

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2019

PRONOUNCED ON : 11.07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.4700 of 2019 and
W.M.P.Nos.17981, 5328 and 5331 of 2019

M/s.Deepika Transports,
Represented by its Proprietor,
V.Revathy,
37/15, Nutech Vishram Apartment,
E Flat, 11th Avenue, Ashok Nagar,
Chennai - 600 083. Petitioner

Vs

1.The Government of Tamil Nadu,
Represented by the Secretary to the Government,
Department of Animal Husbandry,
3-A, Pasumpon Muthuramalingar Salai,
Nandanam,
Chennai - 600 035.

2.The Managing Director,
The Tamil Nadu Cooperative Milk Producers
Federation Ltd.,
Aavin Illam, 3-A Pasumpon Muthuramalinganar Salai,
Nandanam,
Chennai - 600 035.

3.Mr.C.Kamaraj ... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the
Constitution of India for a writ of Certiorari calling for the
records in Tender Ref.No.20489/Proj.2/2018 dated 07.01.2019 on
the file of the second respondent and quash it as illegal and
irregular.

For petitioner :Mr.V.Raghavachari,
for Mr.Avinashwadhani

For Respondents :Mr.Vijay Narayan, Advocate General,
Assisted by Mr.R.Bala Ramesh,
Special Government Pleader for R1 & R2

ORDER

The petitioner engaged in milk transportation business for the past 20 years has preferred this writ petition challenging the inclusion of experience clause in the tender notification issued by the 2nd respondent dated 07/01/2019, inviting bid from the transporters having minimum 3 years experience in the preceding 5 years in milk tanker operation in Government/Government undertaking/ co-operative diaries as discriminative and restrictive. Besides, the petitioner also questions the authority of the 2nd respondent to invite tender in the absence of the elected board and during the Election Code of Conduct, in view of notification to the elections to the Co-operative Society was in force.

2. Background facts of the case are as follows:

M/s Deepika Transport (the writ petitioner) was blacklisted by the General Manager, Thiruvannamalai District Milk Producers Federation Union vide proceedings No 9005/B 1/ 2012, dated 04/10/2014, for a period of 3 years for the theft and adulteration of milk. The contract was also terminated forthwith. The order of blacklisting was challenged by the petitioner in W.P.No.28029/2014 and the termination order was challenged in W.P.No.24501/2014. Both the writ petitions were dismissed vide common judgement dated 17/11/2014. Aggrieved by the judgement, the petitioner preferred Writ Appeals. Pending W.A.Nos.1613 and 1555 of 2015, the 3 years period of black list came to end. Further, the criminal prosecution initiated against the petitioner and her husband (Vaidhiyanthan) for alleged adulteration of the milk came to be quashed by this Court in Crl.R.C.Nos.1354 and 1372 of 2017 vide a common order dated 05/01/2018.

3. In the said circumstances, when the writ appeals came up for hearing on 03/07/2018, the Division Bench of this Court has passed the following order:-

"3. The learned Advocate General would fairly submit that the order of blacklisting, which is impugned in the writ petition, will not be made a basis for rejecting future applications for award of contract by the appellant. Insofar as, the manner in which the period of blacklisting is to be treated in terms of calculating the experience required for award of future contract, the learned Advocate General would submit that the respondents are willing to

consider any representation that may be made by the appellant in that regard.

4. Therefore, while keeping the Appeal pending, we direct the appellant to make a representation for the appropriate relief. If any such representation is made within one week, the respondents shall consider the same and pass appropriate orders on or before 12.08.2018.

5. Post on 13.08.2018."

4. In reverence to the above direction, the respondents vide order dated 10/08/2018 passed the following order:

"B. Cancelling of experience clause in transport tender

Experience clause was incorporated in the tender condition uniformly for all the District unions in order to engage reputed and experienced transporters which play a vital role in handling of the milk which is perishable in nature and this experience clause cannot be cancelled in the future tenders."

5. Thereafter, the petitioner herein has made a representation to cancel the blacklisting order and to relax the experience clause in tender conditions. In response to this request, the 2nd respondent in his letter dated 09/10/2018, has informed to the petitioner that, they are granted liberty to participate in future tenders and enter into contracts with its union. Taking note of the above facts and the information passed across the bar regarding modified experience clause, (instead of 2 years out of 5 years as 7 years in toto) in tender document for hiring 137 numbers of insulated vehicles under tender No.1559/P-1/2018/MKG.UNIT/2018-2020 the Division Bench disposed of W.A.Nos.1613 and 1555 of 2015 on 14/11/2018 with the following observations:-

"11. The above cited communication also makes it very clear that the appellant was granted liberty to participate in future tenders and enter into the contract and in

the light of the said development, the tender applications/forms submitted by the appellant to the respondents shall be processed in accordance with the terms and conditions of the tender, subject to fulfilment of the other eligibility criteria, along with tender applications submitted by the other intended bidders, if any.

12.The Writ Appeals stand disposed of accordingly. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

After the judgment in the writ appeals, on the same day, the respondents have cancelled the tender process for hiring 137 numbers of insulated vehicles under tender No.1559/P-1/2018/MKG.UNIT/2018-2020.

