IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

CORAM

THE HON'BLE MR. JUSTICE C. V. KARTHIKEYAN

Writ Petition Nos.32957 & 33477 of 2022
and
W.M.P.Nos.32350, 32351, 32919, 32920 & 32921 of 2022

W.P.No.32957 of 2022:

M/s.Fun World & Resorts India Pvt., Ltd.,
Rep. by its GPA Mr.U.Sivanarayanan,
Palace Grounds, (Opp to TV Towers),
J.C.Nagar, Bangalore-560 006. ... Petitioner

Versus

1.The Principal Secretary to Government,
Tourism, Culture, Religious Endowments,
And Chairman, Tamil Nadu Tourism Development Corporation,
Fort St.George, Secretariat, Chennai 600 009.

2.The Managing Director,
Tamil Nadu Tourism Development Corporation,
No.2, Wallajah Salai, Chennai 600 002.

3.The General Manager,
Tamil Nadu Tourism Development Corporation,
No.2, Wallajah Salai, Chennai 600 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd respondent to accept firm's commercial bid submitted along with the tender application for conduct of 47th India Tourist and Industrial Fair 2022 at Island

Grounds along with other bidders application for the same vide Tender Notification bearing No.51/FS/2022 dated 31.10.2022 and consequently direct the respondents to follow the terms and conditions laid down in the said tender notification.

For Petitioner	:	Ms.Chitra Sampath, Senior Counsel for Mr.M.Vijay Anand
For Respondents	:	Mr.R.Shunmugasundaram, Advocate General
Assisted by:		
For R1	:	Mr.T.Sreenivasan, Special Government Pleader
For R2 & R3	:	Mr.A.Edwin Prabakar, Special Government Pleader

W.P.No.33477 of 2022:

M/s.Fun World & Resorts India Pvt., Ltd.,
Rep. by its GPA Mr.U.Sivanarayanan,
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J.C.Nagar, Bangalore-560 006. ... Petitioner

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3.The General Manager,
Tamil Nadu Tourism Development Corporation,
No.2, Wallajah Salai, Chennai 600 002.

4.M/s.Sunlight World,
Rep.by its Proprietor, Mr.Peer Anees Raja,
No.36/3, Malayaperumal Street,
Chennai 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent relating to the impugned order bearing letter No.51/FS/2022 dated 03.12.2022 and quash the same and consequently, direct the official respondent 1-3 to grant permission to petitioner for conducting the fair 47th India Tourist and Industrial Fair 2023 at Island Grounds, Chennai on opening of the petitioner's financial Bid.

For Petitioner : Ms.Chitra Sampath, Senior Counsel
for Mr.M.Vijay Anand

For Respondents : Mr.R.Shunmugasundaram,
Advocate General

Assisted by:

For R1 : Mr.T.Sreenivasan,
Special Government Pleader

For R2 & R3: Mr.Edwin Prabakar,
Special Government Pleader

For R4 : Mr.B.Kumar, Senior Counsel
For Mr.C.Iyyaparaj

COMMON ORDER

W.P.No.32957/2022 had been filed, seeking a mandamus against the 2nd respondent/the Managing Director, Tamil Nadu Tourism Development Corporation, to accept the commercial bid of the petitioner along with the tender application for conducting the 47th India Tourist and Industrial Fair, 2022 at Island Grounds along with other applications. Having received information that the 4th respondent in W.P.No.33477/2022 had been awarded the said tender, the petitioner had filed this Writ Petition in the nature of Certioratified Mandamus seeking interference with such order.

2. Naturally, the facts overlapped. The arguments also overlapped. It is therefore only appropriate that a common order is passed in both the Writ Petitions.

3. The 2nd respondent had issued a tender notification on 31.10.2022, seeking prospective bidders for organizing "the 47th India Tourist and Industrial Fair, 2023" for 70 days at Island Grounds, Chennai.

4. The date of commencement of the sale of bidding documents was from 29.11.2022 and the last date for receipt of the tender document was 30.11.2022. The date and time for opening of the technical bid was on 30.11.2022 at 1.00 p.m. The date and time of opening of the financial

bid was kept open and was to be intimated after the scrutiny of the technical bids.

