

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.01.2021	Delivered on 05.03.2021
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CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.Nos. 14017 & 12286 of 2020

and

W.M.P.No. 17409 & 15801 of 2020

Viswanath Rajan ...Petitioner in W.P.No.14017 of 2020

G.Mohan ...Petitioner in W.P.No. 12286 of 2020

Vs.

1.Chennai Metropolitan Development Authority,
Rep. By its Member Secretary,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

3.The Superintending Engineer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

4.A.Chinnadurai

...Respondent in W.P.No.14017 of 2020

4.N.Karthik

...Respondent in W.P.No. 12286 of 2020

Prayer in both writ petitions: Writ petitions filed under Article 226 of the Constitution of India seeking issuance of writ of certiorarified mandamus, calling for the records of the 3rd respondent comprised in order dated 06.08.2020 bearing Ref.No.Lr.No. SE-I/CW/PAIV/1224/2018 rejecting tender of the petitioners and accepting tender of the 4th respondents by declaring them as successful bidder, quash the same and consequentially direct the respondents to conduct open auction for Shop No.VG-88 and VN-124, Vegetable Market Godowns, Koyambedu in fair and transparent manner.

For Petitioner in both WPs : Mr.S.Ramesh,

For Respondents in both WPs: Mr.Tamil Mani, Standing Counsel
for R1 to R3

Mr.Kumar Krishnamurthy,
for R.Prabhakaran

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COMMON ORDER

These writ petitions are filed as against the communication of the 3rd respondent dated 06.08.2020 in and by which, the Superintending Engineer, CMDA informed the petitioners that their tender application for the allotment of VG – 88 and VN-124, Vegetable Market Godowns at Koyambedu Whole Sale Market were not considered on the ground of eligibility criteria.

2. Mr.Tamil Mani, learned Standing Counsel for CMDA would submit that the CMDA floated a tender for allotment of shops at Flower Market Godown, Koyambedu on outright basis prescribing certain qualifications such as that the applicant should have been in existence of perishable goods trade for the past five years as on December 2019 and shall not be a license holder of Market Management Committee, Koyambedu Wholesale Market Complex and shall be an income tax assessee for the last three years etc.

3. The petitioners have participated in the tender for the Shop No. VG-88 and VN-124 also enclosed a demand draft of Rs.2,04,00,000/- & Rs.1,02,00,000/- respectively, which is 20% of the value of the shops as quoted by the CMDA in their website. The petitioners have submitted their applications along with the demand draft on 08.01.2020 but there was no intimation from the respondents and in the meantime, the Government has announced lockdown in view of the pandemic situation. The petitioners did not receive any notice for the auction but received the impugned order as their applications were rejected at the stage of pre-qualification.

4. Mr.S.Ramesh, learned counsel for the petitioners assailed the impugned order that the alleged public auction said to have been conducted on 31.07.2020 and the order of rejection holding the petitioners as not qualified is made subsequent to the auction. The petitioners have taken out a demand drafts and submitted their applications in January 2020 and they were waiting for notice from the respondents for the public auction. In the meantime, the Government has announced lockdown in view of the Covid-19 situation but, the auction was conducted on 31.07.2020 without issuing

any notice to the applicants on the date of auction when the lockdown was partially lifted. He would further submit that the petitioners have quoted a higher amount than the amount quoted by the 4th respondent. However, without any valid reason, the petitioners / applicants were disqualified in the pre-qualification process and informed by the impugned communication dated 06.08.2020 ie., after the conduct of auction as on 31.07.2020.

5. Mr.T.R.Tamilmani, learned Standing Counsel would submit that the petitioners have not furnished any experience certificate along with his application and furnished Income Tax returns only for two years instead of three years. The Vegetable Godown bearing No.VG-88 & VN124 are specifically meant for vegetable market godown purpose and the respondents also provided separate godown facilities for flower merchants and fruit merchants. In so far as the vegetable godowns are concerned, as per the condition of tender, the applicant should have in existence of perishable goods trade for the past five years as on December 2019 for running the godown and should be an income tax assessee for atleast three proceeding years. On these two grounds, the petitioner have not satisfied

the prescribed qualification. Therefore, the petitioners application was rejected at the pre-qualification stage and intimated through the impugned communication.

