



W.P(MD)No.26796 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.26796 of 2022

and

W.M.P(MD)No.20969 & 20970 of 2022

Rayar

..Petitioner

Vs

1.The Secretary to Government,
Highways and Minor Ports (HF2) Department,
St. George Fort,
Chennai-6.

2.The Superintendent Engineer (H),
C and M Circle,
Trichy,
Trichy District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent pertaining to its proceeding in Tender Notice No.21/2022-2013/HDO dated 21.10.2022 and to quash the same with regard to Serial No.9, 10, 11, 12, 13, 14 and 15 and consequently direct the respondents to float fresh tender for works independently as notified by the second respondent in G.O(Ms) No.191 Highways and Minor Ports (HF2) Department, dated 29.09.2022.

For Petitioner
For R1 & R2

:Mr.S.C.Herod Singh
:Mr.D.Gandhiraj
Special Government Pleader



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ORDER

The Petitioner has filed this Writ Petition seeking issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent pertaining to its proceeding in Tender Notice No. 21/2022-2013/HDO dated 21.10.2022 and to quash the same with regard to Serial No.9, 10, 11, 12, 13, 14 and 15 and consequently direct the respondents to float fresh tender for works independently as notified by the second respondent in G.O(Ms) No.191 Highways and Minor Ports (HF2) Department, dated 29.09.2022.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The learned counsel appearing for the petitioner would submit that the petitioner is a registered Class I contractor registered during 2007. His registration was renewed from time to time and the last renewal was made up to 2022-2023. He is having a valid license to participate in the tender to the value over and above Rs.75,00,000/-. He has also invested a huge amount so as to develop and improve the works to the convenience of the respondent. As a contractor, he has been carrying out various contract works for various departments. Considering



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the machineries and equipment as well as the work force available with him, he was granted various works. He has completed a work of construction of bridge across Vellaiyar river on 17.09.2021 for a value of Rs.187.52 lakhs. Another bridge was constructed by him at the value of 79.19 lakhs across Kondiyar. He has also constructed another bridge across Samantham Cavery channel for a value of Rs.89.74 lakhs and the same was completed on 17.09.2021 and 29.01.2021 respectively. Recently, he participated in the tender for construction and maintenance floated by the District Collector/Chairman DRDS Sivagangai. The prize of the contract was Rs.31,76,303/-. He has to keep his workers engaged in the contract work only then, he can pay the salary. While so, the first respondent by proceeding in G.O(Ms) No.191 Highways and Minor Ports (HF2) Department, dated 29.09.2022 called for various works including widening and strengthening the roads, construction of bye-pass and bridges etc., for the year 2022-2023. The total cost of the same was Rs. 5,58,180/- crore and administrative sanctions were also accorded. Several works were floated individually and independently division wise in the said order. The Pudukkottai division was subdivided into 5 sub divisions that is 1) Alankudi, 2) Aranthanki and Avudaiyarkovil 3) Karur 4) Pudukkottai and 5) Thirumayam. As per G.O(Ms) No.191, Highways and Minor Ports (HF2) Department dated 29.09.2022, 11 works are sanctioned with regard to Alankulam, 8 works were sanctioned with regard to



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Aranthanki and Avudaiyarkovil, 7 works were allotted to Keeranoor, 20 works were allotted to Pudukottai sub division and 9 works were allotted to Thirumayam sub division. Therefore, he was awaiting for the respondents to call for the tender independently. However, by the impugned order, the respondents grouped the works into packages according to their whims and fancies and the works were sought to be allotted for limited contracts. Such activities of the respondents would eliminate the contractors like him and thereby they will not be in a position to participate in the works.

5. He would further submit that the said impugned order is taking away the rights of the various small contractors. If a contractor fails to get tender works, he will be losing the experience to participate in future tenders. By implementing the package system, the respondents are trying to eliminate various contractors by violating Article 14 of the Constitution of India. The principles of equality before law and equal protection of law is being violated due to the activities of the respondents. Splitting up of works would grant opportunity to various persons. However, by the package system, such right to participate is being taken away. Considering the same, the Government issued G.O.ms.No.139, Public Works Department, dated 27.09.2021 abolished the package system. Unmindful of the same, the respondents are floating tender



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under package system. He would be disqualified in as much as he is not eligible to participate in the tender and therefore, prayed for stay the operation of all further proceedings. The learned counsel appearing for the petitioner relied on various judgments of this Court.

6. According to the petitioner, separate works would be allotted and they cannot allot package system. If package system is followed, small contractors fail to get tender works and they will be losing the experience to participate in tenders. By implementing the package system, the respondents are trying to eliminate various contractors. Therefore, the same is in violation of Article 14 of the constitution of India.