5. There were general conditions which every prospective bidder should satisfy.

6. In the general conditions, condition No.4 was as follows:

"4. Anyone having outstanding dues to TTDC or those tenderers black listed by the TTDC or by any other Government Department are not eligible to participate directly or indirectly in the tender."

7. Condition No.6 was as follows:

"6. The tenders not in the prescribed form and received without Rental Advance amount and Performance Security Deposit along with Technical Bid will not be accepted and the same will be summarily rejected. The Managing Director, TTDC also reserves the right to accept/reject any or all the tenders at any time before award of contract."

8. Condition No.13 was as follows:

"13. Evaluation of tenders would be in accordance with the provisions of Tamil Nadu Transparency in

Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 and amendments thereon. The technical bid will be evaluated concerning the parameters prescribed in the technical bid."

9. There were also Eligibility Criteria which were given. The Eligibility Criteria No.6 was as follows:

> *"6. Tenderers who have defaulted in payment of rent in Government Exhibitions or Exhibitions of TTDC shall be disqualified from participation in Tender."*

10. There were specific Terms and Conditions of the tender which were also given. Condition No.8 was as follows:

> *"8. Tenderers who have defaulted in payment of rent in Government Exhibitions or Exhibitions of TTDC shall be disqualified from participation in the tender. Tenderer should submit a self-certification that the tenderer does not default in payment into Government Exhibition or Exhibition of TTDC."*

11. Condition No.17 was as follows:

> *"17. If any of the conditions laid down by the TTDC are not complied with, the tender shall be liable to*

be cancelled and the tenderer shall be responsible for any loss incurred by TTDC."

12. There were further General Rules and Regulations of the contract. Rule No.1 was as follows:

> *"1. TTDC reserves the right of accepting or rejecting the tender or take any final decision in this regard. For any disputes that might arise in this connection, the decision of the Managing Director, TTDC shall be final and binding. In case of any disputes that might arise in the future shall be within the jurisdiction of Chennai Courts."*

13. Rule No.3 was as follows:

> *"3. The tenderer shall be responsible to pay tax, cess, and other duties/fees as stipulated by the Central/State Government. The tenderer shall produce proofs for payment of all taxes before the closure of the exhibition."*

14. The petitioner had submitted their documents on 30.11.2022 along with annexures. It must also be kept in mind that the petitioner had been earlier selected for the very same tender for conducting the 43rd India Tourist and Industrial Fair. They were therefore hopeful of crossing

the stage of technical evaluation and being invited for participating in the opening of the financial bids.

15. W.P.No.32957/2022 had been presented on 05.12.2022 before this Court. On 05.12.2022, my learned predecessor had stated that notice should be directed on the respondents and that the Writ Petition should be listed on 06.12.2022 at 2.15.p.m., and specifically directed that the letter of indent (LOI) should not be issued till then. The Writ Petition was again listed on 06.12.2022, 07.12.2022, 08.12.2022 and again on 12.12.2022 and before me on 16.12.2022.

16. On 06.12.2022, 07.12.2022 and 08.12.2022, the interim order granted was extended till the next succeeding hearing date. Thereafter, on receiving information that the 4th respondent, had been awarded with the tender inspite of the pendency of W.P.No.32957/2022, the writ petitioner filed Writ Petition in W.P.No.32477/2022. That Writ Petition came up for consideration for the first time on 12.12.2022 and thereafter, before me on 16.12.2022.

17. Both the Writ Petitions had been listed earlier in the day today in the forenoon session before me for advancing arguments.

18. Heard arguments advanced by Ms.Chitra Sampath, learned Senior Counsel on behalf of Mr.M.Vijay Anand, learned counsel for the writ petitioner in both the writ petitions, Mr.R.Shunmugasundaram, learned Advocate General assisted by Mr.T.Sreenivasan, learned Special Government Pleader on behalf of the 1st respondent and Mr.Edwin Prabakar, learned Special Government Pleader on behalf of the 2nd and 3rd respondents and Mr.B.Kumar, learned Senior Counsel on behalf of Mr.C.Iyyaparaj, learned counsel on behalf of the 4th respondent.

19. The petitioner, as stated had applied for participation in the bid. It is only expected that the petitioner satisfies the conditions stated in the tender document. It must be kept in mind that the tender suffers from a time limit since the Fair is to start by the end of this year/beginning of next year for a period of 70 days. It must be mentioned that this is a Fair which is a much expected happening event in Chennai for the past nearly more than four decades.

