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W.A.No.660 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.660 of 2023
and C.M.P.No.6613 of 2023

Quality Property Management Service
Private Limited,
Represented by its Director
Chinta Bharath .. Appellant

Versus

1. Tamil Nadu Textbook and Educational Services
Corporation,
EVK Sampath Maaligai,
D.P.I Campus,
No.68, College Road,
Chennai - 600 006.
2. The Principal Secretary to Government of
Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009. .. Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 16.03.2023 in W.P.No.7276 of 2023.



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For Appellant : Mr.Murali Kumaran

For Respondents : Mr.J.Ravindran,
Additional Advocate General,
Assisted by M/s.S.Varsha,
for R1

JUDGMENT

(Made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

This Writ Appeal is directed against the order of the learned Single Judge, dated 16.03.2023 made in W.P.No.7276 of 2023, in and by which, the Writ Petition filed by the petitioner challenging the tender floated by the respondents bearing Ref.RC No.613/PUR-1/2023 inasmuch as it prescribed Criteria III (3), (4) and (5).

2. The gist of the grievance of the petitioner in the Writ Petition is that for the first time, the respondents are inviting tenders to provide housekeeping, sanitation, and security services in all the schools run under the School Education Department in the State of Tamil Nadu. For the purpose of inviting tender, for the reasons best known to the respondents, they have divided the 38 districts into four zones and are inviting tenders. The tender documents prescribe detailed eligibility criteria, *inter alia*, the following conditions were made:-



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Sl.	Criteria	Proof
1	...	...
2	...	...
3	The bidder should have carried out the above services in at least 25,00,000 sq. ft. (Twenty-Five Lakh Square feet) either in a single or multiple contracts (not more than 3), in any one of the last three financial years (2019 – 20 to 2021-22), having the nature and complexity equivalent to the services called for in the present tender, with satisfactory performance on the date of bid opening.	Copies of contracts evidencing handling of the minimum building area of at least 25,00,000 sq. ft. (Twenty-Five Lakh Square feet) in any one of the last three financial years (2019 – 20 to 2021-22) towards housekeeping services either in single or multiple contracts in the same year, having the nature and complexity equivalent to the services called for in the present tender. End-user certificates for satisfactory performance also to be submitted.
4	The average annual turnover of the bidder should not be less than Rupees 50 (Fifty) Crore in the last three financial years (2019 – 20, 2020-21, and 2021-22).	Audited P&L statement for the last 3 FYs (2019 – 20 to 2021-22).
5	The bidder should have the experience of having employed a minimum of 5,000 personnel throughout the year in each of the last three financial; years (2019 – 20 to 2021-22) in the field of Housekeeping, Sanitation and Security services, either in single contract or multiple contracts (not more than 3) in the same year. Note: In the proof submitted for the projects, at least 4,500 personnel should be in the area of housekeeping and sanitation services.	CA audited statement of manpower wages for a minimum of 5,000 personnel employed throughout the year in each of the last three years (2019 – 20 to 2021-22) should be submitted. Also, Proof of PF/ESI details of employees of last year FY 2021 – 2022 must be submitted. Note: Bidder should submit affidavit in Rs.100 Non-Judicial paper that in the event of work is awarded to our agency: the wages to be paid to the workers engaged shall not be less than the minimum wages determined by Tamil Nadu State Govt. Authority from time to time.



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Therefore, it is the case of the petitioner that the above criteria are absolutely arbitrary and not based on any rationale or data.

3. All that the respondents want is that the successful bidders should do the housekeeping i.e., cleaning the schools including the toilets and keeping the premises clean and providing security services at the gate. It is very much a doable job for any entrepreneur or organisation which can provide these services. But, however, the respondents without any basis whatsoever have included the said criteria which will exclude 99.9% of the intending bidders. Thus, virtually excluding competition and making it monopolistic to one or two giants alone who are already in the business, is opposite to rule of law. The purpose of floating tenders or framing tender conditions should only be in public interest and in the instant case, they are anathema to public interest. The petitioner also would compare the exercise done by the State of Tamil Nadu in respect of the Hospitals. As a matter of fact, the Hospitals require more cleaning, more sanitising and more security. The petitioner also relied upon the following comparative statement to bring home their point that the impugned criteria are absolutely without any basis and designed to keep only a handful alone.



