

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

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THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.No.2535 & 1916 of 2021

&

W.M.P.Nos.2868, 2869, 2158 & 2162 of 2021

R.R.Palanisamy ...Petitioner in W.P.No.2535 of 2020

R.Velusamy ...Petitioner in W.P.No.1916 of 2020

Vs.

1. The State of Tamil Nadu,
Rep by its Secretary to Government,
Municipal Administration Department,
Secretariat, St.George Fort, Chennai.
2. The Commissioner of Municipal Administration,
Urban Administrative Building,
Santhome High Road, MRC Nagar,
Raja Annamalaipuram, Chennai - 600 028.
3. The Commissioner,
Tirupur Corporation, Tirupur, Tirupur District.
...Respondents in both the WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the 3rd respondent vide his proceedings Na.Ka.No.E1/6680/2020 dated 24.12.2020 passed by the third respondent and quash the same as illegal.

For Petitioner: Mr.M.Imran

for K.Praveen Kumar

For Respondents: Mr.S.Silambanan, Sr.Counsel

for Ms.P.Shanthi for R3

...in both the WPs

Mr.Annai Ezhil,

Government Advocate for R1

Mr.Abdul Saleem, STC

for R2.

COMMON ORDER

These Writ Petitions are filed as against the tender notification issued by the third respondent dated 24.12.2020 for execution of certain road works in the third respondent/ Corporation.

2.The petitioner in W.P.No.1916 of 2020 is a Class II contractor registered with the Tiruppur Corporation and also the Commissioner of Tiruppur City Municipal Corporation Contractors Association. The petitioner in W.P.No.2535 of 2021 is a Class III Contractor registered with the 3rd respondent Corporation. Since, both these writ petitions are filed as against the tender Notification dated 24.12.2020 of the third respondent, these Writ Petitions are taken up together and disposed of by this common order.

3.The grievance of the petitioners in these writ petitions is that the third respondent Corporation has merged 28 contract works as 4 contract works in order to favour few Class-I contractors alone. The road works from different areas are grouped as a package to increase the value of contract and thereby the Corporation is eliminating other class contractors from participating in the tender. According to the learned counsel for the petitioners, there are 5 class of contractors registered with the respondent Corporation and this grouping is made at the instance of Class-I Contractors to avoid the other Contractors and ultimately the competition can be restricted and the very object of the Tender Transparency Act, 1998 itself is defeated.

4.Mr.Silambanan, learned Senior counsel representing for the Corporation submits that this tender is floated for execution of certain road works under the Special Road Program (SRP - 2021) for improvement of damaged roads due to underground sewerage scheme, water supply improvement scheme and natural calamities. 90% of the fund is sanctioned by the State Government under the scheme and the Corporation is spending 10% for the same. Since, the State Government is allocating the 90% of the funds, the works are decided by the Commissioner of Municipal Administration based on the requirement details furnished by the Corporation. The works are grouped as four packages based on the

(i) the Traffic Density Value (TDV),
(ii) requirement constituency wise (3 Constituencies - Palladam, Tiruppur North and Tiruppur South),
(iii) damaged roads taken up for priority wise based on main water supply main line and UGDS (Underground Damage System) and
(iv) Zonal wise (as Supervising Engineers are categorized Zonal wise). According to the learned Senior counsel, the works have

been grouped as four packages and a proposal has been made to the CMA and the Projects Sanctioning Authority granted sanction to take up the works at an estimated cost of Rs.2000 Lakhs. Based on the said orders, the respondent Corporation floated these tenders.

5.The learned Senior counsel further stated that the Package - I are the roads which require repair works of similar nature in ward Nos.1, 3 to 15 belonging to Zone - I and Tiruppur North Constituency (Estimate amount Rs.493.80 Lakhs). Package - II relating to construction of storm water disposal drain and culvert and formation of roads in ward Nos.16 to 30 and 33 belonging to Zone-2 and Tiruppur North Constituency (Estimate amount Rs.533.33 Lakhs). Package - III are restoration of roads in Ward Nos.31,32,34,38 to 51 and 56 belonging to Zone-3 and 4 and Tiruppur South Constituency (Estimate amount Rs.639.51 Lakhs). Package - IV is restoration of roads in Ward Nos.36,52 to 54,57 to 60 belonging to Zone-3 and 4 and Palladam Constituency (Estimate amount Rs.333.36 Lakhs).

