



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Friday, the Eighth day of June Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice M.V.MURALIDARAN

WMP(MD) No.10470 of 2018

IN

WMP(MD)No.8142 of 2018

IN

WP(MD) No.8679 of 2018

1 THE PRINCIPAL SECRETARY TO GOVERNMENT OF TAMIL NADU
PUBLIC WORKS DEPARTMENT ,
CHENNAI.

2 THE ENGINEER IN CHIEF
PUBLIC WORKS DEPARTMENT
CHEPAUK CHENNAI.

3 THE REGIONAL CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (BUILDINGS)
TRICHY REGION, CANTONMENT , TRICHY.

4 THE SUPERINTENDING ENGINEER
PUBLIC WORKS DEPARTMENT (BUILDINGS)
CONSTRUCTION AND MAINTENANCE CIRCLE
CANTONMENT,
TIRUCHIRAPPALLI.

... PETITIONERS / RESPONDENTS 3 to 6 /
RESPONDENTS 3 to 6

Vs

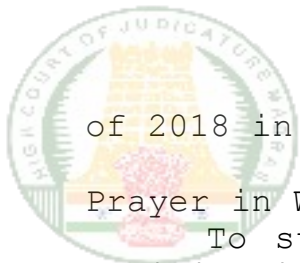
1 R.MUTHUKUMAR ... 1st RESPONDENT / PETITIONER /
PETITIONER

2 THE PRINCIPAL SECRETARY TO
GOVERNMENT OF INDIA
DEPARTMENT OF FINANCE, NEW DELHI.

3 THE CHAIRMAN
NATIONAL BANK FOR AGRICULTURE AND RURAL
DEVELOPMENT (NABARD),
NEW DELHI.

... RESPONDENTS 2&3/RESPONDENTS 1&2/
RESPONDENTS 1 & 2

<https://hcservices.ecourts.gov.in/hcservices/>
Petition praying that in the circumstances stated therein
and in the affidavit filed therewith the High Court will be pleased
to Vacate the STAY granted by this Hon'ble Court in WMP(MD). No.8142



of 2018 in WP(MD). No.8679 of 2018 dated 23.04.2018

Prayer in WMP(MD). 8142/ 2018 in WP(MD)No.8679/18:-

To stay all further proceedings in pursuance of the impugned notification issued by the 6th respondent in Tender Notification No.46/2017-2018/SE/B (C & M) dated 20.03.2018 pending disposal of this writ petition.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.K.CHELLAPANDIAN, Additional Advocate General assisted by Mr.M.RAJARAJAN, Government Advocate for the petitioners and of Mr.P.GANAPATHI SUBRAMANIAN, Advocate on behalf of the Respondent1, the court made the following order:-

This miscellaneous petition has been filed to vacate the stay granted by this Court in W.M.P.(MD) No.8142 of 2018 in W.P.(MD) No.8679 of 2018 dated 23.04.2018, pending disposal of the writ petition.

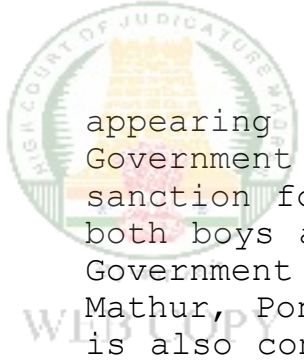
2. The 1st respondent in W.M.P.No.10470 of 2018 is the writ petitioner, who had filed the Writ Petition seeking to issue the Writ of Certiorarified Mandamus to call for the records relating to the tender Notification No.46/2017-2018/SE/B (C&A) of the 6th respondent and quash the same as illegal and further direct the 6th Respondents to conduct the tender for each works separately as notified earlier in order to enable the participation of all eligible contractors.

3. The respondents 3 to 6 in the writ petition are the vacate stay petitioners. Considering the urgency expressed by the learned Government Advocate, this court is inclined to take up the vacate stay petition alone. For the convenience of the court, the rank of the parties arrayed in the main writ petition is referred hereunder.

4. The case of the writ petitioner is that the 6th Respondent invited tenders up to Rs.1781 lakhs by offline which is against the circular issued by the Central Vigilance Commission in CVC No. 98/Ord/1 dated 18.12.2003 and that by introducing the package system in the award of contract, only a few persons, less than 20 in Tamil Nadu will be eligible to participate in the tender and other eligible contractors will be deprived of their right to participate in the tender which is guaranteed under the Tamil Nadu Transparency in Tenders Act, 1998 and the 6th Respondent failed to upload the tender documents in the website till date which is against law and hence prayed to quash the said tender Notification. The learned counsel for the writ petitioner would submit that since the petitioner is having a case on merit, this Hon'ble Court granted interim stay of the tender notification and there is no merit in the contention of the 6th respondent/ vacate stay petitioner. Hence he prays to dismiss the vacate stay petition.