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Comparative Statement showing Tender Conditions and Eligibility			
Sl.No.	Tender Inviting Authority	Tamil Nadu Medical Services Corporation	Tamil Nadu Textbooks and Educational Services Corporation
1.	Nature of Work	House Keeping, Sanitation, Security Services at Medical Colleges, Hospitals, Nursing Colleges	House Keeping, Sanitation, Security Services at Tamil Nadu Govt. Schools
2.	Total Zones	5	4
3.	No. of Sites	94 Hospitals in 5 zones	6155 Schools in 4 zones
4.	Total Area to be serviced	14,11,31,992 sq.ft	9,80,36,546 sq.ft
5.	Contract value	240 Crores	150 Crores
6.	Manpower Required	20000	16501
7.	EMD	10 Lakh for Each Zone	75 Lakh
8.	Performance Bond	5% of Contract Value for 1 Year	5% of Contract Value
9.	Contract Period	3 Yrs	3 Yrs
10.	Consortium	Allowed	Not Allowed
11.	PSARA Licence	Required	Not Specified
ELIGIBILITY CRITERIA			
12.	Experience	3 Years	5 Years
13.	Minimum Area Coverage	10 Lakh Sq.Ft in any 1 year during the last 5 Yrs	25 Lakh Sq.Ft in any one of the last 3 Yrs For Each Zone (100 Lakh Sq.Ft for all the 4 Zones)
14.	Annual Turnover	20 Crores during any one of the last 3 financial Yrs	50 Crores average for the Last 3 Financial Years For Each Zone (200 Crores for all the 4 Zones)
15.	Man Power	1800 Housekeeping personnel in any one of	Minimum 5000 Housekeeping personnel



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Comparative Statement showing Tender Conditions and Eligibility			
		the last 5 Yrs	to be deployed throughout the last 3 financial years For Each Zone (20000 for all the 4 Zones)

4. The Writ Petition was resisted by the respondents by filing a detailed counter-affidavit. The case of the respondents is that it is for the Tender Floating Authority to classify the schools into four zones and determine the process of tender. They have framed tender conditions in the exercise of their powers under the *Tamil Nadu Transparency in Tenders Act, 1998* and the tender conditions are equally applicable to all persons. They submitted that the tender conditions cannot be challenged by the petitioner. It was submitted that the conditions which are prescribed, are strictly commensurate with the quantum of services sought. The conditions will not make any MSMEs ineligible to participate.

5. By a judgment, dated 16.03.2023, the learned Single Judge, considering the case of the parties and after adverting to the law on subject, held that the Court should be very much circumspect in intervening with the tender processes. It was well within the rights of the respondents to impose



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restrictive conditions which cannot be a subject matter for judicial review.

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Considering the enormity of the work, it cannot be said that the eligibility criteria prescribed are unreasonable. Therefore, when the respondents authorities, having regard to all facets of the matter, drafted the eligibility conditions, it cannot be termed as onerous, discriminatory, or arbitrary and dismissed the Writ Petition, aggrieved by which, the present Writ Appeal has been filed before this Court.

6. In the present Writ Appeal, a counter-affidavit is filed by the first respondent, wherein, it is stated that they conducted the pre-bid meeting on 08.03.2023 and the Board of Directors and the Tender Floating Authority scrutinised the queries received and have published a corrigendum modifying various conditions of the tender including the ones which are challenged by the Writ Petition. The following table reveals the modifications done by the respondents *vide* corrigendum, dated 03.04.2023:-

S.No.	Original eligibility condition	Revised eligibility condition
1.	Eligibility Criteria (For bidding in one zone) : For bidding in more than one zone, the eligibility criteria as mentioned in Sl. No.3, 4, and 5 shall be multiplied by the number of zones	This clause stands removed from the Eligibility Criteria.



