

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03/04/2018
Delivered on	05/04/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
W.P.Nos.7711 to 7713 of 2018 &
W.M.P.Nos.9615 to 9617 of 2018

M/s.Subaya Constructions Co. Ltd.,
Rep. by its Director Mrs.S.Meenakshi,
No.21, Soundarapandian Salai,
Ashok Nagar, Chennai - 600 083.

.. Petitioner in
all Writ Petitions

Vs.

1.The Commissioner,
Vellore City Municipal Corporation,
Infantry Road,
Vellore - 632 001.

.. 1st Respondent in
W.P.No.7711 of 2018

1.The Superintending Engineer (Contracts & Monitoring),
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road, Chindadripet,
Chennai - 600 002.

.. 1st Respondent in
W.P.No.7712 of 2018

1.The Commissioner,
Tiruchirappalli City Corporation,
No.58, Bharathisan Salai,
Cantonment,
Tiruchirappalli - 620 001.

.. 1st Respondent in
W.P.No.7713 of 2013

2.The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazar Street, Coimbatore - 641 001.

.. 2nd Respondent in
all Writ Petitions

PRAYER in all Writ Petitions: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the first respondent to accept the Work Completion Certificate dated 17.09.2016 of the second respondent, submitted by the petitioner for processing the tender proceeding in NCB No.81/2017-18 for providing Sewerage Collection System for UGSS in Vellore Corporation under Packages I and II, tender proceeding No. CNT/SEW/NCB/AMRUT-ADB/001/2017-2018 for providing Comprehensive Sewerage Scheme to Manali, Chinnasekkadu, Karambakkam and Manapakkam in Chennai City;

tender proceeding in No.NCB No.223/2017-18 for providing Sewerage Collection System in the extended areas of Corporation for UGSS in Trichy Corporation under Package I respectively.

For Petitioner in
all Writ Petitions: Mr.ARL.Sundaresan, Senior counsel
For Mr.B.Natarajan

For Respondents in
all Writ Petitions :Mr.S.Silambanan, Senior Counsel
For Ms.P.Shanthi,
Standing Counsel for R1
in W.P.No.7711 of 2018

Mr.N.Ramesh, Standing Counsel for R1
in W.P.No.7712 of 2018

No appearance for first respondent
in W.P.No.7713 of 2018

Mr.R.Sivakumar, Standing Counsel for R2
in all Writ Petitions

C O M M O N O R D E R

Heard both sides and perused the records.

2. The petitioner has come forward with these Writ Petitions for issuance of Writ of Mandamus directing the first respondent to accept the Work Completion Certificate dated 17.09.2016 submitted by the petitioner for processing the tender proceeding in NCB No.81/2017-18, for providing Sewerage Collection System for UGSS in Vellore Corporation under Packages I and II, tender proceeding No. CNT/SEW/NCB/AMRUT-ADB/001/2017-2018 for providing Comprehensive Sewerage Scheme to Manali, Chinnasekkadu, Karambakkam and Manapakkam in Chennai City; tender proceeding in No.NCB No.223/2017-18 for providing Sewerage Collection System in the extended areas of Corporation for UGSS in Trichy Corporation under Package I respectively.

3. Mr.ARL.Sundaresan, learned Senior Counsel for the petitioner urged that the petitioner is a Public Limited Company incorporated under the Companies Act, 1956. The petitioner is a reputed civil contractor having implemented major projects worth of Rs.1,500 Crores for Under Ground Sewage Scheme and Sewage Treatment Plant in various Municipal Corporations and Municipalities. In the year 2009, the petitioner participated in the tender called for by the second respondent for UGSC to Coimbatore City Municipal Corporation and after successfully executing the tender project, Work Completion Certificate was issued on 17.09.2016. It is further submitted that in the tender

floated by the first respondent (in all the respective Writ Petitions), the petitioner had participated and also produced the Work Completion Certificate issued by the second respondent.

4. According to the learned Senior Counsel, the certificate produced by the petitioner has to be accepted by the first respondent as per the tender conditions and there was no necessity to seek genuineness of the certificate from the second respondent. It is further contended that if at all the second respondent can give a reply stating that whether the certificate was genuine or forged and the second respondent has no right or authority to give comments on the work executed by the petitioner in Coimbatore. It is the case of the petitioner that the decision of the first respondent to get opinion of the genuineness of the Work Completion Certificate is an arbitrary exercise of power to eliminate the petitioner from the tender process and it is also beyond the terms and conditions of the tender documents.

5. The learned Senior Counsel further submitted that it is not the case of the second respondent that the Work Completion Certificate dated 17.09.2016 is fake or forged and therefore, a positive direction should be issued to the first respondent to accept the Work Completion Certificate for processing the tender documents submitted by the petitioner.

6. Mr.S.Silambanan, learned Senior Counsel for the first respondent in W.P.No.7711 of 2018 submitted that these Writ Petitions are premature in nature and it is the prerogative of the employer to follow procedure to ascertain the details of the tenderer to ensure proper implementation of the Scheme in the interest of public and this procedure is followed to all the participants and hence, it is not an arbitrary exercise of power and this Court while exercising power under Article 226 of the Constitution of India, cannot issue direction to the first respondent to accept the work Completion Certificate at this juncture. It is further contended that the petitioner, who was well aware of the fact that the first respondent had already sought opinion about execution of the work by the petitioner and filed Writ Petitions seeking direction to the second respondent to give information about the genuineness of the certificate in the earlier Writ Petitions in W.P.Nos.6902, 6183 and 6184 of 2018, cannot turn round and say that certificate has to be accepted without any proper verification.

