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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.01.2018

DELIVERED ON: 22.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P(MD)No.23418 of 2017

and

W.M.P(MD)No.19693 of 2017

G.Robin Sitharanjan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Principal Secretary,
Municipal and Water Supplies Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner,
Municipal Administration,
Chepauk, Chennai - 600 105.

3.The District Collector,
Korampallam, Thoothukudi,
Thoothukudi District - 628 101.

4.The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi - 628 002,
Thoothukudi District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the record relating to the impugned order issued by the fourth respondent Commissioner of Thoothukudi City Municipal Corporation in Tender No.H1/2275/2017 dated 06.12.2017, quash the same.



For Petitioner

: Mr. Isaac Mohanlal
Senior Counsel
for M/s. Isaac Chambers

For Respondents 1 to 3

: Mr. K. Chellapandian
Additional Advocate General
Assisted by Mr. A. K. Baskara Pandian
Special Government Pleader.

For Respondent No. 4

: Mr. K. Chellapandian
Additional Advocate General
Assisted by Mr. Saaji Bino
Standing Counsel

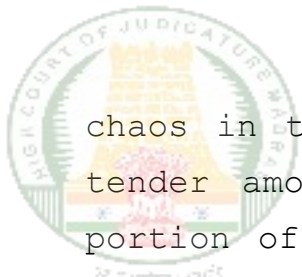
ORDER

(Order of the Court was made by **R. HEMALATHA, J.**)

This Writ Petition has been filed as a Public Interest Litigation in the nature of Writ of Certiorari calling for the records relating to the impugned order issued by the fourth respondent, the Commissioner of Tuticorin City Municipal Corporation in Tender No. H1/2275/2017 dated 06.12.2017 and to quash the same.

2. The petitioner is the President of Consumer Protection Organization. The impugned order which is sought to be quashed is a tender notification in a leading newspaper inviting applications for engaging 600 sanitary workers in 4 packages for the municipal solid waste management service within Tuticorin city municipal corporation with respect to door to door collection of solid waste, road/street sweeping, drain cleaning and storage of waste at designated collection points on contract basis for a period of one year for an estimated value of Rs. 11,06,00,000/-.

3. The main apprehension of the petitioner is that the tenders for the years 2013 to 2015, clearly mentioned the ward numbers in the tender, whereas, the impugned tender did not mention the ward numbers and therefore alleged that the Commissioner, the fourth respondent herein deliberately concealed the same and hence, the impugned tender is "tainted with trickery". Further the petitioner has contended that this tender "would definitely create a great



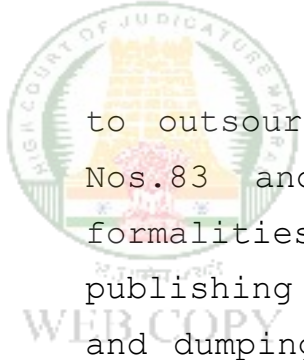
chaos in the tender process". His further contention is that the tender amount of Rs.11,06,00,000/- was exorbitant for merely one portion of work and therefore, is arbitrary, illegal, unreasonable and unconstitutional.

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4.The fourth respondent in his counter has categorically contended that the existing solid waste management had to be raised to a new decentralised solid waste management system in which the waste were segregated as biodegradable and non-biodegradable and disposed through a machinery in the respective places instead of the present system of centralised dumping of waste causing ecological damage. The fourth respondent has also opined that the revised wages for the labour and cost of machinery/equipments for the new system etc., was the reason for the difference in the cost vis-a-vis the existing cost. It has also been clarified by the fourth respondent that the new system is to be implemented in the four zones viz., east, west, north and south and that the new system is in line with "Swachch Bharat Abhiyan" or Clean India Mission (in English) introduced by the Central Government and that the new system worked out to be very cost effective compared to the existing scheme and the writ petition to be dismissed on the above facts.