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S.No.	Original eligibility condition	Revised eligibility condition
2.	The bidder should have carried out the above services in at least 25,00,000 sq. ft. (Twenty-Five Lakh Square feet) either in a single or multiple contracts (not more than 3), in any one of the last three financial years (2019 – 20 to 2021 – 22), having the nature and complexity equivalent to the services called for in the present tender, with satisfactory performance on the date of bid opening.	The bidder should have carried out the above services in at least 10,00,000 sq. ft. (Ten Lakh Square feet) either in a single or multiple contracts (not more than 3), in any one of the last three financial years (2019 – 20 to 2021 – 22), having the nature and complexity equivalent to the services called for in the present tender, with satisfactory performance on the date of bid opening. In case the bidder intends to apply for multiple zones, the sq. ft. shall increase proportionately
3.	The average annual turnover of the bidder should not be less than Rupees 50 (Fifty) Crore in the last three financial years (2019 – 20, 2020–21, and 2021-22)	The annual turnover of the bidder should not be less than Rupees 30 (Thirty) Crore in any of the last three financial years (2019 – 20, 2020-21, and 2021-22)
4.	The bidder should have the experience of having employed a minimum of 5,000 personnel throughout the year in each of the last three financial; years (2019 – 20 to 2021-22) in the yield of Housekeeping, Sanitation and Security services, either in single contract or multiple contracts (not more than 3) in the same year. Note: In the proof submitted for the projects, at least 4,500 personnel should be in the area of housekeeping and sanitation services.	The bidder should have the experience of having employed a minimum of 3,000 personnel throughout the year in any of the last three financial years (2019–20 to 2021-22) in the yield of Housekeeping, Sanitation and Security services, either in single contract or multiple contracts (not more than 3) in the same year. Note: In the proof submitted for the projects, at least 2,700 personnel should be in the area of housekeeping and sanitation services.

7. In this background, we heard *Mr.Murali Kumaran*, learned Senior Counsel for the appellant and *Mr.J.Ravindran*, learned Additional Advocate General for the first respondent.



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8. *Mr.Murali Kumaran*, learned Senior Counsel submitted that except for pleading that the conditions are not arbitrary, no justification or data is provided to justify the original conditions as well as the modified conditions. He would submit that there must be level playing field for the parties. He would submit that the so-called Decision Oriented Systematic Analysis (DOSA) said to be done in the instant case results in only one or an extremely less number of persons/entities participating in the bid and therefore, the very process is arbitrary. Learned Senior Counsel would submit that when the very same State of Tamil Nadu, in respect of the Health Department which requires more work and competency, has imposed pre-conditions enabling more players to participate, the very same State authorities in the Education Department have imposed onerous and impossible conditions virtually excluding participation by most of the intending bidders like the petitioner and thereby, defeating the very purpose of the tender. Learned Senior Counsel relied upon the following judgments in respect of this case:-

S.No.	Name of the citation
1.	Reliance Airport Developers (P) Ltd. Vs. Airports Authority of India and Ors. [(2006) 10 SCC 1]
2.	Reliance Energy Ltd. and Anr. Maharashtra State Road Development Corpn.



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S.No.	Name of the citation
	Ltd. and Ors. [(2007) 8 SCC 1]
3.	Sri. Ajay Kumar Jain Vs. State of Odisha and Ors. [2017 SCC OnLine Ori 473]
4.	JCB India Limited and Anr. Vs. State of Maharashtra and Ors. [2018 SCC OnLine Bom 7942]
5.	JMC Projects (India) Ltd. Vs. Union of India and Anr. [2022 SCC OnLine Del 3641]
6.	Kamala Agencies Vs. State of Odisha and Anr. [2022 SCC OnLine Ori 2451]
7.	State of Orissa and Ors. Vs. Utkal Pharmaceuticals Manufacturers Association and Anr. [(2016) 2 SCC 780]
8.	Airport Authority of India Vs. Centre for Aviation Policy, Safety & Research (CAPSR) & Ors. [2022 SCC OnLine SC 1334]
9.	Uflex Limited Vs. Government of Tamil Nadu and Ors. [(2022) 1 SCC 165]
10.	Silppi Constructions Contractors Vs. Union of India and Anr. [(2020) 16 SCC 489]
11.	Michigan Rubber (India) Limited Vs. State of Karnataka and Ors. [(2012) 8 SCC 216]