7. Mr.N.Ramesh, learned Standing Counsel for the first respondent in W.P.No.7712 of 2018 submitted that the one of the qualifications of the bidder is to meet the construction experience showing that he has successfully and substantially completed a project within a period of five years. The petitioner having accepted the conditions and participating in

the tender process cannot seek issuance of mandamus to accept the certificates whatever produced by him and it is a prerogative of the tender floating authority to seek necessary certificates for proper implementation of the project in compliance of the tender conditions. The learned Standing Counsel further submitted that the technical bid was already opened on 27.02.2018 and now it is under evaluation.

8. Mr.R.Sivakumar, learned Standing Counsel for the second respondent submitted that the second respondent has already sent letters to the first respondent with regard to the execution of works in Coimbatore by the petitioner and it is now upto the first respondent to process the application and the second respondent has no say in that matter.

9. The Hon'ble Supreme Court in the case of Tata Cellular v. Union of India [(1994) 6 SCC 651] has held as follows:-

"94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

10. In Lanco Infratec Limited Vs. The Chief General Manager (Contracts), Neyveli Lignite Corporation Limited [2013 (6) CTC 667], this Court has held as follows:-

"32. There is no dispute that Judicial Review is essentially against the decision making process and not against the merits of the decision. This is more in the realm of contract. The State should have the freedom to prescribe terms and conditions of contract. In case a Tender Notification is issued, it is open to all concerned to apply if they are interested to take part and eligible to participate in the process. If the Tender conditions are tailor-made to suit the chosen few, and the process is arbitrary and action is violative of the equality clause enshrined under Article 14 of the Constitution of India, the Court would be justified in exercising the jurisdiction under Article 226 of the Constitution of India to correct the decision and to ensure a level playing field to all the competitors. However the question here is whether the Court would be justified in interfering with the Tender process in each and every stage. In case of Courts interference in every now and then at the instance of those who are in the race and convinced that they would not be in a position to secure the contract, it would paralyse the very system. The Government agencies would not be in a position to proceed independently in the event of such routine exercise of Judicial Review. There should be materials before the Court that the concerned bidder was fully qualified and in spite of eligibility, his Tender was not considered on extraneous reasons. The party must demonstrate that there is a conscious attempt to part with the privilege in favour of those, who are not eligible for such benefits and not withstanding the eligibility of others, who are in a better position to make a claim. The Court is expected to strike a balance in such cases. The larger public interest must guide the Court in a case of this nature involving substantial public money."

11. The Hon'ble Supreme Court in Jagdish Mandal v. State of Orissa [2007 (14) SCC 517] has observed as follows:-

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse

(allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

12. In the instant case, the petitioner is one of the participants in the tender floated by the first respondent and as per the tender conditions, a Work Completion Certificate has been produced along with the tender documents. According to the first respondent, the execution of the work is complex in nature and also involves huge financial implications, so to ensure proper execution of the work and in the public interest, the decision was taken to get opinion of the genuineness of the completion certificate of all the tenderers. As held by the Hon'ble Apex Court in 2007 (14) SCC 517, if the decision relating to award of contract is bona fide and is in public interest, the Courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The petitioner except making vague allegations, has not produced any materials to show that the action of the first respondent is arbitrary and it has been adopted to eliminate the petitioner from the tender process. Therefore, I do not find any force in the contention of the learned Senior Counsel for the petitioner.

13. It is also relevant to note that in response to the letter of the first respondent, an opinion about the performance of the petitioner has been sent by the second respondent. Whether the opinion of the second respondent that the execution of the work is unsatisfactory, was in fact warranted, or necessary or could be accepted, in my view, need not be tested or decided, in these Writ Petitions. It is needless to state that if the petitioner is aggrieved by the opinion, it has liberty to challenge the same.

14. Keeping in view the principles laid down in the above decisions and also considering the facts of this case, I am of the considered opinion that this is not a fit case for issuing a Writ of Mandamus to accept the Work Completion Certificate and process the tender document of the petitioner. In that view, these Writ Petitions are dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

r n s
To

1. The Commissioner,
Vellore City Municipal Corporation,
Infantry Road,
Vellore - 632 001.
 2. The Superintending Engineer (Contracts & Monitoring),
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road, Chindadripet,
Chennai - 600 002.
 3. The Commissioner,
Tiruchirappalli City Corporation,
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Cantonement,
Tiruchirappalli - 620 001.
 4. The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazar Street, Coimbatore - 641 001.
- +3 Ccs to Mr.B. Natarajan, Advocate sr 25317, 25318, 25316.
+2 Ccs to Mr.R. Sivakumar, Advocate sr 25349, 25350.

W.P.Nos.7711 to 7713 of 2018 &
W.M.P.Nos.9615 to 9617 of 2018

SP(06/04/2018)

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