6.In the above said background, the tender notification of the 2nd respondent bearing Ref.No.20489/Proj-2/2018 dated 07/01/2019 announced to the public in its website on 10/01/2019 inviting bid for supply of 312 numbers of road milk tankers on hire for transportation of milk from /to DCMPU Dairies/CC/BMC of TN/AP/KAKL/TL states and other dairies for 2 years 2019-2021 from persons of 3 years experience within the last 5 years period in milk tanker operation in a Government/Government undertakings/ Co-operative dairies is now challenged by the writ petitioner alleging malafide, incompetence and violation of Election Code of Conduct, besides breach of promise made by the Advocate General to the Court and same recorded in the order dated 03/07/2018.

7.In so far as the present tender notification of the second respondent dated 07.01.2019 in the connected writ petitions in W.P.Nos.4708 and 4729 of 2019, this Court called for the records of the second respondent to verify 'whether the tender notification was published after announcement of the Co-operative Societies election' and 'whether the notification is bad in law due to want of permission from Election Commission, in view of the Election Code of Conduct'. There, this Court found that from the records, the Election Commission has announced schedule for Co-operative Societies Election on 07.01.2019. Whereas, the tender notification bearing number 20489/project 2/2018 dated 07.01.2019 inviting application from

the transporters 312 milk tankers was announced in the website of the second respondent on 10.01.2019. Therefore, it is obviously clear that the tender notification was subsequent to election notification whereas, there is no material found in the records to show that before announcement of tender, the second respondent obtained prior permission from the Election Commission. For that singular reason, the tender notification was set aside.

8.The very same tender is under challenge. The impugned tender notification already been set aside by this Court on 10.07.2019. In this writ petition, nothing survives to hereagain. However, the learned counsel insist upon this Court to consider the eligibility criteria of the petitioner herein, to participate in the tender, dehors of the experience clause. Regarding the 'experience clause', in W.P.Nos.4708 and 4729 of 2019 by order dated 10.07.2019, this Court has held as follows:-

4.Regarding the 'experience clause', in the tender notification and the power of Managing Director as Administrator, this Court hold against the petitioners. For the following reasons:-

(a)Judicial review of administrative action is to prevent arbitrariness, irrationality, unreasonableness, bias and mala fide.

(b)Fixing experience to the bidder does not fall under any of the above reasons. Change in the experience period per se is not mala fide.

(c)The petitioners ought to have demonstrated how the experience clause is arbitrary or irrational.

In the absence of above reasons, the 'experience clause' prescribed by the respondents is valid.

9.This Court has no second opinion regarding the prescription of experience clause while shortlisting the bidders

for supply of transport vehicles. One peculiar aspect in the case of the petitioner herein is that, since, he was blacklisted earlier, for the period of three years, the restrictive clause infringes his right to participate in the tender floated by the second respondent. No doubt, the second respondent herein earlier blacklisted the petitioner for three years which was subject matter of the writ petitions and writ appeals mentioned above. The said period lapses as early as in the year 2017. Presently, the tender clause pertaining to experience clause reads as below:-

"4.2.1.The tenderer should be an operator/contractor of road milk tankers.

4.2.2.Milk is a perishable commodity and handling it requires experience. Hence the tenderers shall have minimum 3 years experience with in the last 5 year period in milk tanker operation in a Government / Government Under takings / Co-operative diaries. The 3 years experience of the tenderer should be in the same name and style as the bidding entity. The five year period will be calculated preceding from the date of publication of notice inviting tender. The tenderer should submit valid documents to prove his experience in transporting milk. "

10.The embargo on the petitioner to participate in tender proceedings floated by the second respondent expired on 04.10.2017. While so, certain undertaking given by the Advocate General and observation made by the Courts in the said context cannot be perpetually applied for all years to come. The petitioner had no restriction to transport after 04.10.2017 to the society under the second respondent and never been prohibited to transport to other private diaries at any point of time. Therefore, he cannot seek exemption to the experience clause. At the same time, it is also imminent to point out that the very same second respondent while floating tender, for transportation of milk sachets has considered the experience of transporting milk sachets to private diaries also. Whereas, in the present notification, private diaries are not included in the experience clause.

11.In such circumstances, this Court is of the opinion that, having set aside the notification dated 07.01.2019, published by the second respondent on 10.01.2019, while floating tender in future, the second respondent shall also include the experience

of the bidders transporting milk through their tanker lorries to private dairies also.

12.With this observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Secretary to the Government,
Department of Animal Husbandry,
3-A, Pasumpon Muthuramalingar Salai,
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Chennai - 600 035.

2.The Managing Director,
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Federation Ltd.,
Aavin Illam, 3-A Pasumpon Muthuramalinganar Salai,
Nandanam,
Chennai - 600 035.

+1 cc to the Government Pleader, S.R.No.59254

+1 cc to M/s.Avinashwadhvani, Advocate, S.R.No.58651

+1 cc to M/s.R.Bala Ramesh, Advocate, S.R.No.58471

SKV(CO)
SSM(19/07/2019)

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W.P.No.4700 of 2019

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