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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WRIT PETITION NO.20842 OF 2021

S.Mahadevan

... Petitioner

-Vs-

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.

2. The Superintending Engineer,
Storm Water Drain,
Rippon Building,
Greater Chennai Corporation,
Chennai - 600 003.

... Respondents

PRAYER:-

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent tender notification in BRR.C.No.B4/2553-1 and 2/2020 uploaded website dated 20.09.2021 and quash the same and consequently direct the respondents to consider the representation of the petitioner dated 21.09.2021.

For Petitioner : Mr.E.C.Ramesh

For Respondents : Ms.P.T.Ramadevi
Standing Counsel

O R D E R

This writ petition has been filed challenging Clause 33.2 of the tender notification dated 20.09.2021.

2. The case of the petitioner is that, he is a registered Class-I contractor and he is undertaking various contractual works in the Government Departments and also at the level of local authorities. The second respondent issued an e-tender



notification inviting bids for carrying out the work of the restoration of the road cut made by TANTRANSCO laying a 230KV cable at Pantheon Road and Ethiraj Salai.

3. The grievance of the petitioner is with regard to Clause 33.2 of the tender notification and for proper appreciation, the same is extracted hereunder.

"33.2. As per Council Resolution No.456/2002 dated 28.11.2002 the amount of Additional Security Deposit to be paid by the Contractor along with the tender for various percentage of rebate are as follows:

Percentage of Rebate	Amount of Additional Security Deposit payable in the form of Demand Draft
5 to less than 15%	2%
15% to 20%	50% of Difference between Office value of work and Tender amount
Above 20%	Same as above

4. According to the petitioner, the additional security deposit that was insisted in the said Clause will cause grave prejudice to the participants in the tender, since there is a huge outflow of cash and considering the pandemic situation, many contractors will not be able to participate in the tender and consequently it will limit the number of participants in the tender process. The other grievance expressed by the petitioner is that, if in spite of the payment of the additional security deposit, the tender is not ultimately accepted, it becomes more difficult for the participants to get refund of the money. Therefore, considering the present position and the financial constraints faced by the contractors, the above Clause has been put to challenge in the present writ petition.

5. Heard Mr.E.C.Ramesh, learned counsel for the petitioner and Ms.P.T.Ramadevi, learned Standing Counsel appearing for the respondents.

6. Insofar as the scope of interference in tender conditions, the law is governed by the judgment of the Hon'ble Supreme Court in "Michigan Rubber (India) Private Limited -Vs- State of Karnata and Others reported in 2012 (8) S.C.C.216. The guidelines given by the Supreme Court is extracted hereunder.



" 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 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."

7. The above judgment was also followed by this Court in a recent judgment in "SDV Chandru -Vs- Tamil Nadu Civil Supplies Corporation" reported in 2020 (2) C.T.C.285.



8. It is clear from the above judgments that, in the matter of formulating conditions of tender documents and awarding the contract, greater latitude is required to be conceded to the State authorities unless the action is found to be malicious and it is misuse of statutory powers. If the Court finds that the condition is not totally unreasonable, the mere fact that the participants will face hardship due to their financial constraints cannot be a ground for interfering with the condition imposed in the tender notification. There is a reason as to why the second respondent has included Clause 33.2 in the tender notification seeking for payment of additional security deposit and this Court does not want to question the wisdom of the respondents in adding such a Clause in the tender notification. This Court does not find anything unreasonable in the above said Clause and the same cannot be interfered by this Court.

9. It is brought to the notice of this Court that the petitioner has already participated in the tender and submitted the bid. It is made clear that the amounts deposited by the participants whose bids are ultimately rejected must be immediately refunded to them since they have to maintain the cash flow in order to run their business. Withholding the amount will only cause prejudice to the participants and it will be a disincentive for the participants to participate in the future tender invited by the authorities. This has to be kept in mind by the authorities.

10. In the result, this Court does not find any ground to interfere with the tender notification issued by the second respondent and accordingly this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.



2. The Superintending Engineer,
Storm Water Drain,
Rippon Building,
Greater Chennai Corporation,
Chennai - 600 003.

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+1cc to Mr.E.C.Ramesh, Advocate, S.R.No.50171
+1cc to Ms.P.T.Ramadevi, Advocate, S.R.No.50185

W.P.NO.20842 OF 2021

PCH(CO)
PBS/12/10/2021