5.The apprehension of the petitioner is that the tax payers' money would be squandered if the impugned tender is not quashed. Mr.Isaac Mohanlal, learned senior counsel appearing for the petitioner would contend that the fourth respondent in order to circumvent the stay granted in W.M.P.(MD)No.14600 of 2017 in W.P.(MD)No.18134 of 2017, filed by a social activist Mr.S.R.Sreeram, has cleverly concealed the particulars of ward numbers in the impugned tender notification. On a perusal of the said order, it is clear that the order pertains to Nagarcoil Municipality and no further details are available in the order.

<https://hcservices.ecourts.gov.in/hcservices/> 6. Mr. K.Chellapandian, learned Additional Advocate General, appearing for the fourth respondent would contend that the decision

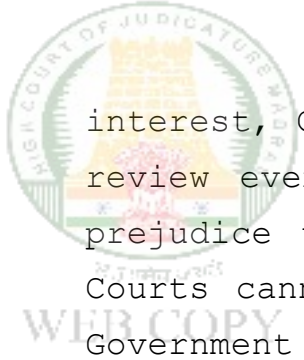


to outsource by hiring workers was taken vide Council Resolution Nos.83 and 84 dated 19.09.2017 and that all the prescribed formalities were scrupulously followed for the same before the publishing of the e-tender. Further the system of primary collection and dumping at a collection spot and then secondary collection and moving to a dumping yard is a highly inefficient method of waste management causing ecological imbalance and involves more cost. In fact, the break up of cost in the new revised system has also been furnished by the fourth respondent. This system was in the process of getting phased out by all the urban local bodies across India after the role out of the "Swachch Bharat Abhiyan" in 2014. The new revised system involves only primary collection of waste through light motor vehicles, segregation into biodegradable and non-biodegradable (inorganic), micro composting of the organic waste and sale of inorganic waste, thereby reducing the hazards of centralised storage and also harvesting the benefits of recycling organic waste as manure. The learned counsel appearing for the fourth respondent had also revealed that the State high level power committee had approved the new scheme and allocated Rs.12,00,00,000/- for the implementation of the same and that the proposal to setup 16 micro composting plants and 74 light motor vehicles were to be bought to upgrade the solid waste management in Tuticorin city to high standards of sanitation.

7.The traditional role of a municipality is to keep the streets clean, collect garbage from public places and ensure its safe disposal. Though, many city corporations have large number of employees who are engaged in these activities, only 1/3rd of the waste generated is collected by the staff. Large quantity of waste requires proper system of collection, transportation and disposal and it requires knowledge on what the wastes are made up of, how they need to be collected and disposed. Proper solid waste management requires commitment and resources to deal with wastes.

In this context we wish to dwell into the nitty-gritty of the Swachch Bharat Abhiyan which aims to clean up streets, roads and

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interest, Courts will not interfere by exercising power of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made. His specific contention is that Courts cannot interfere with the terms of tender prescribed by the Government unless they are arbitrary, discriminatory, mala fide or actuated by bias.

11. In both these judgments, the Apex Court dealt with the scope of the Courts in interfering with the tender process initiated by the Government. In a nut shell, in both the judgments it was held that interference in tender or contractual matters in exercise of power of judicial review is permissible only if

- i) the process adopted or decision made is mala fide or intended to favour some one or;
- ii) the process is so arbitrary and irrational that no responsible authority acting under law could have arrived at it or;
- iii) it affected the public interest.

12. In the instant case, scope of interference by this Court appears to be non-existent. In our considered opinion, the larger interest of the public has been the driving force of the decision of the Tuticorin municipality. There is also no mala fide in the contents of the impugned tender. The fourth respondent has in fact satisfactorily explained the details of the new proposed system of solid waste and also furnished a break up of the cost involved. In such circumstances, we opine that there is no need for interference with the impugned tender.

13. The Writ Petition stands dismissed accordingly. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)



To

1. The Principal Secretary,
State of Tamil Nadu,
Municipal and Water Supplies Department,
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2. The Commissioner,
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3. The District Collector,
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Thoothukudi District - 628 101.
4. The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi - 628 002,
Thoothukudi District.

+1cc to M/S.S.SAJI BINO, Advocate SR.No.43026.

ORDER MADE IN
W.P (MD) No.23418 of 2017
22.01.2018

MR
SDS/MR/SAR 4/24.01.2018/7P/6C