

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.19352 of 2018

and

W.M.P.Nos.22749 to 22750 of 2018

A.Mohammed Rabik

...

Petitioner

vs.

1. The Government of Tamil Nadu,
rep.by its Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai-600 009.

2. The Managing Director,
Tamil Nadu Medical Services
Corporation Limited
(A Government of Tamil Nadu
undertaking),
No.417, Pantheon Road,
Egmore, Chennai-600 008

3. The General Manager(Drugs),
Tender Inviting Authority,
Tamil Nadu Medical Services Corporatin
Limited, No.147, Pantheon Road,
Egmo0re, Chennai-600 008

...

Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Declaration declaring the Tender floated by the Second and Third Respondent vide Ref.No.004/M(P)/ABC-KIT/TNMSC/2018, dated 29.06.2018, for the supply of Amma Baby care Kits as null and void and unconstitutional.

For Petitioner : Mr.R.Sreedhar

For Respondents : Mr.M.Vijay Narayanan,
Advocate General

Assisted by Mr.T.N.Rajagopal,G.P.

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

The Petitioner has preferred the instant Writ Petition praying for passing of an Order by this Court to declare the Tender floated by the Second and Third Respondents, vide Reference No.004/M(P)/ABC-KIT/TNMSC/2018, dated 29.06.2018, for the supply of 'Amma Baby care Kits', as null and void and unconstitutional.

2.Heard both sides.

3.According to the Petitioner, he is an Income Tax Assessee, possessing PAN No.BRGPM8890L and paying tax. His annual Income is approximately Rs.3 lakhs per annum and he is possessing Adhaar Card bearing Number 6530 6568 3024. The stand of the Petitioner is that the Second Respondent/Tamil Nadu Medical Services Corporation Ltd., (TNMSC) was set up with the primary objective of ensuring ready availability of all essential drugs and medicines in the Government Medical Institutions throughout the State, by adopting a streamlined procedure for their procurement, storage and distribution. The aim of the Second Respondent Corporation is to make the drugs and materials available to the poorest of the poor and 'Service to the Public'.

4.The Learned Counsel for the Petitioner points out that the Second Respondent had floated a Tender vide Ref.No.004/M(P)/ABC-KIT/TNMSC/2018, dated 29.06.2018 for the supply of 'Amma Baby Care Kits' to it and the validity of the Tender is fixed at 2 years from the date of the Tender. As a matter of fact, the Last Date of the Tender is fixed on 31.07.2018 at 10.30 a.m.

5.At this stage, the Learned Counsel for the Petitioner proceeds to state that the Date of Commencement of Sale of Bid Document was on 29.06.2018; the Pre-bid Meeting was fixed on 09.07.2018 at 11.30 a.m., the Last Date for Sale of Bidding Document is on 30.07.2018 and the Last Date and time for Receipt of Bids is 31.07.2018 upto 10.30 a.m. and that the time of Opening of Bids is on 31.07.2018 at 11.00 a.m. The Place of Opening of Bids is at the Office of the Managing Director of the Tamil Nadu Medical Services Corporation Ltd., No.417, Pantheon Road, Egmore, Chennai-600 008.

6.The Learned Counsel for the Petitioner submits that the Tender was floated by specifying various conditions and particularly Condition No.10(e) vi(9) would reveal that the bidders should produce three years market standing Certificate

for the Kit products and should have supplied a minimum of 3,30,000 kits (same/similar type) in any three consecutive years (i.e. 2014-14, 2015-16, 2016-17 and 2017-18) to any Government/Government Organizations. Further, the Petitioner, on seeing the eligibility criteria clause (c) that the Tender is intended to procure 1,00,000 Nos. of Kits at a time, is of the view that it is very unfair on the part of the Respondents to fix the criteria of production of market standing Certificate for three years for minimum five products and should have supplied a minimum of 3,30,000 kits (same/similar type) in any three consecutive years, as aforesaid, to any Government/Government organisations, which is in violation of Article 19(1)(g) of the Constitution of India and also in violation of Directive principles of State Policy, enshrined in the Constitution of India.

7.The Learned Counsel for the Petitioner contends that the Respondents had determined the Condition only to desist the participants, who had supplied below 3,30,000 Kits to the Government/Government Organisations, and only to satisfy few individuals. As such, it is clear that the Tender is only meant for procuring one Lakh Kits and there is no point to fix the dead point as 3,30,000 kits which would show their idea behind this to support particular group of bidders.

