



Writ Petition No.24840 of 2023 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :25.08.2023
PRONOUNCED ON :07.09.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition Nos.24840, 24843, 24846, 24848, 24849, 24851, 24853,
24854, 24855, 24857, 24858, 24859 and 24861 of 2023
and W.M.P.Nos.24240, 24243, 24245, 24247, 24251, 24253, 24255, 24256,
24258, 24259, 24261, 24263, 24264, 24260, 24268, 24269, 24270, 24272,
24273, 24275, 24276, 24279, 24277, 24278, 24282 and 24283 of 2023

The Managing Director,
M/s.DSR Sons India Engineers Private Limited,
No.49, 1st Floor, HIG, NH-1, Vallal MGR Street,
Maraimalar Nagar,
Chengalpattu District,
D.S.Ravee Kumar.

... Petitioner

Vs

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

2.The Chief Engineer (General)
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

3.The Superintending Engineer,
Bus Route Roads Department,
Amma Maligai,
Greater Chennai Corporation, Chennai – 600 003.



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4. The Executive Engineer (BRR),
Bus Route Roads Department,
Amma Maligai,
Greater Chennai Corporation, Corporation of Chennai.
Chennai – 600 003.

5. The National Informatics Centre,
Tamil Nadu State Centre,
Rajaji Bhavan Complex,
3rd Avenue, Thiruvalluvar Nagar,
Besant Nagar,
Chennai – 600 090.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the reason for rejection order dated 17.08.2023 passed by the 3rd respondent in tender Ref.No.BRR.C.No.B4/3404/2023 (8) quash the same and direct the respondents to process the bids of the petitioner along with other bidders in accordance with law.

For Petitioner : M/s.S.Doraiswamy

For Respondents: Mr.J.Ravindran
AAG-IX
Assisted by Mr.A.S.Ragul Adhithya
for M/s.P.T.Ramadevi
SC for GCC
for R1 to R4



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COMMON ORDER

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These writ petitions are filed challenging the tender summary reports of the respondents 2 to 4, refusing to admit the tender of the petitioner on the ground that the plant site of the petitioner is located beyond 40kms of the Chennai city.

2. According to the petitioner, the 3rd respondent herein issued a tender notification for laying of roads in various zones of Chennai Corporation. The petitioner is a State Level Class-1 Contractor having work experience in execution of various works for Government Departments and Chennai Corporation. It is also stated by the petitioner that it is having six sets of latest model machineries including imported milling machines, 9 meters Sensor Paver Machines etc. As per the tender notification the bids shall be submitted online on or before 20.07.2023 at 15.00 hours in the office of the 3rd respondent in the presence of the bidders. Subsequently, a corrigendum dated 19.07.2023 was issued by the 3rd respondent extending the time for submission of the bids till 27.07.2023 at 03.00 p.m and opening of the bid on 28.07.2023 at 03.00 p.m.



3. The petitioner intended to participate in the above tenders.

Though the petitioner was in possession of all the required machineries with perfect working conditions as per the check list S.No.7 Clause 3.4(e) including Cold Milling Machine and Central Hot Mix Plant. The respondents 1 to 4 refused to issue machinery certificate with an intention to prevent the petitioner from participating in the tender. Hence, the petitioner filed writ petition before this Court in W.P.No.22631 of 2023 and when the matter came up before this Court on 28.07.2023, the counsel appearing for official respondents submitted that they were ready to conduct inspection of the machineries of the petitioner on the next day and issue necessary certificate had the machineries been found to be in order. After recording the said statement made by the learned counsel appearing for the official respondents, this Court permitted the petitioner also to participate in the tender bid, subject to condition, the petitioner should produce the machinery certificate on or before 01.08.2023. It is also averred by the petitioner that machinery certificate was issued by the respondents on 31.07.2023 and the same was produced before the 3rd respondent on 01.08.2023. Subsequently, on 16.08.2023 and 17.08.2023 the petitioner received an e-mail from the 5th respondent stating that the petitioner's tender had been rejected for the



reason that the Central Hot Mix plant of the petitioner is not located within 40 kms from Chennai City. It is also stated by the petitioner though the respondents uploaded the details of the successful bidder, in respect of the other tenders, in which the petitioner had not participated, the details of successful bidder in respect of tenders in which petitioner had participated have not been uploaded in the official portal. Hence, challenging the tender summary reports uploaded in the official portal of the first respondent/Corporation rejecting the petitioner's bid on the ground that Central Hot Mix plant is not available within 40kms, the petitioner has come by way of this writ petition.