20. People from the surrounding Districts come to witness the Fair. There are a large number of stalls which are put up. All this requires meticulous planning and the successful bidder should have the necessary wherewithals and infrastructure for putting up stalls and providing for the security of the general public who would attend in thousands every day. Even the preliminary arrangements for putting up the Fair will take a number of days.

21. It is stated that the fair is to be opened very shortly, definitely within January-2023 which gives about ten working days from this date for the arrangements to be completed. It is thus evident that substantial arrangements will have to be made keeping in mind the welfare of the general public who would throng the Fair in large large numbers and also the people who would put up the stalls.

22. The successful bidder is determined on the basis of the offer submitted for sharing the revenue received from sale of entry tickets. The bidder who offers the highest amount to the Government, would normally cross the financial stage. But even prior to crossing of the financial stage, every bid will have to be assessed whether they satisfy all the technical requirements.

23. Unfortunately, the petitioner's bid did not cross the technical evaluation or even the preliminary scrutiny conducted. The petitioner is alleges malafide on the part of the respondents in rejecting the tender documents of the petitioner. It is also claim that the petitioner was not put on notice about the rejection and more particularly, were not served with either the reasons for such rejection or the reasons for acceptance of the 4th respondent as the successful bidder.

24. The Writ Petitions are therefore focused primarily on the allegations that the respondents herein had acted with malafide intention in not only rejecting the petitioner from participating in the tender, and simultaneously in selecting the 4th respondent as the successful bidder.

25. The learned Senior Counsel on behalf of the petitioner, had pointed out that the ground rates were fixed in the tender itself. It is a question of the share offered to the Government which will determine as to who crosses the financial bid. But that is the second stage.

26. The tender is of two stages one, a technical stage and the other a financial scrutiny.

27. The date to open the technical bid was 30.11.2022. The date for opening the financial bid was fixed on 01.12.2022.

28. It is claimed by the petitioner that they were of the opinion that their tender had been accepted by the Committee, which scrutinizes the tender documents and that they had crossed the technical bid.

29. It is also claimed that the petitioner was waiting eagerly and it is stated that since information was not given, they had waited till 02.12.2022 and overcome by frustration at lack of information had filed W.P.No.32657/2022 on 05.12.2022. When they came to know that the 4th respondent had been awarded with the tender, they had filed W.P.No.33477/2022.

30. It is claimed that the petitioner was waiting on 01.12.2022, till 5.00 p.m. They were not informed whether their bid had crossed the technical evaluation. The petitioner had also given a representation but there was no response for the same.

31. It was stated that on 03.12.2022 and 04.12.2022 being weekends, the petitioner had filed W.P.No.32957/2022 on 05.12.2022

and moved it as a lunch motion. As stated, my learned predecessor had given an order stating that, the letter of intent (LOI) should not be issued.

32. The primary ground on which the petitioner therefore seeks to impinge the entire process is the lack of transparency in the rejection of the technical bid of the petitioner.

33. The reason for such rejection is that the petitioner had existing dues with the 2nd respondent particularly, rental dues which flowed from the 43rd Trade Fair which the petitioner had participated. This reason was challenged by the learned Senior Counsel on behalf of the petitioner herein, questioning the very bonafide of such demand.

34. It is stated that a dispute had been raised regarding the alleged rental dues and final orders had not been passed by the Managing Director of the 2nd respondent. It was therefore contended that it cannot be said that the dues had been crystallized as a lawful due payable by the petitioner herein which could be used as a reason by the respondents to reject the bid of the petitioner.

35. But that was what exactly happened. The petitioner's bid was rejected.

36. Both the writ petitions are therefore focused on such rejection.

37. The petitioner has incidentally not advanced any argument that the 4th respondent should be automatically disqualified or that the 4th respondent suffers from any disqualification or that the 4th respondent does not satisfy any of the conditions stated in the tender conditions, either general or specific.

38. The line of arguments advanced was more with respect to the rejection of their bid rather than the acceptance of the bid of the 4th respondent.

39. Before proceeding further, it would only be appropriate that a few provisions of the Tamil Nadu Transparency in Tenders Act, 1998 are extracted.

