



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2022

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) .No.1694 of 2022

K.Sappani

... Petitioner

Vs.

1.The District Collector,
Office of the Collectorate Building,
Ramanathapuram District.

2.The Executive Officer,
Abiramam Town Panchayat,
Abiramam,
Ramanathapuram District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to consider the petitioner's tender application dated 13.01.2022 submitted for laying paver block road in various streets in the second respondent Town Panchayat vide his tender notification in Na.Ka.No.436/2021 dated 27.12.2021 along with other tender applications in transparent manner and in accordance with law.

For Petitioner	:	Mr.R.Gowri Shankar
For R-1	:	Mr.D.Ghandiraj, Special Government Pleader.
For R-2	:	Mr.M.Ramesh, Government Advocate.

ORDER

The Writ Petition is not at all maintainable. It has been filed in the nature of Mandamus seeking a direction to the second respondent / the Executive Officer, Abiramam Town Panchayat, Abiramam, Ramanathapuram District, to consider the tender application of the petitioner dated 13.01.2022.

2. In the affidavit filed in support of the Writ Petition, it had been stated by the petitioner that he came to understand that the second respondent had issued a tender notification, dated 27.12.2021, for laying paver block road in various streets of the second respondent Town Panchayat. The petitioner had given his bid for the same. The Writ Petition has been filed stating that the petitioner's application should be considered.



3. However, Mr.D.Ghandiraj, learned Special Government Pleader, who takes notice on behalf of the first respondent, had given a different statement of facts. He stated that the tender bids were accepted, tender bids were opened and the contract had also been executed in favour of one Ramar and the contract had been signed on 21.01.2022.

4. This fact is also affirmed by Mr.M.Ramesh, learned Government Advocate, who takes notice for the second respondent / the Executive Officer, Abiramam Town Panchayat, Abiramam, Ramanathapuram District. He also stated that the contract had been executed in favour of Ramar on 21.01.2022. It had been stated that the bid of the petitioner had also been considered and rejected.

5. The jurisdiction of the Writ Court is extremely narrow and in fact, it cannot interfere in a tender process, when a contract had already been executed in favour of, according to the respondents, the successful bidder, Ramar. The Writ Petition had been filed on 27.01.2022, whereas, the contract in favour of the said Ramar was executed on 21.01.2022. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

6. My view is also enforced by the dictum of the Hon'ble Supreme Court in **Tata Cellular vs. Union of India**, reported in **(1994) 6 SCC 651**, wherein, it had been stated as follows:

"94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.



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(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

7. In **Uflex Limited vs. Government of Tamil Nadu and others**, reported in (2022) 1 SCC 165, the Hon'ble Supreme Court had held as follows:

"40. 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 vs. Union of India, (1994) 6 SCC 651** 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."



8. The Hon'ble Supreme Court had very clearly stated that, in tender matters, a Writ Court under Article 226 cannot sit as an appellate authority and should not interfere with such process.

9. In the instant case, the petitioner had deliberately suppressed the fact that a contract had been executed on 21.01.2022 in favour of a named specified individual, Ramar and he had also not impleaded the said Ramar as a party to the Writ Petition.

10. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (As)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Lm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Office of the Collectorate Building,
Ramanathapuram district.

**W.P. (MD) .No.1694 of 2022
28.01.2022**

MGJ(09.02.2022) 4P 2C