

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16/07/2018
Delivered on	20/07/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.16107 & W.M.P.No.19143 of 2018 and
W.P.No.16594 of 2018 & W.M.P.Nos.19763 & 19764 of 2018

M/s.Jayaraj Contractor,
A Registered Firm with its
Proprietor V.Jayaraj,
71 G3, GKM Layout,
Sivananthapuram, Saravanampatti (PO),
Coimbatore - 641 035.

... Petitioner in both W.Ps'

Vs.

- 1.The Commissioner of Municipal Administration,
Ezhilagam Annex, 6th Floor,
Kamarajar Salai, Chepauk,
Chennai - 600 005.
- 2.The Regional Director of Municipal Administration,
Kumaraj Shopping Complex,
Near Tirupur Railway Station,
Kumaran Road, Tirupur- 641 601.
- 3.The Commissioner,
Punjai Puliyampatti Municipality,
Jawahar Main Road,
Punjai Puliyampatti.
- 4.VBN Builders,
No.352/2, Thanneer Pandhal Colony,
Tirupur - 638 652.

.. Respondents in both W.Ps'

PRAYER in W.P.No.16107 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the third respondent herein to reject the tender offer of the respondent and consequently award the tender to the highest bidder in the Financial Offer in ROC.No.25/A1/2017, dated 06.04.2018.

PRAYER in W.P.No.16594 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent relating to Na.Ka.No.A1/25/2018, dated 27.06.2018 and quash the same and consequently award the tender to the lowest qualified bidder in the Financial Offer in ROC.No.25/A1/2017, dated 06.04.2018.

For Petitioner in
both W.Ps' : Mrs.Hema Sampath, Senior Counsel
For Mr.M.Roshan Atiq

For Respondents in
both W.Ps' : Mr.S.R.Rajagopal
Additional Advocate General
Assisted by Mr.B.Anand for R1 & R2

Mr.A.S.Thambusamy
Standing Counsel for R3

Mr.R.Arumugam for R4

C O M M O N O R D E R

Heard Mrs.Hema Sampath, learned Senior Counsel, representing Mr.M.Roshan Atiq, learned counsel for the petitioner; Mr.S.R.Rajagopal, learned Additional Advocate General, Assisted by Mr.B.Anand, learned counsel for the respondents 1 and 2; Mr.A.S.Thambusamy, learned Standing Counsel for the third respondent; Mr.R.Arumugam, learned counsel for the fourth respondent and perused the materials available on record.

2. The solid waste management contractor of the third respondent, whose license expired on 30.06.2018 filed W.P.No.16107 of 2018 for issuance of Writ of Mandamus, directing the third respondent to reject the tender offer of the fourth respondent and W.P.No.16594 of 2018, to quash the work order issued in favour of the third respondent dated 27.06.2018.

3. The brief facts of the case are that the third respondent issued a notification dated 06.04.2018 calling for tenders for engaging 41 workers in Municipal Solid Waste Management Services comprising of door to door collection of municipal solid waste, road/street sweeping, drainage cleaning and storage of waste at designated collection points on contract basis for a period of one year in Ward Nos.1 to 6 in Punjaipuliampatti Municipality.

4. Pursuant to the notification, the petitioner, the fourth

respondent and one M/s.S.S.Engineers submitted tender documents. As per the schedule, the technical bid was opened on 18.05.2018 and the three bidders were found to be qualified and thereafter on 21.06.2018 price bid was opened in the presence of the three tenderers. The third respondent awarded contract in favour of the fourth respondent, who was found to be the lowest bidder.

5. The petitioner challenges the impugned order on the grounds that the fourth respondent was not technically qualified for the reasons that he did not enclose a Demand Draft for Rs.10,000/- towards processing fee, the fourth respondent did not have required experience and he was selected in an arbitrary manner.