40. The Tamil Nadu Transparency in Tenders Act, 1998 had been introduced to provide for transparency in public procurements and to regulate the procedure in inviting and accepting tenders.

41. The object is to maximize economy and efficiency in Government procurement. Since, the Act regulates the entire process, it also encourages effective participation by tenderers in the process of tenders. It therefore promotes healthy competition among the tenderers. It also provides a platform for fair and equitable treatment of all tenderers. It therefore aims to eliminate irregularities, interference and correct practices in matters relating to tender process by providing transparency.

42. Owing to all the above, objects, the Act aims to promote integrity in the process of tenders and promote fairness and public confidence in the processing of tenders. It is with those avowed objections in mind did the State of Tamil Nadu pass the Tamil Nadu Transparency in Tenders Act in the year 1998.

43. Section 2(f) defines "*tender*" as follows:

> *"Section 2 (f) 'tender' means the formal offer made by any means including electronic mode in pursuance of an invitation by the procuring entity;"*

44. Section 2(h) defines *"Tender Bulletin"* as follows:

> *"Section 2 (h) 'Tender Bulletin Officer' means any officer appointed by the Government to publish the*

district or State Tender Bulletin.”

45. Section 2(i) defines *“Tender Documents”* as follows:

“Section 2 (i) 'Tender Document' means a set of papers including electronic documents containing schedule of works, rates, requirement of goods or services, technical specifications, procedure and criteria as may be prescribed for evaluation and comparison of tenders and such other particulars as may be prescribed:”

46. Section 4 regulates the issuance of tenders and places an embargo on any authority from accepting or inviting tenders except in accordance with the procedures laid down by the Act.

47. Section 4 is as follows:

“Section 4. Regulation of tenders._ No tender shall be invited or accepted by any authority after the commencement of this Act, except in accordance with the procedure specified in this Act and the rules made thereunder.”

48. Section 6 stipulates the functions of the Bulletin Officers. The

said provision is as follows:

"Section 6. Functions of Bulletin Officers._

(1) On receipt of intimation relating to details of notice of invitation of tender, from the Tender Inviting Authority, information relating to acceptance of tender together with a comparative analysis and reasons for acceptance of tenders from the Tender Accepting Authority, the State or, as the case may be, the District Tender Bulletin Officer shall, publish the same in the State or District Tender Bulletin, as the case may be, in such manner and within such time as may be prescribed:

Provided that, if the procurement covers more than one district, the invitation and the acceptance of tenders shall be published in the State Tender Bulletin and also in the District Tender Bulletin of such districts.

(2) The Tender Bulletin shall be delivered to registered subscribers by e-mail and shall also be published in a dedicated website administered by the State Tender Bulletin Officer for view and download by any person."

49. Section 10 deals with evaluation and acceptance of tender.

Section 10 (1) is as follows:

"Section 10 (1). Evaluation and acceptance of tender._

(1) The Tender Accepting Authority shall cause an objective evaluation of the tenders taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market rate for procurement and comparison of the tenders in accordance with the procedure and criteria specified in the tender document."

50. Section 10 (4) is as follows:

"Section 10 (4).If at any time before the acceptance of tender, the Tender Accepting Authority receives information that a tender who has submitted tender has been banned by any procuring entity, the said authority shall not accept the tender of that tenderer even if it may be the lowest tender."

51. Section 10 (6) is as follows:

"Section 10 (6). If the Tender Accepting Authority proposes to accept the tender as per the provisions of this section, the said authority shall pass orders accepting the tender together with reasons for such acceptance.

provided that if the tenderer is unable to supply the *entire quantity required, the Tender Accepting Authority may follow the fixed rate contract procedure as may be prescribed."*

52. Section 10 (7) is as follows:

"Section 10 (7). The Tender Accepting Authority shall intimate the information regarding the name and address of the tenderer whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate Tender Bulletin Officers."

53. Section 11 is as follows:

"Section 11.Appeal._ (1) Any tenderer aggrieved by the order passed by the Tender Accepting Authority under Section 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.

(2)In disposing of an appeal under sub-Section(1), the Government may, after giving the party an opportunity of making his representations, pass such order thereon as they may deem fit.

(3)The order of the Government on such appeal shall be final.

