



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

Coram

The Hon'ble Mr. Justice PARESH UPADHYAY
and

The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

W.A.No. 7 of 2022
and C.M.P.Nos.99 and 101 of 2022

K.Durvasulu

..Appellant

Vs

1.S.Mahadevan

2.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

3.The Superintending Engineer,
Bus Route Roads Department,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

4.Tamil Nadu Pollution Control Board,
Rep. By its District Environmental Engineer,
Gummidipoondi,
Tiruvallur District.

..Respondents

Appeal preferred under Clause XV of Letters Patent against the order dated 23.12.2021 made in W.P.No.28002 of 2021.

Prayer in W.P.No.28002 of 2021:

Praying that directing the 3rd respondent to process my application dated 09.12.2021 and pass orders within a period of 7 days and direct the 2nd respondent to extend the time for submitting the Pollution Control Board Certificate before the 2nd respondent board by another 4 weeks and not to reject my tender till then in E-Tender Short Tender Notice in BRR. C.No. B4/4716/2021 uploaded on 03.12.2021 on the file of the 2nd respondent for the Work No.2 to 12



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For Appellant .. Mr.AR.L.Sundaresan
Senior Counsel
for Ms.AL.Ganthimathi

JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order passed by learned Single Judge dated 23.12.2021 recorded on W.P.No. 28002 of 2021. The appeal is by a third party, who was granted leave by this Court vide order dated 04.01.2022 recorded on C.M.P.No.72 of 2022.

2. Mr.AR.L.Sundaresan, learned Senior Advocate for the appellant has submitted that the learned Single Judge, by the impugned order fell in error by granting extension of time to submit valid Pollution Control Board Certificate which would be relevant factor to decide the eligibility of the original writ petitioner. It is submitted that the same ought not to have been done. Reliance is placed on the decision of the Supreme Court of India in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others (1979) 3 SCC 489. Attention of this Court is also invited to the tender condition no. 9.1 (at page 41), the corrigendum therein at page 164 dated 14.12.2021 and the document at page 166 to point out that the application of the original writ petitioner dated 09.12.2021 was already rejected by the Pollution Control Board on 21.12.2021. Reference is also made to the document at page 182 dated 31.12.2021, which is clearance certificate issued by the Pollution Control Board in favour of the original writ petitioner pursuant to the order of learned Single Judge. It is submitted that the impugned order is unsustainable and the same needs to be interfered with.

3. Having heard the learned senior advocate for the appellant and having considered the material on record, this Court finds as under :-

3.2 The original writ petitioner had approached this Court with the following prayer:-

"Writ petition under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the third respondent to process the petitioner's application dated 09.12.2021 and pass orders within a period of 7 days and direct the 2nd respondent to extend the time for submitting the Pollution Control Board Certificate before the 2nd respondent Board by another 4 weeks and



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not to reject the petitioner's tender till then in E-Tender Short Tender Notice in BRR.C.No.B4/4716/2021 uploaded on 03.12.2021 on the file of the 2nd respondent for the Work No.2 to 11."

3.3 In the writ petition, the respondents were the Commissioner, Greater Chennai Corporation so also the Tamil Nadu Pollution Control Board being respondents 1 and 3 respectively, both being instrumentalities of the State.

4. It is not in dispute that the bidding process was by the first respondent and the requirement therein was production of clearance from the third respondent. The grievance of the original writ petitioner was that, though he had made application to the respondent No.3 who is one instrumentality of the State, he is yet to give that clearance and because of non-compliance of that condition, over which the original writ petitioner can not be said to have any control, the second instrumentality of the same Government (respondent No.1) should not be permitted to treat the original petitioner as ineligible to bid. It is under these circumstances, learned single Judge, after hearing the concerned parties passed the order, the relevant of which reads as under:

"10. Since the condition 3.4(e)(i) was issued only by way of a corrigendum after the tender notice dated 03.12.2021 and thereafter only the petitioner since has applied to the third respondent for getting the certificate and it will take a reasonable time, this Court feels that at least time up to 31.12.2021 can be given to the petitioner and the other similarly placed tenderers in respect of the tender notice in question to produce the certificate obtained from the Pollution Control Board under Clause 3.4(e)(i).

11. In view of the above, there shall be a direction to the first respondent to extend the time, to produce the Pollution Control Board certificate as claimed through the corrigendum notification issued in the tender notification, by Clause 3.4(e)(i), up to 31.12.2021.

12. In view of the above direction, there shall be a direction to the third respondent, on behalf of whom Mrs.V.Yamunadevi, learned Special Government Pleader takes notice, to process the application of the petitioner and decide the request of the petitioner for grant of NOC within a period of 5 days from today. It



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is made clear that on or before 31.12.2021, if the petitioner has not produced the necessary certificate under Clause 3.4(e)(i), it is open to the respondent to proceed and finalize the tender in accordance with the tender conditions.

With the above direction, this writ petition is disposed of. No costs."

5. We find that, complying with the condition of submitting valid Pollution Control Board Certificate was already thought proper to be relaxed and for that purpose cut-off date was changed vide corrigendum dated 14.12.2021, which is on record. That is not under challenge.

6. A citizen cannot be condemned by any public authority saying that, my own authority needs to do something within stipulated time, which it has not, and therefore you are not eligible to participate in the bidding process. Keeping this in view, learned single Judge, after hearing the submissions of the concerned parties including the Pollution Control Board has exercised discretion, which in our view, can not be said to be an error which may call for any interference in an intra-court appeal. This appeal therefore needs to be dismissed.

7. So far reliance on the decision of the Supreme Court of India in Ramana Dayaram Shetty (supra) is concerned, in our view, in the facts noted above, the same will not change the complexion of the matter. We also note that the order of learned single Judge has already stood complied with even by the Pollution Control Board and clearance certificate is also issued in favour of the original writ petitioner on 31.12.2021.

8. For the above reasons, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mmi/13



To

1. The Commissioner,
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Rippon Buildings,
Chennai - 600 003.

2. The Superintending Engineer,
Bus Route Roads Department,
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3. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Gummidipoondi,
Tiruvallur District.

+1cc to M/s.A.L.Ganthimathi, Advocate SR. No.1030

W.A.No.7 of 2022

UM (CO)
PR (25/01/2022)