4. Mr.S.Doraisamy, the learned counsel appearing for the petitioner submitted that when the petitioner intended to submit his bid in response to the tender notice, the respondents wantonly refused to issue machinery certificate. Therefore, the petitioner was constrained to approach this Court in W.P.No.22631 of 2023 and only thereafter the respondents issued machineries certificate to enable the petitioner to submit his bid. Now the bid of the petitioner has been rejected by the respondents/Corporation mainly on the ground that the Central Hot Mix



plant (CMP) is not situated within 40kms from Chennai city. The learned counsel by taking this Court to Serial No.7 of check list issued to the tender notice submitted, as per the tender condition, Central Hot Mix Plant must be located within 40 kms radius from the Chennai City. In the case on hand, the Central Hot Mix Plant of the petitioner is located at Maraimalai Nagar, which is well within 40kms from the limits of the Chennai City. It is the specific case of the petitioner that the respondents 1 to 4 with malafide intention rejected the petitioner's bid even though its Central Hot Mix Plant is located within 40kms as per the tender conditions.

5. Mr.J.Ravindran, learned Additional Advocate General appearing for respondents 1 to 4 by taking this Court to Clause 3.4(e) of eligibility criteria submitted that the Central Hot Mix Plant (CMP) must be located within 40 kms radius from Chennai City and the said 40km radius shall be calculated from '0' point of Chennai City namely Muthusamy Iyer Bridge to the plant site of the bidder. It is also stated by the learned Additional Advocate General, if the distance is calculated from '0' point of Chennai City, the Central Hot Mix Plant of the petitioner located at Maraimalai Nagar, is 53 kms away from '0' point. Therefore, the learned



Additional Advocate General submitted that the respondents 1 to 4 are justified in rejecting the petitioner's bid as he failed to satisfy the tender conditions.

6. The learned Additional Advocate General further submitted that the allegation of malafides raised by the petitioner cannot be taken into consideration by this Court as the above said rule of calculating 40kms radius from '0' point of Chennai City has been applied in respect of all the bidders uniformly and only bidders whose Central Hot Mix Plant located within 40kms from '0' point were taken into consideration. The learned Additional Advocate General further submitted that the eligible bids were already considered and letter of acceptance dated 17.08.2023 was also issued to successful bidders in respect of 127 packages and in respect of remaining 7, re-tenders have been called for due to the participation of only one tenderer. The learned Additional Advocate General also submitted that these tenders have been called for improvements of BT roads in Chennai City and the improvements works have to be completed prior to monsoon season in the interest of general public. Therefore, in a tender matter, where respondents applied uniform yardstick for all the successful bidders, this



Court refused to interfere taking into consideration the urgency and the public interest in execution of the works. The learned Additional Advocate General also submitted that against the rejection of petitioner's bid, an appeal remedy is available to the petitioner under Section 11 of Tender Transparency Act and therefore, this writ petition is not maintainable.

7. The learned Additional Advocate General in support of his arguments relied on the following judgments for the proposition that the tender inviting authorities are entitled to interpret the tender conditions and in cases where two interpretations are possible then the interpretation of the author must be accepted.