8.Yet another plea taken on behalf of the Petitioner is that the Third Respondent had not made any arrangement to Prospective bidders to verify the prototype Baby Health Care Kit which would lead to unnecessary confusions among the bidders and they would not be in a position to participate effectively.

9.On behalf of the Respondents, an objection is raised as to the maintainability of the present Writ Petition, as a 'Public Interest Litigation', considering the fact when none of the participants in the Tender, have come out with any grievance as regards the Tender Terms and Conditions. It is further represented that the Petitioner is not a person, who is taking part in the Tender process.

10.The Learned Advocate General for the Respondents, cites the decision of the Hon'ble Supreme Court between Villianur Iyarkkai Padukappu Maiyam vs. Union of India [(2009) 7 SCC 561), wherein, it is observed and held as under:

"113. As far as second preliminary objection regarding locus standi of the appellant to challenge the Award of the Contract for the development of the Pondicherry Port to the respondent No. 11 is concerned, this Court finds that the contract assailed in the writ

petitions is purely commercial in nature. Neither the parties, which had participated in the process of selection of the consultant/Developer nor one of those, who had expressed desire to develop the Pondicherry Port but was not selected, has come forward to challenge the selection procedure adopted by the Government of Pondicherry or the selection of the respondent No. 11 as Developer of the Pondicherry Port.

11. The question of locus standi in the matter of awarding the contract has been considered by the Hon'ble Supreme Court in [BALCO Employees' Union \(Regd.\) vs. Union of India](#) [(2002) 2 SCC 333]. The Hon'ble Supreme Court, after review of law on the point, has made the following observations in paragraph 88 of the judgment:

"88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of [Article 21](#) or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of [Article 21](#) and the persons adversely affected are unable to approach the court."

From the passage quoted above it is clear that the only ground on which a person can maintain a PIL is where there has been an element of violation of [Article 21](#) or human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who

are unable to come to the court due to some disadvantage."

12. Further, this Court's attention is invited to the decision of the Hon'ble Supreme Court between Michigan Rubber (India) Limited vs. State of Karnataka and Others [(2012) 8 SCC 216)], wherein, at Special Page Nos. 217 to 218, it is held as under:

"Dismissing the Appeal, the Supreme Court held:

(a) The basic requirement of [Article 14](#) is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

20) 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"; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226.

The Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical.

The Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts would interfere. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, the CMG consisting of experienced persons, revised the tender

conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

13. Apart from these, on behalf of the Respondents, the Division Bench Order of this Court dated 27.08.2014, between S.Gnanaeswaran vs. Deputy General Manager (Commercial) Airports Authority of India, Chennai Airport, Chennai-27 (W.P.No.22465 of 2013) is cited, wherein, it is held that ' . . . the petitioner, through this public interest litigation, cannot seek to assail the terms, on which the respondent-authority should award its tender or what conditions should be prescribed, when he is not a participating party in the tender'.

14. On a careful consideration of respective conditions, this Court holds that a person, who is not a participant in the concerned Tender Process and when he is a 'Third Party', he cannot file a 'Public Interest Litigation' assailing the terms and conditions of the subject Tender. To put it succinctly, in Law, the ambit of interference by a Court of Law, relating to Contractual matters, is very much restricted. At the risk of repetition, suffice it for this Court to make a pertinent mention that the Petitioner, in the present Public Interest Litigation, cannot challenge the terms of the subject Tender and that too, when he is not a party taking part in the 'Tender Process'. Viewed in that perspective, the present Writ Petition filed by the Petitioner, under the Caption 'Public Interest Litigation' sans merits.

In fine, the present Writ Petition is dismissed 'in Limine', as not maintainable in Law. There shall be no order as to costs. Connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Secretary,
The Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.

2. The Managing Director,
Tamil Nadu Medical Services
Corporation Limited
(A Government of Tamil Nadu
undertaking),
No.417, Pantheon Road,
Egmore, Chennai-600 008

3. The General Manager (Drugs),
Tender Inviting Authority,
Tamil Nadu Medical Services Corporation
Limited, No.147, Pantheon Road,
Egmore, Chennai-600 008

+1cc to Mr.R.Sreedhar, Advocate, S.R.No.50989
+1cc to the Government Pleader, S.R.No.51069

W.P.No.19352 of 2018

SR(CO)
CS/31/07/18



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