7. The learned Special Government Pleader appearing for the respondents would submit that it is a policy decision taken by the Government in the interest of the public to see that the works are completed at the earliest so that public is not put to inconvenience. He would further submit that ineligible tenderers are eliminated at the initial stage itself so that the tender process could be completed very smoothly and effectively in the interest of the public. He would further submit that there is no violation of Articles 14.



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8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. The Superintending Engineer (H) C & M Circle, Tiruchirappalli invites percentage bids under Two Cover System through Online for various works in Tender Notice No.21/2022-2023/HDO, dated 21.10.2022 and the same can be downloaded at free of cost upto 01.12.2022, 14.00 hours. The bidder should be a registered eligible contractor of Tamil Nadu Highways Department with upto date renewal for the year 2022-23 with valid Digital Signature Certificate and the bids must be uploaded with scanned copy of EMD pertaining to the works as per the above table in the prescribed form drawn in favour of the Divisional Engineer (H), C & M, Pudukkottai Division and other conditions are stipulated.

10. G.O(Ms) No.162, Highways & Minor Ports Department, dated 01.10.2012, came to be issued on the recommendations of Director General of Highways Department. In paragraph 4 of the Government Order itself, the recommendations of the Director General, Highways Department have been extracted, which read as follows:-

" In the letters fourth and fifth read above, the Director General, Highways Department has proposed to Re-introduce package system, in which number of works may be grouped to



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a value of Rs.5,00/- Crores to Rs.15.00 Crores as a major work for easy execution. he has put forth the advantages/justifications of the system which are envisaged as follows:-

i) Only Major contractors having sufficient knowledge in Road Management System with sound financial capacity can participate in the tender under package system.

ii) Major contractors will be having sufficient Tools and Plants including CMP site. hence, the quality of work at site and CMP can be ensured property.

iii) If the works are to be executed at remote areas and in difficult terrains, the contractors would not come forward to participate in the tenders. But if these works are grouped together under package system, the major contractors will take part in the tenders without hesitation, which in turn speed up the examination and early completion.

iv) Price adjustment clause is applicable for the value of works more than Rs.1.00 Crore. Hence, sudden variation in cost of material will not affect the contractors, which invite more number of contractors to participate in tenders with competition.

In paragraph 6 of the order, it is stated as follows:-

6. The Director General, Highways Department has stated that, if the package system is re-introduced, the works are proposed to be grouped to form packages, to a total value of Rs.5 Crores to Rs.15 Crores, then the number of packages coating Rs.5 Crores, under plan works will be around 400 works and under non plan works will be 100. The tender proposals for all these packages have to be placed before Commissionerate of Tenders for approval, which will



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accumulate pressure to Commissionerate of Tenders in many fold. In order to reduce the accumulate pressure to work pressure to the Commissionerate of Tenders and to avoid cost over run and time over run of the project, the tender approving powers of the Chief Engineers Highways may be enhanced from Rs.2.00 Crores to Rs.10.00 Crores at Estimate Rate (or) below Estimate Rate for easy finalization of tender and speedy entrustment of works and thereby completion of project in time without any additional expenditure."

11. In Union of India and another v. International Trading Co., and another 11, this Court held that non-renewal of permit by the Government to a private party on ground of change in its policy cannot be faulted if such change is founded on Wednesbury reasonableness and is otherwise not arbitrary, irrational and perverse. It was held:-

"22. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed.

23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates



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harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil (2003) 5 SCC 437 sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country."

12. In the case of Directorate of Education and Ors. v. Educomp Datamatics Ltd. and ors. 12, this court, inter alia, applied the principles enunciated in Tata Cellular and Monarch infrastructre (P) Ltd and held as follows:

"12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. it is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the



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terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.”

13. After taking into consideration of the hardships and difficulties in single tender system, the Government took a policy decision by giving the reasons for reintroduction of package system. When the Government has applied its mind taking into consideration of the hardships, difficulties and delay in concluding the works in a time bound manner, the package system has been introduced and the same cannot be found fault with.

14. It is seen that the beneficiaries are going to be the public. These works are indeed to be executed with speed as people are using the roads and they should not be put to hardship at any point of time due to delay in execution of works. Even if there is any repair, that needs to be completed at once. Therefore, the conditions stipulated in the tender document to see that eligible tenderers alone could participate in the tender process who have got man power, financial capacity and equipments. Otherwise, there will be a delay in execution of works and works will not be completed in time resulting in inconvenience to the public.



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15. In view of the above facts, this Court is of the opinion that the petitioner has no right to approach the court for cancelling the tender notification as it is the decision taken by the Government and hence, this Court is not inclined to interfere with the tender notification. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

29.11.2022

Index : Yes/No
Internet:Yes/No
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To

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- 2.The Superintendent Engineer (H),
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V.BHAVANI SUBBAROYAN,J
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ORDER MADE IN

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