6.The learned Senior counsel however accepts that there are 5 classes of Contractors depending upon the value of the work and as per the value of the work, in this case, the Class - II Contractors alone can participate and other class of contractors cannot participate. Further he would submit that the Corporation is having several other works and the others may get reasonable opportunity and this work is a time bound work and therefore certain special conditions have been incorporated for participating in the tender like previous experience, possession of machineries etc. He would submit that if there are no sufficient number of Class-I contractors registered with the Corporation then the Contractors registered with PWD and Highways can also participate in this tender. The learned Senior counsel has also relied upon the orders of Hon'ble Supreme Court on the scope of judicial review in the tender matters.

7.This Court paid its anxious consideration to the rival submissions made and also perused the materials available on record.

8.The case of the petitioners is that different road works from different area are clubbed together as one package and thereby the volume of contract work has been increased with a sole object to eliminate competition in awarding contract work. As per this grouping, the other class of contractors cannot participate in this tender process. Ultimately a competition would be restricted with Class-I contractors alone. According to the learned counsel for the petitioner, there are only 7(seven) Class-I Contractors registered with the third respondent Corporation whereas there are several other contractors in Class

II, III or IV. It is an admitted fact that there are five types of class of registered contractors registered under the Corporation depending upon the value of the project, which is as follows;

Classes	Estimate cost
Class-I	Above Rs.75 lakhs
Class-II	Upto Rs.75 lakhs
Class-III	Upto Rs.30 lakhs
Class-IV	Upto Rs.15 lakhs
Class-V	Upto Rs.6 lakhs

9.The respondent had floated reasoning for packages as that the first package are the road works which require repair works of similar nature in Ward Nos.1, 3 to 15 belonging to Zone I, Package II is relating to construction of storm water disposal drain and culvert and formation of roads in ward Nos.16 to 30 and 33 belonging to Zone II. Package III is for restoration of roads in Ward Nos.31,32,34,38 to 51 and 56 belonging to Zone III and IV and Package IV is for restoration of roads in Ward Nos.36, 52, to 54, 57 to 60 belonging to Zone III and IV.

10.Initially the learned Senior counsel has pointed that the group of these works are made depending upon the value and in the counter affidavit a stand has been taken that the groupings are made as per the zone wise. The reason for grouping the works as zone wise is stated in their counter as it is categorized zonal wise and therefore it appears that the respondent/Corporation has grouped the works for the convenience of the supervising engineers in the same class. But on perusal of the counter affidavit, certain road works in Ward Nos.31, 32, 34, 38 to 51 & 56 belonging to restoration of roads are grouped as Package - III and the reconstruction of road works in Ward Nos.36, 52 to 54, 57 to 60 of Zone III & IV are grouped as Package - IV.

11.In their stand taken by the respondent that the groups are categorized by them as per the constituency places namely Palladam, Tiruppur North and South Constituencies, there is no logic behind this. Yet another ground taken by the respondent Corporation for dividing the work into four packages is as per Traffic Density Value (TDV). The Traffic Density Value is defined as the number of vehicles occupying a unit length of roadway. The easiest way to visualize traffic density is to consider an aerial photograph of a highway section. The number of vehicles in 1 mile of a single lane gives the density per lane-mile. If the specifications are made, every contractor is supposed to lay the road as per the specification. The

reasonings for grouping of the packages based on the Traffic Density Value is absolutely baseless without any valid reasoning.

12.All these grounds projected by respondent Corporation for grouping these road works as four packages appears to be made to favour few contractors or to eliminate the competition in the contract works. The Zonal Engineer who is working within the Corporation has no restriction to inspect all zones and every zone is having Zonal Engineers assisted by their Subordinate Engineers and they can very well inspect and ascertain the quality of work even if its is executed by several other contractors. The Engineers are expected to inspect the works and not the contractors.

13.The Tamil Nadu has enacted a separate Act namely the Tamil Nadu Transparency in Tenders Act in the year 1998 (Tamil Nadu Act 43 of 1998) and the preamble portion of the said Act reads as follows;

"An Act to provide for transparency in the public procurement and to regulate the procedure in inviting and accepting tenders and matters connected therewith or incidental thereto.

WHEREAS to maximise economy and efficiency in Government procurement;

AND WHEREAS to foster and encourage effective participation by tenderers in the process of tenders;

AND WHEREAS to promote healthy competition among tenderers;

AND WHEREAS to provide for fair and equitable treatment of all tenderers;

AND WHEREAS it is expedient to eliminate irregularities, interference and corrupt practices in the matters relating to tender processes by providing transparency in such matters;

AND WHEREAS to promote the integrity of the process of tenders and to promote fairness and public confidence in the processing of tenders by ensuring transparency in the procedure relating to procurement.

