actuated by bias, then alone shall the Court interfere.

31. In *Centre for Public Interest Litigation v. Union of India* [(2016) 6 SCC 408], it is held by the Apex Court that minimal interference is called for by the Courts, in exercise of judicial review of a government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as courts are not well equipped to fathom into such domain which is left to the discretion of the execution and when it comes to the judicial review of economic policy, the courts are more conservative as such economic policies are generally formulated by experts.

32. A careful look at the decisions referred to above, relied upon by both sides, would make it clear that in the matter of contracts, the Court cannot interfere. However, if there is an element of bias, mala fide, arbitrariness or unreasonableness, the Court can exercise its discretionary power and review the same.

33. In the light of the ratio laid down by the Apex Court in the decisions cited above, in the case on hand, we do not see any arbitrariness in the imposition of conditions in Clauses 3(4) and 3(5) of the General Conditions or any mala fide intention on the part of the respondent authorities to favour a particular person nor we see any element of bias or unreasonableness in the tender notification, except that imposition of such a condition is only to ensure that the scheme is implemented without any difficulty. Further, though this writ petition has been filed as a public interest litigation, since the petitioner has not produced any material to show his bona fide, the same is liable to be dismissed.

34. In view of the above, the writ petition is dismissed. However, there shall be no order as to costs. Consequently, WMP Nos.8476 and 8705 of 2017 are also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kpl

To

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Fort St. George
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2. The Commissioner of Rural Development &
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+ 1 cc to Government Pleader SR.57603

W.P.No.7749 of 2017.

RV(CO)
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