<https://hcservices.ecourts.gov.in/hcservices/>

5. Per Contra, the learned Additional Advocate General



appearing for the Respondents 3 to 6 would submit that the Government of Tamil Nadu was pleased to accord administrative sanction for the construction of school buildings, lab, toilets for both boys and girls, drinking water facilities and compound wall in Government Higher Secondary Schools, Sooriyur, Karuppukudipatti, Mathur, Pon-bethi and Thirumayam vide various government orders. It is also contended that in the Notification it was informed that the tender schedule can be downloaded at free of cost from the Government designated website and that the tender schedule is also available in the Office of the Superintending Engineer, PWD Buildings (C&M) Circle, Trichy from 22.03.2018 to 24.04.2018 up to 5.45 PM which is perfectly in consonance with the Tamil Nadu Transparency in Tenders Act, 1968. Further the Learned Additional Advocate General submitted that the tender Notification was uploaded in the Government designated web site viz. <http://www.tenders.tn.gov.in>. Hence the alleged violation of the Circular issued by the Central Vigilance Commission in CVC. No.98/Ord/1, dated 18.12.2003 is not true. The Government on all relevant parameters took a decision to adopt package tender system for practical and economic reasons. Hence on consideration of all relevant parameters concluded to adopt the Package Tender System for practical and economic reasons. In-fact the package tender system has been proved successful.

6. In support of his contention the Learned Additional Advocate General has relied upon the following decision:-

i. The Hon'ble Supreme Court in '*Tata Cellular*' case reported in (1994) 6 SCC 651, wherein it is held that has called for a right balance to be struck between the administrative discretion and the need to remedy the unfairness, if any. By the application of '*Wednesbury principles*', it is clear that the eligibility criteria has to be imposed with a view to entrust the work only with the Contractors possessing men and materials who can execute the work within the prescribed time span.

ii. In '*M/s Michigan Rubber (India) Limited vs State of Karnataka*' reported in (2012) 8 SCC 216, the Hon'ble Supreme Court has held that 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 statutory powers, interference by Court is not warranted and (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"

iii. The Division Bench of this Hon'ble Court in the case of '*Y. Swamidoss and 2 Ors vs Chief Engineer*' observed in the order dated 01.10.2001 that the authority tendering the work is only concerned about the execution and money payable there for. The laying of public road is important and urgent work



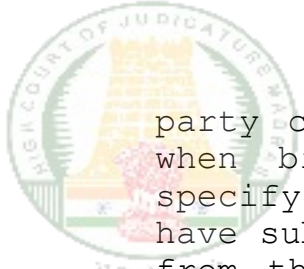
which needs to be completed before the onset of monsoon season. Time schedule is three months and that the authorities cannot and need not wait for the Contractors to acquire the machinery by way of lease from other owners.

iv. In *'CS Traders v Managing Director, TN Civil Supplies Corporation* reported in 2016(2) CWC 538, it has been held that 'it is a well settled proposition of Court in catena of cases that invitation to tender as well as the terms and conditions incorporated thereof are not open for judicial scrutiny. In contractual matters, judicial interference is limited, unless it is shown that the decision making process is against the well settled principles of law, arbitrary or bias, this court cannot interfere in exercise of powers under Article 226 of the Constitution of India"

v. In *Jagdish Mandal v State of Orissa and others* as reported in (2007) 14 SCC 517, by following the decision rendered in (2005) 4 SCC 435, the Hon'ble Supreme Court held that a contract is a commercial transaction. The power of judicial review will not be permitted to be invoked to protect private interest, even if procedural aberration or error in exercise of power of judicial review is made out. 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"

vi. In *Sumeet Synthetics v Department of Handlooms* as reported in 2017 (1)CWC 376, this Hon'ble Court held that courts normally not to interfere with the policy decision of administrators, especially in contractual matters, unless shown that it is arbitrary, discriminatory, mala fide or actuated by bias. The Hon'ble Court further held that as the contract is time-bound, the Tenderer should be ready in all aspects and commence work immediately.

vii. The Hon'ble Supreme Court in *'Tamil Nadu Generation and Distribution Corporation Limited v CSEPD-TRISHE Consortium*, as reported in (2017) 4 SCC 318 has held that the Respondent before finalisation of the financial bid submitted series of representations and seeing the silence of the owner it knocked at the doors of the writ court which directed for consideration of the representations. We are disposed to think that the High Court at that stage should have exercised caution. If the Court would exercise power of judicial review in such a manner, it is most likely to cause confusion and also bring jeopardy in public interest. An aggrieved



party can approach the Court at the appropriate stage, not when bids are being considered. We do not intend to specify...Once the price bid was opened, a bidder could not have submitted representations on his own and seek a mandamus from the Court to take certain aspects into consideration. We have stressed this aspect only to highlight the role of the Court in keeping in mind the established principle of restraint".