14.To exploit the public money involved in the tenders some corrupt officials colluded with the certain contractors and have created a situation such as;

(i)The tender documents will be furnished only to selective contractors

(ii)The tenders were floated without technical publication or Notification

(iii)Preventing certain contractors from submitting the tender documents etc.,

15.The illegal money involved in these public contracts infact to some extent spoil the Indian politics. In order to eliminate these irregularities in supply of tender documents, the State Government has enacted the Tamil Nadu Transparency in Tenders Act. The Act was enacted in the year 1998 and the Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules was framed in the year 2012. But even then the irregularities in the public tender is not reduced. The officers are finding out various reasons to evade and eliminate healthy competition in the public contracts. The Officers are notifying new tender conditions such as

- (i)the persons who are participating in the tender process must possess all the equipments
- (ii)all the equipments must be certified by a concerned officer, and
- (iii)must have experience of contract work for several Crores.

16.In view of these conditions, even an IIT topper who intends to take a contract work to show his skill, cannot participate in the tender. In a road laying work or a construction work, certain machineries may be required for one or two days which can very well be hired. However, conditions were imposed that the person must possess machinery and also must possess a certificate of its working condition, from a particular officer. The particular officer will issue the certificate only to selected contractors and those persons having certificates alone can participate in the tender. The officials are inventing new reasons and new novel ideas to eliminate the competitions and are not ensuring transparency. There is a separate Department functioning for ensuring the quality of the road works but even then the tenders have been floated every year for relaying of the roads.

17.It is true and is a settled position of law that the tender floating authorities can prescribe their conditions and requirements for the tenders by taking advantage of the same, conditions are made in such a way to eliminate competition and to favour few individuals. The money involved in these public contracts are the money of the tax payers and every authority is accountable for every rupee he spend for the public purpose. The Officers have to show utmost response in concerning with the public money. They can impose any number of conditions to ensure the quality of work and for the duration of the work. In the guise of executing the work on time bound manner, the conditions stated in the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 are flouted.

18.In this case the groupings of works have been made without any guidelines or with any reasons or logic particularly

to evade competitions. The reasons offered by the respondent are baseless without any statutory backing.

19.The Hon'ble Supreme Court in the case of West Bengal State Electricity Vs. Patel Engineering Co.Ltd. & others dated 15.01.2001 has held that the project undertaken by the appellant is undoubtedly for the benefit of public. The mode of execution of the work of the project should also ensure that the public interest is best served. Tenders are invited on the basis of competitive bidding for execution of the work of the project as it serves dual purposes. On the one hand it offers a fair opportunity to all those who are interested in competing for the contract relating to execution of the work and on the other hand it affords the appellant a choice to select the best of the competitors on competitive price without prejudice to the quality of the work. Above all it eliminates favoritism and discrimination in awarding public works to contractors. This grouping of contract appears to be made to favour few contractors and to evade a healthy competitions and apparently irrational.

20.In similar such matter which was dealt with by the Madurai Bench of Madras High Court in the case of R.Muthukumar Vs. The Principal Secretary to the Government of Tamil Nadu dated 26.08.2020, this Court held as follows;

"The learned Additional Advocate General contends that courts ought not to poke their nose in tender matters beyond a point and that the decision should be left to the prerogative of the Government. In my view, the concept of prerogative cannot keep company with the concept of rule of law. In any event, the decision making process is subject to judicial scrutiny. We are a democracy and our Constitution contains Part IV in which the Directive Principles of State Policy have been laid down. Of course, as per the Article 37, the provisions contained in Part IV shall not be enforceable by any court. But, the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 39 states that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. That is why, we have what is known as competition law. Government must have due regard to the constitutional values while awarding contract (vide West Bengal State Electricity Board vs. Patel Engineering Co. Ltd. and Ors, (2001) 2 SCC 451). The terms of the tender process must be formulated in such a way that it fosters competition.

The small or medium level players must not left out.
Only then there will be healthy competition in the long
run."

By stating so, this Court quashed the tender notification holding that the respondents had irrational and without any reason clubbed Slice no.10 along with other works.

21.As discussed above grouping of the works are irrationally made with an object to eliminate certain class of contractors and to avoid healthy competition and therefore this Court is inclined to quash the impugned Notification as it is arbitrary, irrational and in order to favour some individuals.

22.In the result, the Writ Petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
The State of Tamil Nadu,
Municipal Administration Department,
Secretariat, St.George Fort,
Chennai.
2. The Commissioner of Municipal Administration,
Urban Administrative Building,
Santhome High Road, MRC Nagar,
Raja Annamalaipuram, Chennai - 600 028.
3. The Commissioner,
Tirupur Corporation,
Tirupur, Tirupur District.

+1cc to Mr.K.Praveen Kumar, Advocate, S.R.No.18512

W.P.No.2535 & 1916 of 2021

PL(CO)
CS/07/04/2021