



W.P.No.5520 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.02.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.5520 of 2023

LRS Services Pvt Ltd
Rep.by its Authorised Signatory
Mrs.B.Rizwana Khathu

... Petitioner

Vs

1.The Secretary to Government
Government of Tamil Nadu
Secretariat, Home Department
St.George Fort, Chennai-600 009.

2,The Commissioner of Police
Greater Chennai Police
No.132, Commissioner Office Building
EVK Sampath Road,
Vepery, Chennai-600 007.

3.The Deputy Commissioner of Police (Head Quarters)
Tender Inviting Authority
Greater Chennai Police
No.132, Commissioner Office Building
EVK Sampath Road, Vepery Chennai-6 ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus quashing the impugned tender as illegal and arbitrary and violative of Article 14 of the Constitution of India, consequently directing the 3rd respondent to re-issue the tender invitations of the said Impugned Tender afresh including in the Indian Trade Journal as per the requirements of the Act Rules and Guidelines.



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For the Petitioner : Mr.G.S.Vivekanandan
For the Respondents : Mr.R.Shunmugasundaram,
Advocate-General,
assisted by Mr.T.Seenivasan,
Special Government Pleader,
and Ms.A.G.Shakeena

ORDER

The writ petition has been filed in the nature of Certiorarified Mandamus seeking interference with the tender claiming that it is arbitrary, violative of Article 14 of Constitution of India. The said Tender was dated 14.12.2022 in Tender RFP No.C. No. MPF-1/85441/2015.

2. Heard the learned counsel for the petitioner and learned Advocate General for the respondents herein.

3. The learned Advocate General brought to the notice of this Court on earlier order passed by me questioning the very same tender. That order was passed by me on 08.02.2023 in ***W.P.No. 3592 of 2023, M/s. World Wide Services, represented by its Authorised Signatory represented by Mr. J. Murugesan vs State of Tamil Nadu and Others.***



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4. That writ petition was also filed questioning the issuance of the very same tender and more importantly on the very same ground as is now raised. The ground raised now and which was raised earlier was that there was no publication in the Indian Trade Journal and therefore, petitioner claims they had been specifically prevented from participating in the tender.

5. Learned counsel for the petitioner herein again relied on the judgment of the learned Single Judge of this court in **W.P.No. 17261 of 2017 batch, in Sri Venkatram Spinner Private Limited vs State of Tamil Nadu**, which was also relied on by the learned counsel for the petitioner in W.P.No. 3592 of 2023 referred supra.

6. The learned Advocate General, however had drawn notice to another order of a learned Single Judge in **W.P.Nos.4357 & 4389 of 2021 [Ind-Vigo Coal Pvt., Ltd and Others vs. Tamil Nadu Electricity Generation and Distribution Company Ltd., and others]**

7. Considering the ratio laid in both judgments, I had dismissed the said writ petition.



8. It may not be proper on my part to re-examine that particular decision taken since the Court cannot sit as an appellate authority over its own orders nor it can review its own order.

9. The relevant portion of the order is extracted hereunder:

"3. The said tender was issued on 14.12.2022. Bids were invited for the aforementioned projects. The date and time for submission of bids had been fixed on 04.01.2023. Later, the date for submission of bids was extended till 25.01.2023, by a Corrigendum.

4. The grievance of the petitioner is that this particular bid had not been published in the Indian Trade Journal.

5. The learned counsel for the petitioner places reliance on Section 9(3) of the Tamil Nadu Transparency in Tenders Act, 1998 and Rule 11 of the said Act.

6. It is claimed by the petitioner that the petitioner had been prejudiced since he was not aware of the calling for the bids and that he came to know about the bid only two days prior to the filing of the Writ Petition and thereafter, had ascertained that the matter had not been published in the Indian Trade Journal.

7. Placing that particular ground, the Writ Petitioner now seeks to scuttle the entire tender process.

8. The learned Advocate General who had been instructed to appear on behalf of the



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respondents however, disputed the contentions raised. It is fairly stated that Rule 9(3) of the Tamil Nadu Transparency in Tenders Act, 1998 is still in force. But, it is the contention of the learned Advocate General, that subsequently in the year 2017, on 31.05.2017, a communication had been issued by the Central Government wherein, to a little extent, publication in Indian Trade Journal had been dispensed with and had not been made mandatory.

9. To this contention, it is stated by the learned counsel for the petitioner that a circular cannot override a provision in the Statute.

10. The learned counsel for the petitioner also places reliance on a Judgment of a learned Single Judge of this Court in **W.P.Nos.17261, 18987 and 18988 of 2017 dated 11.08.2017 [Sri Venkatram Spinners Pvt. Ltd., and another vs. State of Tamil Nadu, represented by the Principal Secretary, Department of Handloom and Textiles and others]**.

11. One of the challenges in that particular Writ Petition was failure to publish the bid in the Indian Trade Journal and the learned Single Judge was of the opinion that, it was a mandatory requirement and had also placed reliance on the order of a Division Bench of the Karnataka High Court and therefore, had stated that the invitation for tender in that case was not proper and not in accordance with the provision of law.

