

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.28047 of 2018 and
W.M.P. Nos.32651 and 32653 of 2018

G.Sugumaran .. Petitioner

Vs.

1.The Chief Secretary to Government,
Union Territory of Pondicherry
Chief Secretariat
Puducherry - 605 001

2.The Secretary to Government
Department of Social Welfare
Chief Secretariat
Puducherry - 605 001

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Mandamus, calling for the record of the second respondent in No.4-17/ ADW/DWCD/DSW/2018-19 dated 24.09.2018 and quash the same and consequently, direct the respondent to follow the guidelines issued by the Central Vigilance Commission, Government of India in No.12-02-1-CTE-6 dated 17.12.2002 and the General Financial Rules, 2017 in inviting tenders.

For Petitioner : Mr.S.R.Rajagopal
Assisted by Mr.K.Kumaresh Babu,
Counsel on record

For Respondents : Ms.N.Mala, AGP (P) for R1 and R2

ORDER

(Order of the Court was made by SUBRAMONIUM PRASAD, J.)

The instant public interest litigation has been filed for a mandamus, calling for the records of the second respondent, namely Secretary to Government, Department of Social Welfare in No.4-17/ ADW/DWCD/DSW/2018-19 dated 24.09.2018, quash the same

and consequently, direct the respondent to follow the guidelines issued by the Central Vigilance Commission, Government of India in No.12-02-1-CTE-6 dated 17.12.2002 and the General Financial Rules, 2017 in inviting tenders.

2. Petitioner a freelance writer and journalist, is also the Secretary of Federation for People's Rights, Puducherry, an organization committed to protect the Human Rights and Civil Rights functioning since 1989. The Federation is an organisational member of PUCL, an All India Civil Rights Movement for several years. He states that he has participated in many Fact Finding Committees regarding the issues related to atrocities on dalits, women, children, minorities, custodial violence, fake encounter deaths in Tamil Nadu and All India level.

3. He has filed this petition stating that the 2nd respondent had published tender notification dated 30.08.2018, for supply of saree, lungi and shirt bits for free distribution to the beneficiaries of Scheduled Caste people, Red cardholders of Backward communities and differently abled persons of the Union of Puducherry for the year 2018-19.

4. The notice stipulated that the bidder must be a manufacturer and should have a composite mill. He also states that the notification stipulated the technical specification of clothing material to be distributed. The beneficiaries are people belonging to Scheduled Caste, Red cardholders belonging to Backward communities and differently abled persons in the Union Territory of Puducherry. The preliminary notice reads as under:

"e-Tenders are invited on behalf of the President of India by the Director, Adi-Dravidar Welfare Department, Puducherry for the purchase of SAREE, LUNGI & SHIRT BITS to the beneficiaries covered under the Scheme for Free Distribution of Clothing items being implemented by the Adi-Dravidar Welfare Department, Department of Women & Child Development and Department of Social Welfare in the Union Territory of Puducherry for the year 2018-19 on the eve of Diwali Festival through e-procurement portal of Government of Puducherry (<https://pudutenders.gov.in/>) and prospective manufacturers willing to participate in this tender shall necessarily register themselves with above mentioned e-procurement portal.

5. Clause 2 of the Eligibility Criteria states that the bidder must be a manufacturer and should have Composite Mill. It was also stipulated that valid copy of Composite Mill

certificate issued by Competent Authority must be enclosed along with the Technical Bid.

6. The date of publication of notice was 31.08.2018, which was also the date of submission of the bid. The date of opening of the bid was 20.09.2018. The petitioner would submit that on 24.09.2018 just four days after the last date of the date of opening of financial bid, the Government of Puducherry, issued another Tender Notification for the purpose of distribution of saree, lungi and shirt bits to "Scheduled Castes", Red cardholders of Backward communities and differently abled persons of the Union Territory of Puducherry. He would say that the eligibility criteria for bidders and the description of material i.e. quality of the material to be used for the project was changed. The petitioner would state that the change in the eligibility for the bidders was only for the purpose to benefit certain individuals. He would state that the same is in violation of the guidelines issued by the General Financial Rules, 2017.

7. A perusal of the document would show that there is no specific allegations of as to whom the Government wanted to benefit by amending the Tender condition. The petitioner has also not stated as to which guidelines of the General Financial Rules, 2017 has been violated. The tenders have been invited for the purpose of distribution of clothing materials to persons belonging to Scheduled Caste, Red cardholders of Backward communities and differently abled persons of the Union Territory of Puducherry. What should be the quality of clothing is for the Government to decide and the petitioner cannot question the same. The fact that the Government has changed the eligibility criteria of the bidders, is well within its right to change the eligibility criteria of the bidders.

8. It is settled law that the terms of the Tender prescribing eligibility criteria is open to interference by courts only when it is completely arbitrary, discriminatory, malafide or biased. Reference can be made to the decision of the Hon'ble Supreme Court in Directorate of Education & others vs. Educomp Datamatics Ltd. & Others reported in (2004) 4 SCC 19, which holds that unless and until, it is established that the decision making process is so arbitrary, irrational that no responsible authority has acted reasonably or lawfully, could have taken justification, power of judicial review cannot be exercised. Reference can be made to the decision of the Hon'ble Apex Court in Siemens Public Communication Networks Private Limited and Another vs. Union of India and others reported in (2008) 16 SCC 215.

9. The Hon'ble Supreme Court in Michigan Rubber (India) Limited vs. State of Kanataka and others reported in (2012) 8

SCC 216, at paragraph Nos.22 to 24, has succinctly held the extent of judicial review in the matters of interference by court for fixing the eligibility criteria for tender. Paragraph Nos.22 to 24 of the said judgment reads thus:

"22. The same principles have been reiterated in a recent decision of this Court in Tejas Constructions & Infrastructure Pvt. Ltd. vs. Municipal Council, Sendhwa & Anr., (2012) 6 SCC 464.

23. From the above decisions, the following principles emerge:

(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.

24) 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.

10. Ms.N.Mala, learned Additional Government Pleader (Puducherry) appearing for the Union Territory of Puducherry, would submit that before the technical specifications were opened in pursuance to the notice dated 30.08.2018, it was found that the rates quoted were very high and it exceeded the budgetary allocation and therefore, a decision was taken to float tender for the second time. She further submitted that the Government has authority to change the eligibility criteria and the quality of the goods to be supplied to the Scheduled Caste people, Red cardholders of Backward communities and differently abled persons of the Union of Puducherry.

In view of the decisions and discussions, there is no merit in the writ petition and the same is dismissed. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Asr

To

1.The Chief Secretary to Government,
Union Territory of Pondicherry
Chief Secretariat
Puducherry - 605 001

2.The Secretary to Government
Department of Social Welfare
Chief Secretariat
Puducherry - 605 001

+1cc to Mr.K.Kumaresh Babu, Advocate sr.no.71722

W.P.No.28047 of 2018 and
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cp(co)
nr 11/01/2019



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