6. The learned Additional Advocate General by referring the judgment of the Hon'ble Supreme Court in **Michigan Rubber (India) Ltd., Vs. State of Karnataka & Others** reported in **2012 (8) SCC 216** has also pointed out the scope of judicial review in tender process. He further referred the orders passed by the Hon'ble Division Bench of this Court in W.P.No. 11576 of 2020 dated 06.11.2020, W.P.No. 2352 of 2020 dated 04.11.2020 and W.P.No. 205 of 2020 dated 10.11.2020 and would submit that as against the very same notification for the vegetable godowns in Shop No.VG-88 & VN-124 at Koyambedu Wholesale Market and Shop No.VN-124, the above writ petitions were filed before the Hon'ble Division Bench of this Court and this Court has rejected all these writ petitions holding the right of the respondents prescribing the conditions for tender process in this case is taken place.

7. He further submit that with regard to the Shop No. VG- 88, ten persons have submitted the tenders, six tenders were rejected on disqualification and the case of the petitioner has been rejected that he has not furnished any experience certificate and is not having Income Tax returns for three years. He would further submit that in Clause – 2(i) of the tender notification that there is specifically mentioned that the applicants are solely responsible for checking the www.cmdachennai.gov.in website for any adantic or amendment issued subsequently before the closure of the downloading time of the application and these conditions of the tender adantum was issued in their website for pre-qualification of tenders on 06.01.2020.

8. This Court paid its anxious consideration to the rival submissions made and the said matter of allotment of these vegetable market godowns on outright sale basis in Koyambedu Vegetable Market in VN-124 was already challenged in W.P.No. 11576 of 2020 by one, A.Maruthupandian with the same relief sought for in the present writ petition and the same was dismissed with the following observations:-

“9. In the considered opinion of this Court, the petitioner appears to have fulfilled the condition (4) of the Addendum partly and did not comply with the conditions 1 to 3. No specific averment has been made in the affidavit filed in support of this writ petition as to the compliance of the above said conditions. A perusal fo the original files establishes that the online application submitted by the petitioner also did not disclose the said fact and as such, the arguments advanced for allowing the prayer of the writ petition cannot be sustained.

10. This Court has also perused the note files of the 1st respondent and it would disclose that, in respect of Shop No.VN-124, the 4th respondent alone was the eligible tenderer and when this Court has posed a specific query to the learned Additional Advocate General as to whether it was the second or third auction in respect of the said godown, the learned Additional Advocate General, on instructions, would submit that it was the first tender. The best business practice normally requires that, in respect of the first tender-cum-auction, if there is only one bidder, normally a fresh tender-cum-auction would be invited and further one also, and thereafter, a call will be taken to finalise the said tender. But in this case, at the first instance itself, the tender was knocked down in favour of the 4th respondent. Though the tender floating authority is vested with all powers to appraise, evaluate and accept the tender, the fact remains that the respondents deal with public and therefore, their endeavour should be to obtain the best possible price and this Court hopes and trusts that the said kind of practice may be adopted by them atleast in future in respect of tender-cum-public auctions.

11. In the light of the reasons assigned above, this Court finds no merit in this writ petition.”

9. In yet another case, on the very same subject matter of the Godown VG-88 one, A.Aravindprabu has challenged the addendum dated 06.01.2020 in W.P.No. 2352 of 2020 and the same was dismissed by order dated 04.11.2020 that the Addendum dated 06.01.2020 have not disclosed any arbitrary decision or malafide act on the part of the respondents. The KWMC Periyar Vegetable Market all Sangam's Federation has also challenged the tender notification dated 28.11.2019 with regard to the allotment of shop No.VN- 124 and VG-88 at Koyambedu Vegetable Market in W.P.No. 205 of 2020 and the same was dismissed on the terms of the above orders of the Hon'ble Division Bench referred supra.

