

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.31063 of 2019
and W.M.P.Nos.31174 and 31175 of 2019

S.Boopathi

.. Petitioner

vs

1.Registrar
Tender Inviting Authority
University of Madras
Chepauk
Chennai-600 005.

2.The Syndicate
University of Madras
Rep. by Vice Chancellor
University of Madras
Chepauk
Chennai-600 005.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in the impugned Tender Document for Supply of manpower dated 03.10.2019 on the file of the 1st respondent and quash clause 4.2 relating to Qualification Criteria insofar of fixing three years annual turnover at Rs.50 Crores and clause 4.3 fixing manpower supply capacity of bidder at 1000 persons in three previous years in the tender document and; (ii) Consequentially direct the respondents to incorporate appropriate changes in the Tender document dated 03.10.2019 by fixing the three years annual turnover at Rs.10 Crores in clause 4.2 relating to Qualification Criteria and fixing the manpower supply capacity of bidder at 100 persons in three previous years in clause 4.3 relating to qualification criteria in the tender document.

For Petitioner : Mr.N.S.Nandakumar

For Respondents : Mr.Stalin
Standing Counsel

O R D E R

Writ Petition is filed for issuance of Writ of Certiorarified Mandamus calling for the records in the impugned Tender Document for Supply of manpower dated 03.10.2019 on the file of the 1st respondent and quash clause 4.2 relating to Qualification Criteria insofar of fixing three years annual turnover at Rs.50 Crores and clause 4.3 fixing manpower supply capacity of bidder at 1000 persons in three previous years in the tender document and; (ii) Consequentially direct the respondents to incorporate appropriate changes in the Tender document dated 03.10.2019 by fixing the three years annual turnover at Rs.10 Crores in clause 4.2 relating to Qualification Criteria and fixing the manpower supply capacity of bidder at 100 persons in three previous years in clause 4.3 relating to qualification criteria in the tender document.

2. Heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondents.

3. The case of the petitioner is that he is the Director of manpower agency. On earlier occasion, his manpower agency has participated in the tender process and he was the successful bidder and supplied manpower to other Government agency. The tender notification dated 03.10.2019 was issued by the 1st respondent for the year 2019-2020 arbitrarily fixing three year annual turnover requirement at Rs.50 Crores (increased from Rs.10 Crores) and fixing manpower supply capacity for three previous years at 1000 persons (increased from 100 persons). Challenging the same, the present writ petition is filed.

4. Learned counsel for the petitioner submitted that on earlier occasion, the respondents fixed three years annual turnover requirement at Rs.5 Crores for the year 2018-2019 and in the second tender dated 18.07.2019, three year annual turnover requirement was increased and fixed at Rs.10 Crores and manpower supply capacity at 100 persons. However, all of a sudden, in tender notification dated 03.10.2019, they increased the three years annual turnover

from Rs.10 Crores to Rs.50 Crores and supply of manpower capacity from 100 to 1000 persons, which is illegal and in order to favour some influential persons, the tender is issued. Therefore, he prays for allowing this writ petition.

5. Learned Standing Counsel appearing for the respondents submitted that the Tamil Nadu Transparency in Tender Rules, 2012 amended in 2018 do not specify the norms to decide the turnover of the company. Hence the University after careful consideration has decided to increase the turn over from Rs.10 Crores to Rs.50 Crores so as to invite the participants, who are having a large pool of human resources with varied skill sets so that such a company only can provide the manpower of required skill sets and number to the University. He further submitted that the respondents have power to fix the eligibility criteria for the tenderer to participate in the tender process for smooth functioning of the University and other departments. Since University of Madras is a reputed University, without disturbing its normal day-to-day affairs, the respondents have decided to restrict the participation of unqualified tenderer for which, they increased the turnover from Rs.10 Crores to Rs.50 Crores and the maximum capacity of manpower from 100 to 1000 persons. The decision taken by the respondents is only in the interest of public for smooth functioning of the University and not for favouring any third parties. In support of his contentions, the learned Standing Counsel relied on the following decisions of the Hon'ble Apex Court.

(i) (2010) 6 SCC 303 (Shimnit Utsch India Private Limited and another vs. West Bengal Transport Infrastructure Development Corporation Limited and others);

"58. The statement of law expounded in S. Nagaraj is beyond question. As noticed above, in the case of Association of Registration Plates, this Court did not find any fault with the controversial conditions in NIT and overruled all objections raised by the petitioners therein in challenge to those conditions. The impugned conditions of NIT in that group of cases were not held to be arbitrary, discriminatory or irrational nor amounted to creation of any monopoly as alleged. The declaration of law by this Court in Association of Registration Plates (2005) 1 SCC 679 is that in the matter of

formulating conditions for a contract of the nature of ensuring supply of HSRP, greater latitude needs to be accorded to the State authorities. We find it difficult to hold that by virtue of that judgment the impugned conditions were frozen for all times to come and the States were obliged to persist with these conditions and could not alter them in larger interest of the public. In our view, the decision of this Court in Association of Registration Plates did not create any impediment for the States to alter or modify the conditions in the NIT if the circumstances changed in material respects by lapse of time.