6. The third respondent filed a counter stating that the fourth respondent has paid a Demand Draft for Rs.74,000/- instead of Rs.10,000/- towards as processing fee and he has also enclosed another Demand Draft for Rs.75,000/- for EMD. It is further stated that as per G.O.No.62, dated 11.10.2017 issued by the Labour and Employment Department, unskilled labourers ought to be employed for similar works and the fourth respondent has experience of doing road work by engaging unskilled persons. The fourth respondent has done work for the third respondent-Municipality as well as Sathyamangalam Municipality and Highways Department. Hence, he satisfies the condition of one year experience as contemplated in the Tender Notification. It is further stated that neither the petitioner object when the fourth respondent was found qualified in the technical bid, nor during consideration of financial bid and hence, the Writ Petitions are devoid of merits.

7. Mrs.Hema Sampath, learned Senior Counsel, representing Mr.M.Roshan Atiq, learned counsel for the petitioner submitted that though the petitioner objected the fourth respondent on the ground that he did not pay Rs.10,000/- towards processing fee, since the respondents have enclosed two demand drafts for Rs.74,000/- issued by the Tamil Nadu Mercantile Bank, Sathyamangalam Branch and the State Bank of India, Punjai Puliyampatti Branch, the petitioner is not pressing that ground.

8. It is next contended by the learned Senior Counsel that as per the tender notification, the tenderer should have minimum one year experience, but, the fourth respondent admittedly did not have any qualification in Solid Waste Management and on the other hand, the certificates have been annexed in the typed set of papers would establish that the petitioner has vast experience and hence selection of the fourth respondent is an arbitrary exercise of power and any decision taken contrary to Article 14 of the Constitution are liable to be struck down.

9. It is further argued that the petitioner and the fourth

respondent have quoted Rs.408.52 and 408.49 per employee and difference is very minimum and moreover, the minimum wages for an employee is Rs.385/- and as per the tender condition, difference can be 10% but the price quoted by the fourth respondent is 0.01% less than the minimum wage and as per the decision of the Delhi High Court reported in (2013) 205 DLT 288 (DB) [Mi2C Security & Facilities Private Limited vs. Government of NCT & Ors], the tender issued in favour of the fourth respondent is to be quashed.

10. Per contra Mr.S.R.Rajagopl, learned Additional Advocate General, assisted by Mr.B.Anand, learned counsel for the respondents 1 and 2 submitted that the fourth respondent has enclosed two demand drafts over and above Rs.10,000/- towards processing fee; that the fourth respondent has an experience in employing unskilled labourers and on the basis of certificates issued by the Divisional Engineer, Highways, NABARD, Rural Road, Erode, dated 12.08.2013 and the Certificate issued by the Commissioner, Sathyamangalam Municipality, dated 11.01.2018, he was awarded that contract and the amount quoted by the fourth respondent is 10.001%, which is negligible.

11. It is further submitted that in the case on hand, notification came to be issued on 06.04.2018 for submitting the tender under two cover system and the technical bid was opened on 18.05.2018 in the presence of bidders, but the petitioner did not raise any objection about the selection of fourth respondent in the technical bid. After a month therefrom, on 18.05.2018, notice was issued for opening financial bid on 21.06.2018, in between for more than 45 days, the petitioner kept quiet without raising any objection towards the qualification of the fourth respondent and even during consideration of financial bid, the petitioner did not raise any objection and only after he was declared as successful bidder, this Writ Petition has been filed.

12. It is further submitted that in all tender matters, the unsuccessful tenderers are challenging the selection of successful bidders on one ground or other and hence, the Court shall be slow in interfering in these matters. It is also submitted that the writ petitioner also did not have experience in Solid Waste Management when he was awarded contract and therefore, now he cannot contend that the fourth respondent have no experience in Solid Waste Management.

13. At this juncture, it would be useful to refer the following decisions:-

(13.1) In (2016) 16 SCC 818 [AFCONS Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and another], the Hon'ble Supreme Court has held as follows:-

"11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] it was held by this Court, relying on a host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.