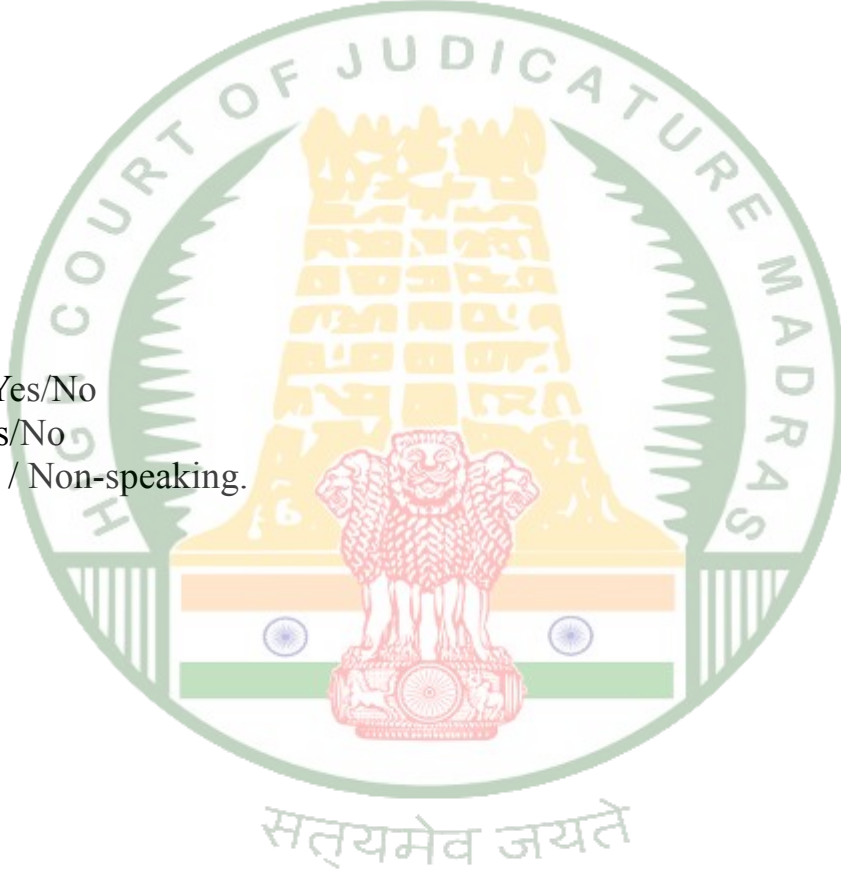
10. Since the issue has already been decided by the Hon'ble Division Bench of this Court and the petitioners have not fulfilled the pre-requisite qualification of the experience certificate and the Income Tax returns, this Court is not inclined to entertain these writ petitions, accordingly these writ petitions are dismissed.

11. In view of the above observations, both the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

05.03.2021

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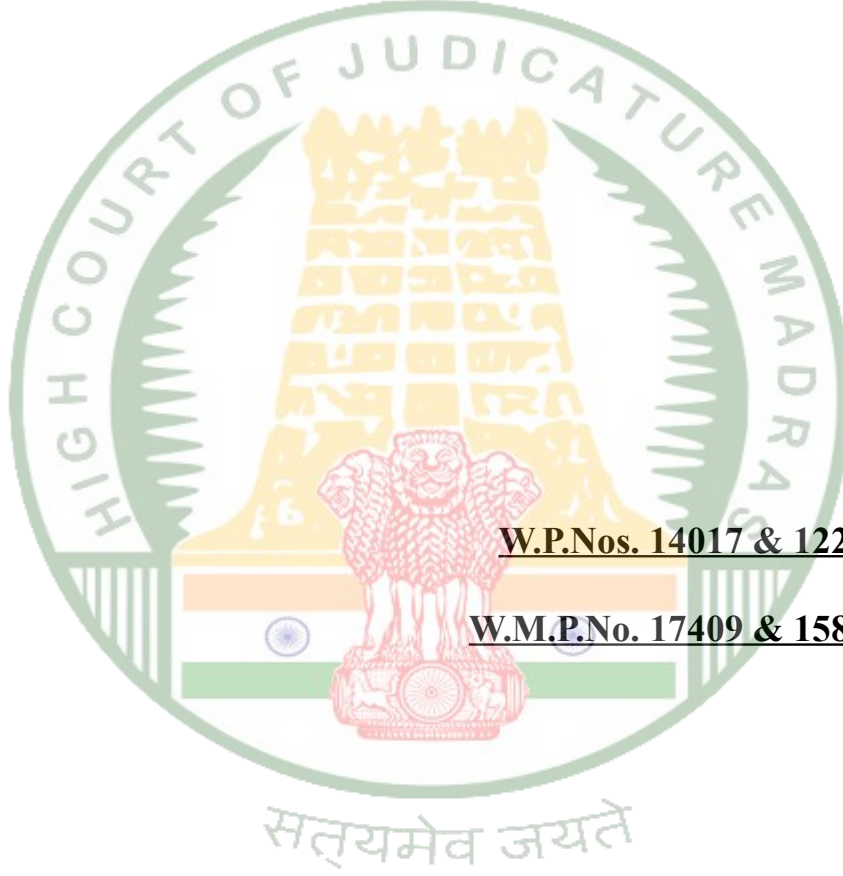
To:

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