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64. It is true that the State or its tendering authority is bound to give effect to essential conditions of eligibility stated in a tender document and is not entitled to waive such conditions but that does not take away its administrative discretion to cancel the entire tender process in public interest provided such action is not actuated with ulterior motive or is otherwise not vitiated by any vice of arbitrariness or irrationality or in violation of some statutory provisions. It is always open to the State to give effect to new policy which it wished to pursue keeping in view "overriding public interest" and subject to principles of Wednesbury reasonableness.

65. The judgment of Gauhati High Court in Real Mazon India Ltd. v. State of Assam (2008) 1 Gau LT 1020 was also pressed into service by the appellants. In that case, the corrigenda dated 26.12.2006, 6.1.2007 and 16.1.2007 issued by the State of Assam deleting the conditions of experience, expertise and exposure of the bidders in the manufacture and supply of HSRP were challenged. The Gauhati High Court quashed the impugned corrigenda. We are unable to approve the judgment of the Gauhati High Court in Real Mazon India Ltd for the reasons given above."

(ii) (2012) 8 SCC 216 (Michigan Rubber (India) Limited vs. State of Karnataka and others);

"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 the 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.

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26.It is also pointed out by the respondent State that in order to ensure procurement of tyres, tubes and flaps from reliable sources, the manufacturers of the same with an annual average turnover of Rs. 200 crores during the preceding three years, were made eligible to participate in the tenders. In the tender issued for procurement of these sets during October 2004, the appellant participated and based on the L1 rates, the orders for supply for 16,000 sets of tyres were placed on the firm. It is also pointed out that the appellant supplied 10,240 sets of tyres and remaining quantity was cancelled due to quality problems."

6. A perusal of the decision of the Hon'ble Apex Court reported in (2010) 6 SCC 303 cited supra makes it clear that the State or its tendering authority has right to give effect to essential conditions of eligibility stated in a tender document and enjoy the administrative discretion. Further, the decision of the Hon'ble Apex Court reported in (2012) 8 SCC 216 cited supra, makes it clear that fixation of a value of the tender is entirely within the purview of the executive and the 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. However, in the case on hand, the respondents have fixed turnover requirement at Rs.50 Crores to participate in the tender, which seems to be genuine and increasing the source of manpower is justifiable one. Since the respondent University is a reputed University and more number of employees are working, increasing the turnover from Rs.10 Crores to Rs.50 Crores and supply of manpower capacity from 100 to 1000 persons is only in the interest of public and for smooth functioning of the University. The petitioner did not show any arbitrariness for fixing the turnover as well as supply of manpower. In the absence of any materials on the part of the petitioner, this Court is not inclined to grant the relief sought for by the petitioner.

7. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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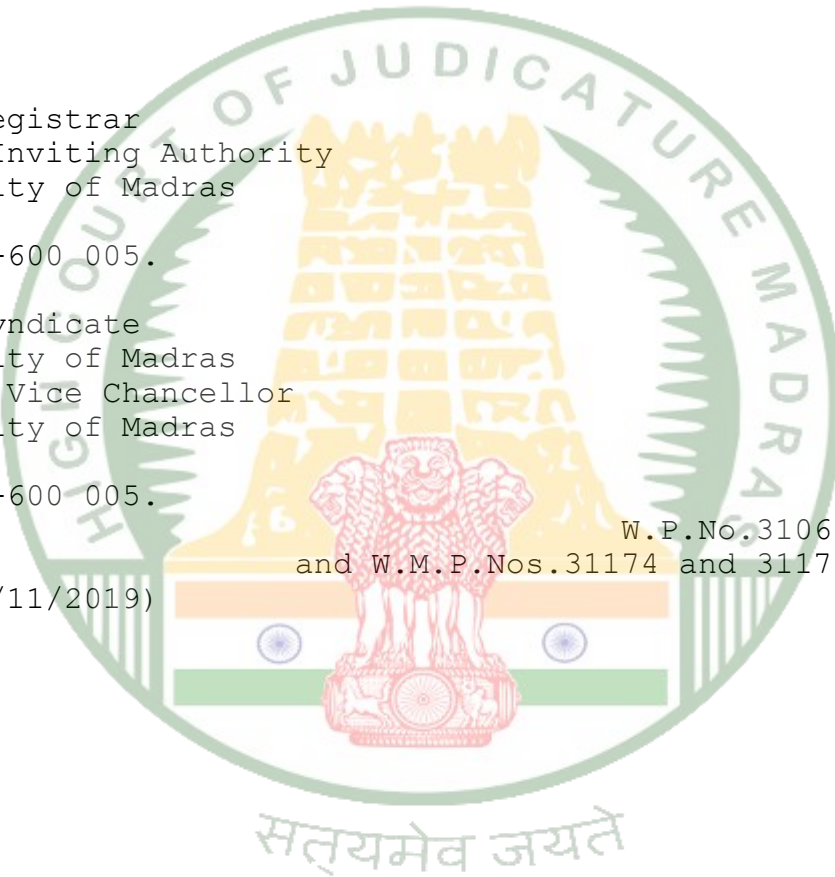
To

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A.SK(08/11/2019)



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