

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.10.2020

CORAM

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

WP.No.14626/2020 & WMP.Nos.18135 & 18137/2020

G.Senthilkumar

..Petitioner

Versus

Deputy Director
Directorate of Backward Classes Welfare
Ezhilagam Annexure Building
Chepauk, Chennai 600 005.

..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 in respect of the Tender Notification issued by the respondent vide No.02/2020-2021 dated 30.08.2020 and corrigendum No.C2/4136/2020, quash the same and consequently, direct the respondent to call for fresh tender in respect of items mentioned in teh impugned tender by following the procedures contemplated in the Tamil Nadu Transparency in Tenders Act, 1998 and Rules 2000.

For Petitioner : Mr.K.N.Selvabharathi

For Respondent : Mr.Kumaresh Babu

Additional Advocate General
assisted by Mr.R.Vijayakumar
Additional Government Pleader
Mr.M.Vijayan, Standing counsel
for M/s.King & Patridge for
ELCOT

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

- (1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2)The writ petition is styled as a Public Interest Litigation and the petitioner claims to be an Advocate by profession and he is very much interested in betterment of the public [weaker

section of the business people of the State of Tamil Nadu]. The petitioner, in this writ petition, styled as a Public Interest Litigation, challenges the Tender Notification issued by the respondent dated 30.08.2020 as well as the Corrigendum dated 28.09.2020 pertain to supply, installation, commissioning and maintenance of 2510 cameras with accessories to 502 BC, MC, DNC and MW Girls Hostels situate in various locations in 37 Districts of Tamil Nadu.

- (3) During the course of arguments, this Court has put a query to the learned counsel for the petitioner as to the locus standi of the petitioner who claims to be a practising Advocate to file this writ petition as a Public Interest Litigation challenging the Tender Notification and the Corrigendum issued by the respondent. However, the learned counsel for the petitioner is unable to come out with any plausible answer.
- (4) The primordial grievance expressed by the petitioner is that since the Electronic Corporation of Tamil Nadu [ELCOT] is having expertise in procurement and installation of CCTV Cameras, their services should have been utilised in stead of the respondent going for Notification to invite Tender from others for supply and installation of CCTV Cameras.
- (5) Mr. M. Vijayan, learned Standing counsel appearing for Electronic Corporation of Tamil Nadu [ELCOT] would submit that it is the prerogative of the Tender inviting authority to take a call ; but the fact remains that ELCOT being a Government Company, is also having expertise in supply and installation of CCTV Cameras.
- (6) Mr. Kumaresh Babu, learned Additional Advocate General assisted by Mr. R. Vijayakumar, learned Additional Government Pleader appearing for the respondent has invited the attention of this Court to the counter affidavit of the respondent dated 14.10.2020 and would submit that in terms of G.O. Ms. No. 74 of BC, MBC and MW Department dated 19.11.2018, a fair decision has been taken for procurement of CCTV Cameras with accessories to 502 Backward Classes, Most Backward Classes/Denotified Communities and Minority Welfare Girls Hostels in Tamil Nadu, by strictly adhering to the Tender Procedures laid down in the Tamil Nadu Transparency in Tender Act, 1998 and the Rules framed thereunder and accordingly, a Purchase Committee with the Director of Backward Classes as Chairman and 8 other Members also been constituted. It is the further submission of the learned Additional Advocate General that fair and transparent procedure has also been adopted by issuing a public Notification in two Dailies on 30.08.2020 and two Committees had also been constituted, viz., Technical Committee and Tender Scrutiny Committee to scrutinise the process of Tender Applications. Subsequently, certain mistakes were noted in terms of the recommendations of the two Committees and accordingly, a Corrigendum was also issued on 28.09.2020 and at

that juncture, a Legal Notice dated 03.10.2020 was issued by one Mr.K.N.Selva Bharathi, Advocate. In sum and substance, the learned Additional Advocate General appearing for the respondent submitted that in the light of the well settled legal position that a non - participant cannot make a challenge to the Tender process and assuming for the sake of arguments that the petitioner is having locus standi in the light of the fair and transparent procedure adopted which is also in conformity with the relevant Statutes and Rules framed thereunder, the petitioner cannot express any grievance and prays for dismissal of this writ petition with exemplary cost.

(7) This Court has considered the rival submissions and also perused the materials placed before it.