(4)The Government may, pending the exercise of

their powers under this section, pass such interlocutory orders as they may deem fit.”

54.To implement the provisions, the Tamil Nadu Government also brought into effect the Tamil Nadu Transparency in Tender Rules, 2000.

55. Let me also extract a few relevant rules which would be required for further discussion of the issues raised in the present Writ Petitions.

56. Rule 2(e) is as follows:

> *“Rule 2 (e)”two-cover system” means a procedure under which the tenderers are required to simultaneously submit two separate sealed covers, one containing the earnest money deposit and the details of their capability to undertake the tender which will be opened first and the second cover containing the financial quotation which will be opened only if the tenderer is found qualified to execute the tender.”*

57. Section 2 (h) is as follows:

> *“Rule 2 (h)”Multi-Stage Tender” means a tender in*

which there are at least two stages including an initial stage of short-listing based on the fulfilment of eligibility criteria based on experience and financial or technical parameters or both and a final stage in which only the qualified, short-listed tenderers are invited to submit their financial bids."

58. Rule 24 is as follows:

"Rule 24. Tender Scrutiny Committee._
(1)A Tender Scrutiny Committee may be constituted to scrutinise the tender documents, supervise opening of tenders, to carry out the preliminary examination and detailed evaluation of the tenders received and to prepare an evaluation report for the consideration of the Tender Accepting Authority.
(2)The constitution of a Tender Scrutiny Committee will be obligatory in all cases where the value of the procurement exceeds limit as may be specified."

59. Rule 27 is as follows:

"Rule 27. Process of tender evaluation to be confidential until the award of the contract is notified._
(1)Subject to the provision of Sections 13 and 14 of the Act, the Tender Inviting Authority shall ensure the confidentiality of the process of tender

evaluation until orders on the tenders are passed.

(2)The Tender Accepting Authority shall cause the information on orders passed on the tenders published in the Tender Bulletin.

(3)Tenderers shall not make attempts to establish unsolicited and unauthorised contact with the Tender Accepting Authority, Tender Inviting Authority or Tender Scrutiny Committee after the opening of the tender and prior to the notification of the award and any attempt by any tenderer to bring to bear extraneous pressures on the Tender Accepting Authority shall be sufficient reason to disqualify the tenderer.

(4)Notwithstanding anything contained in sub-rule (3), the Tender Inviting Authority or the Tender Accepting Authority, may seek bonafide clarifications from tenderers relating to the tenders submitted by them during the evaluation of tenders."

60. A perusal of the above provisions, reveal that there is a Tender Accepting Authority which shall cause objective evaluation of the tenders. But when Section 10, which deals with evaluation and acceptance of tenders is read in conjunction with Rule 24, it would be

clear that it is also imperative that a Tender Scrutiny Committee is also formed.

61. The functions of the Tender Scrutiny Committee is to examine whether the documents produced along with the tender forms are proper and whether there has been complete and proper disclosure by the tenderer, in this case, the petitioner.

62. Under Rule 24, the Tender Scrutiny Committee, which is distinct from the Tender Accepting Authority, scrutinizes the tender documents, supervises the opening of the tenders and carries out a preliminary examination and detailed evaluation of the tenders received and thereafter, they prepare an Evaluation Report for the consideration of the Tender Accepting Authority for technical evaluation of the bids submitted.

63. This step is thus prior to actually examining whether the bidder is technically qualified to move on to the financial evaluation. Such scrutiny is a step in aid to examine the documents produced.

64. When the Tender Scrutiny Committee scrutinizes the tender

documents, they must keep in mind, the general conditions of the tender and the specific conditions and stipulations as given in the tender documents. The relevant general conditions and stipulations have been extracted above.

65. One of the conditions which is not only considered to be a general condition, but also a specific condition is that a participant, should not have any outstanding dues to TTDC or to any other Government Department or should not have been black listed by TTDC or by any other Government Department. If they have any dues or they have been black listed, the general condition itself stipulates that they are not eligible to participate either directly or indirectly in the tender.

66. The general conditions have been worded very carefully. They not only include direct participation by a prospective bidder who has dues with TTDC or has been black listed by TTDC but also include those who have such dues or have been black listed from even indirectly participating in the tender. This general condition, has been further explained in condition No.6 which also states that if the tenders are not in the prescribed form, they will not be accepted and the same will be summarily rejected.