7. The Learned Additional Advocate General has further informed the Court that three Contractors have submitted their bids through on-line in response to the tender notice dated 20.03.2018 and before the same could be processed, the Petitioner came out with the present writ petition and obtained stay in WMP (MD) No. 8142 of 2018 in WP (MD) No. 8679 of 2018 dated 23.04.2018 and hence the tender could not make any head- way. The floating of Tender Package was ensured as the successful tenderers can commence work during the summer holiday so that the interest of the students studying in above mentioned are not unduly affected and hence prayed to vacate the interim order.

8. I have carefully considered the rival submissions on either side and perused the entire records and judgments produced by either parties.

9. It is the specific case of the Petitioner that by the introduction of the package system in the award of contract, only a few persons will be eligible to participate in the tender and the Petitioner and other eligible contractors will be deprived of their right to participate in the tender and the 6th respondent failed to upload the tender documents in the web site till date. But the facts are quite different as the tender documents were uploaded in the official web site and three tenderers who have opted to bid have uploaded their documents only on-line. Insofar as the package tender is concerned, this Court in WP (MD) No. 15486 to 15489 of 2012 dated 14.07.2014 held that,

"it is the further contention of the learned counsel for the petitioner that the Package system may impose unreasonable restriction on the small contractors, who are not able to compete with the Class I Contractors, Thus the impugned order violates Article 14 of the Constitution of India. The Court held "Having considered the contention of the Petitioners that the impugned order violates Article 14 of the Constitution of India, I do not find any substance at all. Fir of all, the petitioners have not got any vested right so as to claim parity under Article 14 of the Constitution of India. The Government is concerned only to see that as per contract, the work is done so as to benefit the public at large. Whatever may be viable for the cause of the Organization, the Government has to necessarily adopt. That is done in the case, as per the recommendation of the Board of Engineers. There are lot of reasons given as to why package system is introduced. Therefore, it cannot be stated that there is violation of



equity as envisaged under Article 14 of the Constitution.

11. The next contention of the Learned Counsel for the Petitioner is that the very object of the Tamil Nadu Transparency in Tenders Act, 1998 is violated by the introduction of the said Government order. In this contention also, I do not find any substance at all. The Learned Counsel for the Petitioners has not at all demonstrated as to how the object of the Act will be defeated by the introduction of the package system. Thus, the arguments of the learned counsel for the petitioners do not deserve acceptance at all. I do not find any merit in the case of the Petitioners.

This Court in WP 23589 to 23592 of 2017 while dealing with a similar issue observed, "14. The next contention of the learned Senior Counsel appearing for the Petitioners is that if multiple packages are given, many eligible contractors will be participating in the tender and it has not been done in this case. Hence, the act of the respondents calling for a single package is highly arbitrary. The said contention cannot be accepted for the simple reason that the petitioners cannot claim any constitutional right in participating the Government Contract, ultimately, it is for the respondents to decide how the contract should be formulated and awarded and the petitioners cannot insist the respondents to invite tenders in a particular way".

10. Considering the fact that because of the interim stay, the school buildings, lab, toilets for both boys and girls, drinking water facilities and compound wall in Government Higher Secondary Schools, Sooriyur, Karuppukudipatti, Mathur, Pon-bethi and Thirumayam could not be construction and therefore the students studying in the said government schools are suffering lack of basic amenities. Further, this court would able to see that interim stay was granted only because of the failure of the learned government advocate to get instruction within the time stipulated by this court. Now, the respondents has filed counter affidavit with this vacate stay. I am also prima facie satisfied that the vacate stay petitioners/ respondents 3 to 6 have made out a case for vacating the stay. That apart, with regard to the contention of the petitioner that the respondents have brought several contract works into a single tender, this court is not able to accept the same, in view of the decisions cited supra which are in favour of the vacate stay petitioners. In any event the said issue has to be gone into only at the time of final hearing of the case and therefore to meet the ends of justice, this court is of the view that the interim stay granted by this court is liable to be vacated for the welfare of the students.

11. In view of the discussions made above and in the light of the decisions referred above, I am inclined to vacate the interim



stay granted in W.M.P.(MD) No. 8142 of 2018 in W.P.(MD) No. 8679 of 2018 dated 23.04.2018.

12. In the result, W.M.P.(MD) No.10470 of 2018 is allowed and the interim stay granted in W.M.P.(MD) No.8142 of 2018 in W.P.(MD) No.8679 of 2018 is hereby vacated.

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Post the main writ petition on **22.06.2018** for hearing.

sd/-

08/06/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE PRINCIPAL SECRETARY TO GOVERNMENT OF TAMIL NADU
PUBLIC WORKS DEPARTMENT , CHENNAI.

2 THE ENGINEER IN CHIEF
PUBLIC WORKS DEPARTMENT
CHEPAUK CHENNAI.

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DEVELOPMENT (NABARD), NEW DELHI.

+1. C.C. to Mr.P.GANAPATHI SUBRAMANIAN, Advocate SR.No.9375
+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No. 9912

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ORDER IN
WMP(MD) No.10470 of 2018 IN
WMP(MD) No.8142 of 2018 IN
WP(MD) No.8679 of 2018
Date :08/06/2018