9. Opposing the above said submissions, *Mr.J.Ravindran*, learned Additional Advocate General, taking this Court to paragraph No.10 of the counter-affidavit filed before this Court, would submit that already, by virtue of the pre-bid meeting, the conditions have been diluted and the quantity of square feet required had been reduced from 25,00,000 Sq.ft to 10,00,000 Sq.ft. Similarly, the turnover of Rs.50,00,00,000/- had been reduced to Rs.30,00,00,000/- in any of the last three financial years. Similarly, the experience of having 5000 personnel has been reduced to 3000 personnel in any of the last three financial years. He would submit



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that the Tender Floating Authority has the right to fix the conditions and their wisdom cannot be questioned and judicially reviewed before this Court. In support of his contentions, learned Additional Advocate General relied upon the judgment of the Hon'ble Supreme Court of India in ***Balaji Ventures Pvt. Ltd. Vs. Maharashtra State Power Generation Company Ltd. & Anr***¹, more-fully relying upon paragraph No.5.1 that the tender conditions cannot be challenged by the individuals simply because they are not convenient to them. He would rely upon the judgment of the Hon'ble Supreme Court of India in ***Silppi Constructions Contractors Vs. Union of India and Anr*** (cited *supra*), more-specifically relying upon paragraph No.20, whereunder, it is laid down that there must be overwhelming public interest to justify judicial interference in matters of contract and the authority, which floats the contract or tender, is the best judge as to how the documents have to be interpreted. Learned Additional Advocate General also relied upon the judgment of the Hon'ble Supreme Court of India in ***Airport Authority of India Vs. Centre for Aviation Policy, Safety & Research (CAPSR) & Ors.*** (cited *supra*), more-specifically relying upon paragraph Nos.3.5 and 3.6 to contend that it is within the ambit and policy decision of the Tender Making Authority to frame the conditions and it is

¹ MANU/SC/0740/2022



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outside the scope of judicial scrutiny.

10. We have considered the rival submissions made on either side and perused the material records of the case. Firstly, it has to be seen that after contending before the learned Single Judge that the criteria in the impugned notification are commensurate to the enormity of the work and after asserting that they have applied their mind, framed the above conditions and thus having invited the impugned judgment in their favour, the respondents themselves have given a go-bye to their conditions by drastically reducing the rigor of the eligibility criteria. As their sole contention before the learned Single Judge goes, therefore, the contention of the respondent that the order of the learned Single Judge upholding the said conditions is to be affirmed is unsustainable. Because by altering the disputed conditions of tender before the Appellate Court the respondents admittedly conceded the claim of the appellant that the tender criteria impugned are arbitrary.

11. We are in complete agreement with the proposition of law, as argued by the learned Additional Advocate General, that it is for the Tender Floating Authority to fix the conditions and it is not for the Court to



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determine the desirability or adequacy of the eligibility conditions. We are also in agreement that such conditions cannot be scrutinised by the Court as if it is an appellate authority. At the same time, even as per the above three judgments relied upon by learned Additional Advocate General, it would be clear that what is within the realm of judicial review is that is not the ultimate decision, but whether there is application of mind on the part of the Tender Committee and whether the conditions are serving the public interest. The Tender Floating Authority cannot arbitrarily assert before this Court that it has the power under the *Tamil Nadu Transparency in Tenders Act, 1998* and therefore, it will fix the conditions. On the other hand, the authorities have to satisfy that there was an application of mind by the Committee and that no condition, which is stipulated, is arbitrary and irrational.