67. This insistence of there not being any dues to TTDC has been again reiterated in the eligibility criteria.

68. It is thus seen, that there are two separate conditions. The first is that if the tenderer has no dues with TTDC, he cannot participate in the tender. If still the tenderer participates in the tender, then, the Tender Scrutiny Committee which evaluates the documents submitted to determine whether the particular bidder is eligible to be considered for further evaluation both technical and financial can disqualify the tenderer from further participation since the tenderer was a defaulter in payment of rent in Government exhibitions or exhibitions of TTDC.

69. The words in the tender document are clear and straight forward and simple.

70. It stipulates that any prospective tenderer who has arrears of rental amount or any other amount to TTDC specifically, are disqualified from participation in the tender. This only signifies that they cannot even participate in the tender. This would further signify that their documents need not ever be even perused further by the Tender Accepting

Authority.

71. The fact in the instant case is that the petitioner has rental dues to TTDC.

72. The fact that there are rental dues cannot be denied. It is disputed on the ground that the dues have not been crystallized by the Managing Director of TTDC, but by some other official of TTDC. That assertion is besides the actual issue that there are dues payable.

73. The fact is that the petitioner has dues to be paid to TTDC. The dues are not payable either to the Managing Director or to any other official directly but to the TTDC as an institution. When there is a due, then, the petitioner should have cleared such dues before even participating in the tender process. The due may be an insignificant amount. The dues may be a significant amount. That fact is again besides the point.

74. The fact that the petitioner has existing dues and is indebted to the TTDC is established by documents. The petitioner had participated in

the 43^{rd} Trade Fair.

75. By communication dated 20.08.2019 sent by the TTDC to the petitioner, it had been stated that the amounts due from the petitioner towards rent and water charges was a sum of Rs.63,71,800/-. In the very same communication, the amount due to be paid to the petitioner was also given and that was crystallized at Rs.60,64,897/-. By any mathematical calculation, it can be seen that the amount payable by the petitioner exceeded the amount receivable by the petitioner. This difference was Rs.3,06,903/-.

76. There is no indication that prior to the date on which the petitioner participated in the tender, this amount was paid. The petitioner had also not disclosed in the application form that they are due and liable to this amount to the 2^{nd} respondent/TTDC.

77. It has been argued that the 2^{nd} respondent had also called for payment of sales tax. It is complained that this cannot be a proper levy. But, the fact remains that the petitioner is as on date, a debtor to TTDC.

78. Once the petitioner is due and payable some amount, may be significant or insignificant to TTDC, naturally, the confidence which TTDC can place on the petitioner would have deteriorated to that particular extent. The question which begs an answer is should the TTDC still extend a benevolent arm to the petitioner when admittedly the petitioner had not paid the dues payable when they participated in the 43rd Trade Fair.

79. The answer to that question is that it would only be advisable that TTDC exercises caution while evaluating the credentials of the petitioner.

80. It is thus seen that the rejection of the petitioner is for the reason they had no right to participate in the tender without clearing the dues.

81. This order is dictated in open Court in the presence of the counsels.

82. Mr.M.Vijay Anand, learned counsel for the petitioner interrupted the dictation and stated that the petitioner had participated in

subsequent Trade Fairs. That aspect was not put forth by Ms.Chitra Sampath, learned Senior Counsel. But that aspect is again besides the issue involved.

83. This Court is concerned with the tender document submitted for the 47th Trade Fair. In the tender documents for participation in the tender, there is a specific clause that if the tenderer has dues to the Government or dues to the TTDC then, they have no right to participate. The interference by Mr.M.Vijay Anand, learned counsel for the petitioner is noted and the point raised is thus answered.

84. The petitioner has no right to participate when they have dues to the Government. There is no explanation given by the petitioner whether they had paid the aforementioned dues of Rs.3,06,903/-. There is no proof produced that they had actually paid the amount. They could have even paid it under protest. But they had taken a conscious decision to remain a debtor to TTDC. It is their choice.

85. It was argued that the Managing Director of the 2nd respondent had not issued any communication that the petitioner was due to the said

amount, but that some other official had issued such communication. Still, a communication had emanated from the 2nd respondent. That fact cannot be denied. Once it is clear, that the petitioner has dues, they stood disqualified to even participate in the tender, let alone having a right to seek their documents to be scrutinized.

