IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 21.02.2020
Delivered On : 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.No.1567 of 2020
and
WMP.Nos.1833 and 1834 of 2020

Arulnambi Engineering Consultants,
Rep. by its Managing Partner,
Mr.A.Arul Nambi,
S/o.Arunachalam,
No.1-39, Sevalanur, Pottaneri,
Mettur, Salem - 636 453. ...Petitioner

vs.

The Special Chief Engineer,
PWD, WRD,
Upper Cauvery Basin Circle,
Salem. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned Tender Notice issued by the respondent in short term Re-Tender Notice No.08/2019-2020/DB/DO1 dated 06.01.2020 and to quash the same and to direct the respondent to issue fresh tender notification by following due process of law.

For Petitioner : Mr.L.Chandrakumar

For Respondent : Mr.M.Vijaynarayan,
Advocate General,
Assisted by Mr.V.Jayaprakash narayanan,
Special Government Pleader

O R D E R

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

This Writ Petition is a public interest litigation. According to the learned counsel for the petitioner, there was a tender notification dated 13.11.2019 for diversion of flood surplus water from the Mettur Dam to the dry tanks in the Sarabanga basin in Salem District for drift irrigation which was cancelled as there were no bidders. The petitioner has contended that subsequently, impugned re-tender notification dated 06.01.2020 was published as a short tender with the last date being 24.01.2020. It is further contended that the impugned tender notice suffers from infirmities and also that Rules 9, 10, 11 and 20 of the Tamil Nadu Transparency in Tender Rules, 2001 have been breached making the entire process murky and doubtful. The tender amount being more than Rs.400 crores, made the petitioner file this public interest litigation, though the petitioner is not a participant himself. His apprehension that huge amounts of money, in the instant case Rs.445 crores, will go down the drain if such blatant violations are made. Moreover, he also contended that public money cannot be allowed to be frittered away in such manner. Hence this Writ Petition.

2. Mr.M.Vijaynarayan, learned Advocate General vehemently opposed such a petition. It is his contention that the petitioner has no locus standi to question the tender process as he is not a participant in the process. It has also been contended that none of the 'alleged infirmities' are true. All the procedures prescribed in the process for inviting tenders as well as the Rules of the transparency in tender have been followed. The interim directions in the Writ Petition has been complied with and even the tenders received have not been opened and therefore, the Writ Petition needs to be dismissed, it is contended. The learned Advocate General has relied on the ruling in Villianur Iyarkkai Padukappu Maiyam vs. Union of India and others reported in (2009) 7 SCC 561, in which the Hon'ble Apex Court again referred to the decision in BALCO Employees' Union vs. Union of India reported in (2002) 2 SCC 333, in which it has held that

> "114. The question of locus standi in the matter of awarding the contract has been considered by this Court in BALCO Employees' Union v. Union of India [(2002) 2 SCC 333] . This Court, after review of law on the point, has made following observations in para 88 of the judgment: (SCC p. 381)
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> > "88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are

taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court."

3. Thus, it can be seen that public interest litigations have to serve a specific purpose of representing those who are unable to come to the Court due to some disadvantage. In the instant case, the petitioner is not an aggrieved party as he is not a participant in the tender process. He cannot don the role of an expert adviser or that of a moral police. Any Government tender is not an easy process. There are experts in different fields and in this case, the irrigation specialists who are fully qualified and who know the job and the cost estimate for the work have planned on behalf of the Government. Tenders, when they are of high value, has its own inbuilt checks and balances and if such petitions are allowed by Court, the administration will come to a stand still. This petition is purely based on an apprehension. It can also be seen as 'shadow boxing' by vested interests who are keen on stalling the tender process. Thousands of tenders are floated by various Government Departments in a year. Public interest litigation cannot be misused as a tool to stall them unless there is a clear case of violation of Article 21 of the Constitution of India. The infirmities pointed out by the petitioner appear to be ill conceived and disruptive. As the Hon'ble Apex Court in Villianur Iyarkkai Padukappu Maiyam vs. Union of India and others (cited supra) rightly observed that,

"168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a

particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

170. Normally, there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the Government in taking an action."

The petitioner was wrong in stating that the publication of notification was not made in the Indian Trade Journal and two newspapers (both Hindu and Dinamalar). The facts are to the contrary. The petitioner averred that the title for the tender was different from the actual work which is also untrue as the caption was a short form of the work intended. The petitioner had stated that the worth of the project was not mentioned in the notification which again is not mandatory as per Rule 10. However, all details were available in the website and there was no suppression of facts. The petitioner has stated that the reduction in time, required the approval of the higher authorities, as per Rule 20 (2) and did not find a mention in the impugned notice. It was indeed approved by the higher authority the Chief Engineer, PWD, Trichy as averred by the respondent. Thus, it is clear that the petitioner has filed this Writ Petition without getting the facts right.

4. Regardless of all these aspects, this public interest litigation has no merits and the petitioner has no locus standi whatsoever to file this petition. The Writ Petition is

dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Special Chief Engineer,
PWD, WRD,
Upper Cauvery Basin Circle,
Salem.

+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No.20364
+1cc to the Government Pleader, S.R.No. 19773

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PVS(CO)
GN(26/05/2020)