12. In Dwarkadas Marfatia and Sons v. Port of Bombay [Dwarkadas Marfatia and Sons v. Port of Bombay, (1989) 3 SCC 293] it was held that the constitutional courts are concerned with the decision-making process. Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] went a step further and held that a decision if challenged (the decision having been arrived at through a valid process), the constitutional courts can interfere if the decision is perverse. However, the constitutional courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was confirmed in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] as mentioned in Central Coalfields [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99].

13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision."

(13.2) In (2018) 5 SCC 462 [Municipal Corporation, Ujjain and another vs. BVG India Limited and others] the Hon'ble

Supreme Court has held as follows:-

"64. Thus, the questions to be decided in this appeal are answered as follows:

64.1. Under the scope of judicial review, the High Court could not ordinarily interfere with the judgment of the expert consultant on the issues of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non-performance of the bidder;

64.2. A bidder who submits a bid expressly declaring that it is submitting the same independently and without any partners, consortium or joint venture, cannot rely upon the technical qualifications of any third party for its qualification.

64.3. It is not open to the court to independently evaluate the technical bids and financial bids of the parties as an appellate authority for coming to its conclusion inasmuch as unless the thresholds of mala fides, intention to favour someone or bias, arbitrariness, irrationality or perversity are met, where a decision is taken purely on public interest, the court ordinarily should exercise judicial restraint."

14. In the judgment cited by the learned Senior Counsel for the petitioner in (2013) 205 DLT 288, the Delhi High Court had an occasion to consider the prices quoted by the tenderers and having found that the prices are low and the successful bidder did not quote the price as per the tender schedule, which is less than the minimum wages, set aside the contract awarded in favour of the second respondent, but in the case hand, the amount is less than 0.001%, which is negligible and hence, with great respect, I am not able to follow the decision of the Delhi High Court.

15. In the matter on hand, indisputably the tender notification has been issued to engage unskilled labourers for collection of garbage, for sweeping street and cleaning drainage. Experience Certificates annexed in the booklet of the third respondent from page Nos.10 to 21 establish that the fourth respondent is the renowned contractor and he had experience in executing works by engaging skilled and unskilled labourers. The third respondent having satisfied with the experience of the fourth respondent issued the impugned order. The perusal of the records reveal that the third respondent has followed the process and no infirmity has been pointed out that the selection of the fourth respondent was perverse and he acted in an arbitrary manner. Further, no materials have been produced by the petitioner to take a different view.

16. It is pertinent to note that at the threshold no objection was raised by the petitioner about the disqualification of the fourth respondent and these Writ

Petitions have been filed after issuance of the work order.

17. In the light of the principles laid down in the decisions, referred supra, and the facts of this case, I find no merit in these Writ Petitions. Writ Petitions fails and they are dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

r n s

To

- 1.The Commissioner of Municipal Administration,
Ezhilagam Annex, 6th Floor,
Kamarajar Salai, Chepauk,
Chennai - 600 005.
- 2.The Regional Director of Municipal Administration,
Kumaraj Shopping Complex,
Near Tirupur Railway Station,
Kumaran Road, Tirupur- 641 601.
- 3.The Commissioner,
Punjai Puliyampatti Municipality,
Jawahar Main Road,
Punjai Puliyampatti.

+1cc to Mr.M.Roshan Atiq, Advocate, S.R.No.49230

+2cc to Mr.R.Arumugam, Advocate, S.R.No.48282 & 48283

+2cc to Mr.A.S.Thambusamy, Advocate, S.R.No.48284 & 48285

+1cc to the Government Pleader, S.R.No.49348 & 49347

W.P.No.16107 &
W.M.P.No.19143 of 2018
and

W.P.No.16594 of 2018 &
W.M.P.Nos.19763 & 19764 of 2018

KNK (CO)
GSP (06/08/2018)