86. It was also argued that reasons for rejection should have be given. The reasons are already known to the petitioner. They knew that they were in default to the 2nd respondent. They knew that they had not paid the aforementioned rental amount. They knew that they had not even offered to pay the said rental amount. They still participated. They suffered the consequences.

87. In ***Uflex Limited vs. Government of Tamil Nadu and others 2022 (1) SCC 165,*** the delay caused by Court orders and Court interferences in commercial contracts were examined by the Hon'ble Supreme Court. A tender was issued for the labeling of Tasmac bottles in the State of Tamil Nadu. Challenges to the tender were rejected by the learned Single Judge in the Writ Petition Writ Appeals were filed. Writ Appeals were allowed. Thereafter, the matter reached the portals of the

Hon'ble Supreme Court. The Hon'ble Supreme Court had observed as follows:

> *"The enlarged role of the Government in economic activity and its corresponding ability to give economic "largesse" was the bedrock of creating what is commonly called the "tender jurisdiction". The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India (hereinafter referred to as "the Constitution"), beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The public interest litigation ("PIL") jurisdiction is also invoked towards the same objective, an aspect normally deterred by the Court because this causes proxy litigation in purely contractual matters.*
>
> *2.The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, choice of decision is*

made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.

3.We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, "attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted."

88. The above observations squarely applies to the petitioner. The Hon'ble Supreme Court had stated about attempts by unsuccessful tenders with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills.

89. In the instant case, the petitioner should address themselves as to why they did not clear the rental dues of Rs.3,06,903/- before taking a decision to participate in the tender process.

90. The learned Advocate General pointed out that a due is a due. It stares at the face of the petitioner. It is not the quantum which is important. But it is the diminished value of the reputation of the petitioner which is at stake. If the petitioner had not cleared the amount the petitioner will have to suffer the consequences thereof, namely rejection at the threshold.

91. The Hon'ble Supreme Court in ***Uflex Limited*** *referred supra* had set aside the order of the Hon'ble Division Bench and held as follows.

> *"42.We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters there is obviously an aspect of commercial competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for downplaying the freedom which a tendering party has, merely because it is a State or a public authority, making the said process even more cumbersome. We have already noted that element of*

transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examined are restricted as set out in TATA Cellular and other cases. The objective is not to make the Court an appellate authority for scrutinizing as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them."

92. In ***2020 16 SCC 489 Silppi Constructions Contractors vs. Union of India and another*** the Hon'ble Supreme Court again examined the scope of judicial review and interference with a tender process and had held as follows:

*"8.In **Raunaq International Ltd. v. I.V.R. Construction Ltd.,** this Court held that the superior courts should not interfere in matters of tenders unless substantial public interest was involved or the transaction was mala fide.*

*9.**In Air India Ltd. v. Cochin International Airport Ltd.,** this Court once again stressed the need for overwhelming public interest to justify judicial intervention in contracts involving the State and its instrumentalities. It was held that the courts must* *proceed with great caution while exercising their discretionary powers and should exercise these powers only if furtherance of public interest and not merely on making out a legal point.*

*10.**In Karnataka SIIDC Ltd., v. Cavalet (India) Ltd.,** it was held that while effective steps must be taken to realise the maximum amount, the High Court exercising its power under Article 226 of the Constitution is not competent to decide the correctness of the sale effected by the Corporation."*

93. **In *N.G.Projects Limited vs. Vinod Kumar Jain and others (2022) 6 SCC 127*** it had been held by the Hon'ble Supreme Court as follows:

"17.Therefore, the position of law with regard to the interpretation of terms of the contract is that the question as to whether a term of the contract is essential or not is to be viewed from the perspective of the employer and by the employer."

94. In the instant case, the 2nd respondent can be termed as the employer and they had every right to uphold the condition laid by them that a tenderer had no right to participate if he had rental dues.