(8) In the judgment reported in 2010 [3] SCC 402 [State of Uttaranchal Vs. Balwant Singh Chaufal and Others], the Hon'ble Supreme Court of India has also considered the issue relating to the Public Interest Litigation filed by a Lawyer and it is observed that "it was expected from a member of a noble profession not to invoke the jurisdiction of the Court in a matter where the controversy itself is no longer res integra. The petitioner, a local practising lawyer, ought to have bestowed some care before filing this writ petition as a Public Interest Litigation under Article 226 of the Constitution of India."

(9) It appears that the petitioner who claims to be a practising Advocate, has failed to carry out any due diligence before filing this writ petition as a Public Interest Litigation. The present Division Bench, in the order dated 05.03.2020, in WP.No.1567 of 2020 [Arulnambi Engineering Consultants rep.by its Managing Partner Mr.A.Arul Nambi, Salem, Vs. The Special Chief Engineer, PSD,WRD, Upper Cauvery Basin Circle, Salem] has dealt with the issue relating to a Public Interest Litigation, challenging the Tender Notification. The said order is authored by one of us [The Hon'ble Mrs. Justice R.HEMALATHA] and it is relevant to extract paragraph No.3 of the said order:-

"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."

(10) In the considered opinion of the Court, in the light of the well settled legal position, the petitioner is not at all having any locus standi to maintain this writ petition as a Public Interest Litigation challenging the Tender Notification issued by the respondent. However, at the same time, the respondent is under obligation to ensure as to the following of fair and transparent procedure and installation of quality CCTV Cameras and other allied systems in BC, MBC, DNC and MW Girls

Hostels located throughout the State of Tamil Nadu and also see to that, after such installation, the quality of the same as well as the backup services shall be ensured.
(11) In the result, the writ petition stands dismissed subject to above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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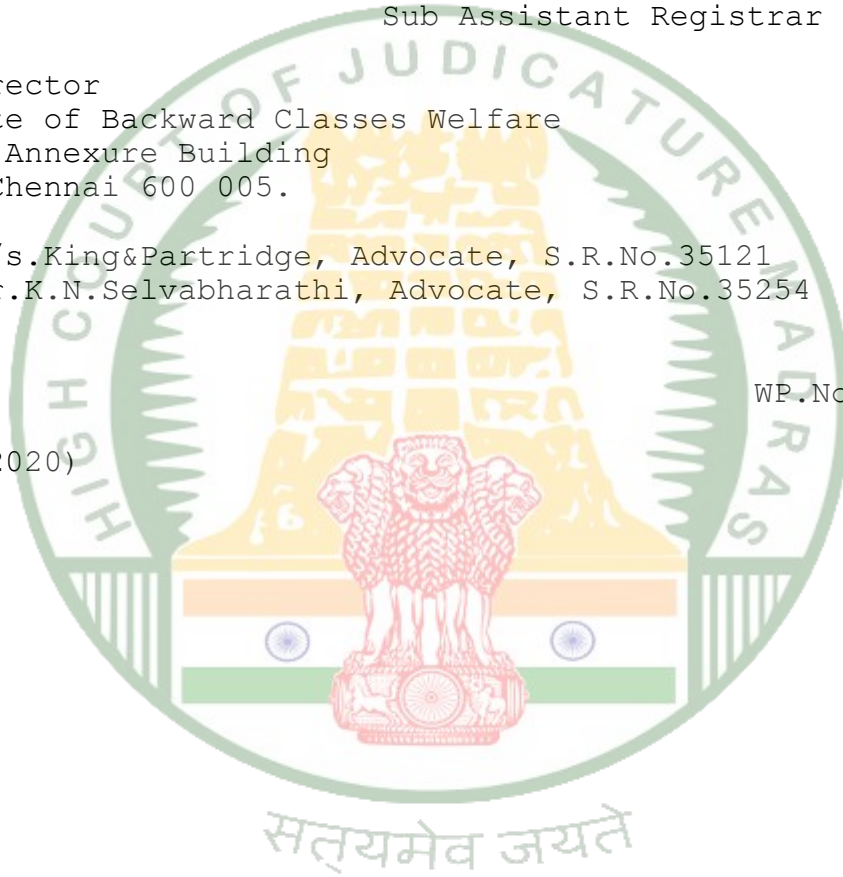
Sub Assistant Registrar

To
Deputy Director
Directorate of Backward Classes Welfare
Ezhilagam Annexure Building
Chepauk, Chennai 600 005.

+1cc to M/s.King&Partridge, Advocate, S.R.No.35121
+1cc to Mr.K.N.Selvabharathi, Advocate, S.R.No.35254

WP.No.14626/2020

RP (CO)
RV (11/12/2020)



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