

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.29054 of 2017
and
WMP Nos.31283 and 31284 of 2017

Sree Balaji International
No.51/1, Acharappan Street,
1st Floor, Chennai 600 001.

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary,
Co-operation, Food and Consumer Protection Department,
St.George Fort, Chennai-600 009.

2.Tamil Nadu Civil Supplies Corporation,
Rep. by the Managing Director,
No.12, Thambusamy Road,
Kilpauk, Chennai 600 010.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorari to call for the records of the second respondent culminating in the advertisement inviting e-Tender bearing NIT No.Com1/48146/2017 dated 26.10.2017 for the Purchase of 40,000 MTs of S-30 grade Sugar for Public Distribution System and quash the same.

For Petitioner : Mr.P.S.Raman
Senior Counsel
for M/s.Pushpa Menon

For Respondents : Ms.T.Girija for R1
Government Advocate
Mr.STS.Murthy for R2
Additional Advocate General
Assisted by Mr.L.P.Shanmuga Sundaram

ORDER

The petitioner is aggrieved against the proceedings of the second respondent, which is nothing but an advertisement issue inviting e-Tender bearing NIT No.Com1/48146/2017 dated 26.10.2017 for the Purchase of 40,000 MTs of S-30 grade Sugar for Public Distribution System

2.Heard Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner, Ms.T.Girija, learned Government Advocate appearing for the first respondent and Mr.STS.Murthy, learned Additional Advocate General appearing for the second respondent. सत्यमेव जयते

3.A counter affidavit is filed by the second respondent opposing the present writ petition.

4.The impugned tender notification is put to challenge before this

court mainly on two grounds, which are as follows:

a) The tender issuing authority has not followed the mandatory requirement of publishing the notice inviting tenders in the Indian Trade Journal, as contemplated under Section 9(3) of the Tamil Nadu Transparency in Tenders Act, 1998.

b) A minimum of 30 days should be allowed between the date of publication of notice inviting tenders and the last date for the submission of the tenders and in this case, only 15 days time was provided for submission of the bids. Therefore, Rule 20 of the said Rules is violated.

5. Ventilating the above said grievances, the petitioner has filed the above writ petition. It is their case that if the procedures as mandatorily required had been followed, the petitioner would have also taken part in the tender process. Learned Senior Counsel appearing for the petitioner in support of his contention relied on an order passed by this Court in W.P.No.17261 of 2017, etc., dated 11.08.2017.

6. On the other hand, it is the contention of the respondents that though the publication of the notice inviting tenders has not been published in the Indian Trade Journal, such non publication has not prejudiced the interest of the petitioner, as the petitioner is fully aware of the tender process, since the

publication of the notification was made in the newspapers, which are widely circulated. Insofar as the second contention viz., want of 30 days notice is concerned, it is the contention of the respondents that they have already obtained permission to reduce the time from the superior authority, as required under Rule 20(2) of the Tamilnadu Transparency in Tenders Rules, 2000 and therefore, the petitioner is not justified in contending otherwise.

7. Upon hearing the learned counsels appearing on either side and perusing the materials placed before this Court and also considering certain admitted facts involved in this case, this court is of the view that the present impugned tender notification cannot be sustained for the following reasons:

a) As rightly pointed out by the learned Senior Counsel for the petitioner, Section 9(3) of the Tamilnadu Transparency in Tenders Act, 1998, specifically contemplates and mandates on the Tender Inviting Authority to publish notice inviting tenders in Indian Trade Journal and daily newspapers having wide circulation depending upon the value of the procurement prescribed. The said provision of law reads as follows:

"9. Functions of the Tender Inviting Authority:-

(3) The Tender Inviting Authority shall also publish the notice inviting tenders in Indian Trade Journal and in daily newspapers having wide circulation depending upon the value of

the procurement prescribed."

8. There is no dispute to the fact that the value of the procurement prescribed in this case requires such publication of notice not only in the daily newspaper and also in the Indian Trade Journal. Therefore, the respondents cannot escape by saying that publication in the daily newspapers is sufficient more particularly, when the petitioner is aware of the tender process by noticing such publication in the newspapers. Needless to say that compliance of the mandatory requirements under law, by the statutory authorities, has to be ascertained and get satisfied based on the action of the authorities and not to be valued based on the act of the other party. In other words, knowledge to the other party through daily newspapers publication cannot be construed as sufficient compliance of the mandatory requirement of Section 9(3) of the said Act, in the absence of publication of notice in the Indian Trade Journal. In this case, admittedly, no such publication was made in the Indian Trade Journal. The very same issue was considered by the learned Judge of this Court in W.P.Nos.17261, etc., of 2017, wherein after elaborately discussing the facts and circumstances and the relevant provision of law, the learned Judge has observed at paragraph Nos.14 and 15 as follows:

"14. The Division Bench of the Karnataka High Court in the on-reported judgment made in Writ Appeal No.4066 of 2011 and

4739 of 2011(cited supra) also held that non-publication of the notification inviting tender in the Indian Trade Journal, as required under Rule 10 of the Karnataka Transparency Public Procurement Act, 1999, is fatal and vitiates the entire tender processing. The ratio laid down in the said judgment squarely applies to the present case.

15.Since the tender notification has not been published as per the provisions of the Act, on this ground alone, the notification is liable to be quashed."

Therefore, I am of the firm view that the tender notification impugned in this writ petition without complying with such mandatory requirement of publishing the tender notice in the Indian Trade Journal, cannot be sustained.

9.In so far as the next contention viz., want of 30 days time is concerned, it is contended by the learned Additional Advocate General that sufficient permission as required under Rule 20(2) from the Superior Officer has been obtained for reduction of time in view of the urgency in this matter for supply of sugar to the public. Therefore, he submitted that the petitioner is not justified in contending otherwise.

10.No doubt, Rule 20(2) of the Tamilnadu Transparency in Tenders Rules 2000, empowers the reduction of time and however, such power has to be exercised only by the Authority, who is superior to the tender inviting

authority, by specifically stating and recording the reasons for reducing such time limit. It is true that in this case, the respondents seemed to have obtained such permission. However, as this court is satisfied to set aside the impugned tender notification on the first ground viz., want of publication in the Indian Trade Journal, the respondents have to go ahead with fresh publication only by following all the procedures. Therefore, they are not entitled to harp upon the permission already obtained from the superior authority in respect of the tender, which is being set aside herein for not complying with the mandatory requirement under Section 9(3) of the said Act. Accordingly, this writ petition is allowed and the impugned tender notification is set aside with liberty to the respondents to proceed afresh by strictly following the mandatory requirement of law. No costs. The connected miscellaneous petitions are closed.

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16.11.2017

Speaking/Non Speaking

Index:Yes/No

Note:Issue order copy on 17.11.2017

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