95. The learned Senior Counsel on behalf of the petitioner had relied on the Judgment of a learned Single Judge of this Court reported in ***2016 SCC Online Madras 10441, M/s.Renaatus Projects Private Limited represented by its Executive Director Mr.Manoj Poosappan vs. The Tamil Nadu Police Housing Corporation Ltd., represented by its Superintending Engineer,*** wherein the learned Single Judge had observed as follows:

> *"31.In the present case, the defects pointed out by the respondent can be construed as anciliary or subsidiary condition in nature especially when it is shown that the petitioners have the wherewithal and have the capacity to undertake the contract, if awarded, by means of documentary evidence. In the present case, the violations pointed out by the respondent are trivial in nature namely non-uploading of one page of the affidavit, non-furnishing of solvency certificate after the date of tender, improper uploading of the scanned documents etc., Therefore, in my opinion, these defects cannot be and ought not to be a reason for the respondent for rejecting the tender applications of the petitioners. In such circumstances, this Court is inclined to interfere with the orders of rejection passed by the respondent."*

96. It must be pointed out that the dictum laid down by the Hon'ble Supreme Court is binding on this Court. It had been very clearly held that Court should not interfere with commercial contracts and should not consider itself as an Appellate Authority.

97. It must also be pointed out that the other competing tenderers had given their objections and when such objections had been raised specifically mentioning that the petitioner had rental dues to the 2nd respondent, the Tender Scrutiny Committee had a duty to examine whether, as a fact the petitioner had dues to the 2nd respondent. That fact was established. The petitioner had dues. This is evident from the documents produced by the petitioner themselves in these Writ Petitions.

98. Once there are Government dues payable by the petitioner, then, on the ground of eligibility itself, the petitioner stands disqualified. The petitioner had no right to participate and there is no corresponding duty on the part of the respondents to extend a benevolent hand for the petitioners overlooking the dues payable by them to the 2nd respondent. They would have failed their duty if they had do so.

99. It is pointed out by the learned Senior Counsel for the petitioner that if an opportunity is granted and the financial bid of the petitioner is opened then it would be evident that the petitioner had quoted a better sharing ratio than the 4th respondent. But when the petitioner had no right to participate and had failed in the eligibility criteria itself the documents presented by the petitioners cannot be examined.

100. The petitioner was not able to clear the dues. They had raised a dispute about the dues. The petitioner will have to settle those disputes and can participate in later tenders issued by the 2nd respondent. As on date, so long as the dues subsist, the eligibility of the petitioner has to be scrutinized by this Court and unfortunately, such scrutiny does not pass even the preliminary test. The fact remains that the petitioner is not eligible to participate in the tender.

101. The learned Advocate General has also passed on the files for consideration of this Court. Though it may not be proper to state reasons from the official files since they are not part of the documents presented

before this Court, a perusal shows that all the members of the Committee had applied their mind and had taken an unanimous decision that the petitioner herein is not eligible to participate in the tender process.

102. The Tender Scrutiny Committee had also examined the objections and though objections relating to address and other aspects may be minor, the objections relating to dues of Rs.3,06,903/- stare in the face of the petitioner. Till this date, there is no answer to that particular objection. The petitioner had not paid that amount. For nonpayment of a sum Rs.3,06,903/-which demand was raised and which could have been paid at least in protest, the petitioner has to suffer being categorized as eligible to participate in the present tender process for the 47th Tender Fair.

98. The Writ Petitions stands dismissed with costs of Rs.25,000/- [Rupees Twenty Five Thousand only] in each Writ Petition to be paid to the 2nd respondent. Consequently, the connected miscellaneous petitions stands closed.

19.12.2022

ssi
Index : Yes/No

Internet : Yes/No

To:

1.The Principal Secretary to Government,
Tourism, Culture, Religious Endowments,
And Chairman, Tamil Nadu Tourism Development Corporation,
Fort St.George, Secretariat, Chennai 600 009.

2.The Managing Director,
Tamil Nadu Tourism Development Corporation,
No.2, Wallajah Salai, Chennai 600 002.

3.The General Manager,
Tamil Nadu Tourism Development Corporation,
No.2, Wallajah Salai, Chennai 600 002.

4.M/s.Sunlight World,
Rep.by its Proprietor, Mr.Peer Anees Raja,
No.36/3, Malayaperumal Street,
Chennai 600 001.

C. V. KARTHIKEYAN,J.

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W.P.Nos.32957 & 33477 of 2022 and
W.M.P.Nos.32350, 32351, 32919, 32920 & 32921 of 2022

19.12.2022