12. On a perusal of the counter-affidavit filed before the learned Single Judge and the counter-affidavit filed before this Court, it would be clear that such justification is completely absent. Not even an attempt is made by the respondents that on account of any particular data or concern, the eligibility criteria is fixed. It is simply and baldly argued that the criteria



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fixed by the Health Department is not binding on the Education Department.

Admittedly, in the instant case, it is for the first time, the tender is floated.

The work is to provide housekeeping services, sanitation and security to the Government schools. Therefore, it is for the respondents to take into consideration the nature of work, whether at all it requires such a huge prior experience. It is for them to justify as to why in the first instance, they adopted the contentious criteria and on what basis, it has now been reduced at the appellate stage. Apparently, the counter-affidavits filed before this Court failed to justify the reasons for modifying the conditions and therefore, where bereft of any reason. The same only takes this Court to the irresistible conclusion that there has been no application of mind at all and that the criteria fixed is arbitrary and irrational. When this Court cannot substitute its opinion on behalf of the Tender Floating Authority, whether there should be prior experience or not and if so, what should be the criteria so as to ensure the smooth conduct of the works which is done, certainly this Court can interfere when the overwhelming public interest of due participation of bidders is seriously affected by the tender conditions. Besides the tender conditions failed to provide a level playing field to all the players who have experience with huge turnover and those who are



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upcoming with marginal turnover, the Court can interfere with such conditions.

13. We, therefore, find that there is no application of mind and justification shown before this Court as to the decision making process and as to what led the respondents to impose those impugned conditions and as to what led them to reduce / relax the conditions to a huge extent and as to what led them to fix in the current level. Therefore, we are of the view that there has been no application of mind nor any objective criteria has been considered by the Tender Floating Authority. The above mentioned comparative table between the criteria adopted in respect of the Health Department, on being compared with the down scaled tender conditions will appear to run *contra* to the public interest of inviting tenders that is to encourage participation of persons/entities who are in the field, resulting in best of the prices offered to the Government.

14. Our above finding is suffice for the purpose of deciding the above Writ Appeal. We have gone through the tender document in full. From the nature of work, it can be seen that the regular / temporary Watchman will



<https://www.mhc.tn.gov.in/judis>



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them is essential. The tender does not even contain any condition as to the fact that they should be conversant in communicating, reading and writing in the local language, as schools are located in deep down in every village throughout Tamil Nadu. Therefore, not only on the fairness of the qualifications / conditions, since this effort is attempted for the first time, the authorities have omitted to apply their mind on the above issues also.

15. In the result,

(i) This Writ Appeal in W.A.No.660 of 2023 is allowed and the impugned order passed by the learned Single Judge, dated 16.03.2023 in W.P.No.7276 of 2023 is set aside;

(ii) The impugned Writ Petition in W.P.No.7276 of 2023 is allowed on the following terms:-

(a) The impugned tender, dated 27.02.2023 in Ref.RC No.613/PUR-1/2023 stands quashed inasmuch as it imposed Criteria III (3), (4) and (5) and it would be open for the respondents and the appropriate Tender Floating Committee to apply its mind and appropriately frame the conditions taking into account all the materials including the criteria



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adopted by the other departments in the best interests of the work which is to be done and invite fresh tenders in accordance with law;

(b) The Tender Committee may also consider making knowledge of Tamil or the local language of the area in which the school is located as mandatory for all those to be employed by the successful bidders;

(iii) There shall be no order as to costs.

(iv) Consequently, connected miscellaneous petition is closed.

(T.R., ACJ.)

(D.B.C., J.)

20.04.2023

Index : yes

Speaking order

Neutral Citation : yes

grs

To

1. Tamil Nadu Textbook and Educational Services Corporation,
EVK Sampath Maaligai,
D.P.I Campus,
No.68, College Road,
Chennai - 600 006.
2. The Principal Secretary to Government of Tamil Nadu,
School Education Department,
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