12. The learned Advocate General however pointed out that there was a different view taken by the another learned single



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Judge of this Court in **W.P.Nos.4357 & 4389 of 2021 [Ind-Vigo Coal Pvt., Ltd and Others vs. Tamil Nadu Electricity Generation and Distribution Company Ltd., and others]**. Even in that case, one of the challenges laid was failure to publish the notice inviting tenders in the Indian Trade Journal.

13. The learned Judge also referred to the aforementioned order **Sri Venkatram Spinners Pvt. Ltd.**, (referred supra) but however came to an opinion that there was a need for uninterrupted supply of Coal for Thermal Power Plant with the calorific value, and that it was a critical tender, was of the opinion that since it is a curable defect, the publication can be subsequently effected.

14. The learned Advocate General also forwarded the number of participants who had submitted their bids. It is seen from a perusal of that particular data that as many as 34 participants had participated in the bid. They were not restricted to Chennai but had come from all over the Country and thereafter, further processes had been initiated by the respondents. It was also informed that four of the tenders had dropped their physical bids in the tender drop box and submitted on-line bids. Those details had also been given.

15. It was also stated that preliminary examination of the bids submitted by the bidders had also been done. A decision had also been taken to accept/reject some of the bids. It was also stated that the Tender Scrutiny Committee had also met on 03.02.2023 and had reviewed all the documents and had shortlisted three bidders for further technical evaluation stage. It is thus seen that the process had moved much to



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a substantial distance.

16. The issue now revolves as to whether the petitioner had been bonafide in coming to the Court after the process had started. If he had approached the Court even before the process for opening of the bids had commenced, then, he could have raised a reasonable ground that he is prejudiced and that his bid should also be put for consideration.

17. But now, the respondents have moved much further. Those who had submitted the bids, had also submitted their documents to be examined and scrutinized by the respondents herein. Such scrutiny has been done. Three of the bidders have been shortlisted for technical evaluation. They would be seriously prejudiced.

18. As a matter of fact, all the other parties who had submitted their bids would also be seriously prejudiced. These factors will also have to be weighed in the mind of this Court. No doubt, it is a fact that the 4th respondent had not published in the Indian Trade Journal. But once there are too different or slightly distinguishing views presented by learned single Judges on this particular aspect, the Court will have to examine whether there are any further circumstances on the facts of this case to take a specific view.

19. On that ground, I hold that the petitioner had not come to Court within a reasonable period of time. It is stated that the petitioner came to know about the bid just two days back. That statement does not advance the case of the petitioner. He should have been vigilant. The bid had been published in



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the newspapers as required. The bid had also been put up in the portal as required.

20. It is common knowledge that everybody who is interested in submitting the bids for Government contracts, also have to be vigilant to examine the portals which are opened. The petitioner cannot claim ignorance. He cannot claim innocence. He cannot seek indulgence of this Court. Vigilance indicates interest in the progress of the petitioner's company and if that had been the object, then, he would have certainly come to know about the bid which had been floated by the 4th respondent.

21. The Court cannot come to the assistance of the petitioner who had evidently slept over and non complains about the process involved, particularly, since after the process had started, progressed and three bidders have been shortlisted. Their interest, overrides the interest of the petitioner herein. The petitioner had not even participated. He claims that he could not participate only because the bid had not been published in the Indian Trade Journal. But it is seen from the data provided by the learned Advocate General that, there had been substantial participation and interest shown in participating in the tender committed.

21. The Court cannot sit as an Appellate Authority while sitting in Writ jurisdiction. The scales will have to be weighed. In this case, the scale swings infavour of the three bidders, whose bids have been scrutinized and who have been shortlisted by the respondent herein. It also swings in favour of the 4th respondent since, publication has been done and they had also put it up in the website.



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22. The petitioner claims that he alone stands prejudiced. That argument takes the petitioner nowhere. It is certainly not the intention of the 4th respondent to ensure that the petitioner and the petitioner alone does not participate. It is an open bid. Anybody and everybody who is interested and who is vigilant can always participate. The non-publication in the Indian Trade Journal is not directed against the petitioner individually.

23. No doubt, it has not been done, but the bid has progressed far more than the initial stage.

10. The learned Advocate General had forwarded further documents which had taken place after the said order dated 08.02.2023.

11. It is stated that L1 had been identified namely M/s. KS Smart Solution Private Limited. Letter of intent had been issued on 16.02.2023, which was also accepted on 20.02.2023. This indicates that a binding contract had been entered into between the respondents and the said M/S. KSSmart Solution Private Limited.

12. A copy of the intimation letter had also been forwarded to the Additional Commissioner of Police on 21.02.2023. It is seen from the records that the present writ petition had been filed on 21.02.2023



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by which date, the chosen bidder had already accepted the offer made by the petitioner herein. I am afraid that this Court cannot come to the assistance of the petitioner herein.

13. The writ petition stands dismissed at the admission stage itself. No costs. Consequently, WMP Nos.5538 and 5539 of 2023 are closed.

24.02.2023

Index: Yes/no
mrn

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C.V.KARTHIKEYAN, J.
(mrn)

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