(i) Balaji Ventures Private Limited Vs Maharashtra State Power Generation Company Ltd and another reported in 2022 LiveLaw (SC) 295;

(ii) M/s.Om Gurusai Construction Company Vs. M/s.V.N.Reddy and other reported in 2023 INSC 760;

(iii) The Silppi Constructions Contractors Vs Union of India and another etc., reported in 2020 (16) SCC 489, Special Leave Petition (Civil) Nos.13802-13805 of 2019;



8. Mr.S.Doraiswamy, learned counsel appearing for the petitioner in his reply submitted that the refusal order has not been communicated to the petitioner and therefore the question of filing appeal will not arise in the facts of the case. He further submitted that when the tender summary reports uploaded in the online portal of the respondents/Corporation is challenged on the grounds of malafides, the respondents are not entitled to cite availability of alternative remedy as a defence to counter the writ petition. The learned counsel further submitted in the tender conditions Serial No.7 of check list in clause 3.4 (e), the respondents only mentioned that the Central Hot Mix Plant must be located within 40kms radius from Chennai City. The respondents failed to mention specifically that the 40kms radius shall be calculated from '0' point of Chennai City namely Muthusamy Iyer Bridge. The respondents cannot mention a vague tender condition and interpret the same as per their wish. He further submitted that insistence of respondents that Central Hot Mix Plant shall be located within particular distance is aimed at curtailing number of participants.



9. In this connection, the learned counsel for the petitioner

relied on the following judgments of this Court:

(i) Everest Instruments Private Limited Vs Tamil Nadu Co-operative Milk Producers Federation Limited reported in 2021 SCC online Mad 5206;

(ii) Sri Sai Sreenivasa Constructions Vs T.Siva Prasad Reddy and Others reported in 2003 (4) ALT 708.

10. The learned counsel also submitted that the petitioner applied for road works in zone 12 to 15 of Chennai Corporation. If the distance is calculated from work place in zone 12 to 15 of Chennai Corporation, the Central Hot Mix of the petitioner is very well located within 40kms. The learned counsel by referring to list of bidders whose bids were considered by the respondents for allocation of the work submitted in respect of one D.Kumar and sons (Serial No.5) plant site is located at Oorappakkam, which is 42kms away from '0' point. It is also submitted in respect of one New Bharat Electrical and Enterprises (Serial No.39), the Central Hot Mix is located at Nallambakkam, which is 43.3 km from '0' point. It is also submitted in respect of one P&C projects (serial



No.21) no Central Hot Mix is available in the place mentioned by him.

Therefore, the learned counsel reiterated the submission that the petitioner's bid was rejected wantonly and invited this Court to interfere by exercising its power under 226 of Constitution of India.

11. In the light of the arguments made by the learned counsel for the petitioner it has to be seen, whether the decision of the respondents 1 to 4 in rejecting the petitioner's bid is vitiated by malafides. As seen from the tender summary reports of the respondents, the bid of the petitioner was rejected on the ground that the Central Hot Mix Plant (CMP) is located beyond 40kms. The compliance criteria as per Clause 3.4 (e) of tender conditions reads as follows:

“Valid lease agreement/ownership for Central Hot Mix Plant (CMP) land area to be furnished. The Central Hot Mix Plant (CMP) must be located within 40kms radius from Chennai City.”

12. It is the contention of the petitioner, the compliance criteria as per tender conditions is vague and it is not specific that Central Hot Mix



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Plant (CMP) should be located within 40kms from '0' point of Chennai City. It is the case of the petitioner that he submitted tenders in respect of road work in zones 12, 13, 14 and 15 which are in the Southern side of the Chennai City and if the distance is calculated from the place of work, the Central Hot Mix Plant (CMP) of the petitioner falls within 40kms. The tender conditions mentioned above only says the Central Hot Mix Plant (CMP) must be located within 40kms radius from Chennai City, but it does not say what is the starting point from which 40kms shall be calculated. In other words, the tender conditions are not specific, whether 40kms should be calculated from '0' point of the City or from the boundaries of the city.

13. It is the specific case of the respondents as seen from the counter, the distance was calculated from '0' point of the Chennai City namely Muthusamy Iyer Bridge, which is the starting point for measuring road distances for various cities from Chennai. When the tender conditions are capable of being interpreted in two ways the interpretation given by the author of the tender will prevail. In this regard, it would be appropriate to refer to the decision of the Apex Court in Balaji Ventures Private Limited Vs Maharashtra State Power Generation Company Ltd and another reported



in 2022 LiveLaw (SC) 295. The relevant observations of the Apex Court in this regard reads as follows:

5.1. Now so far as the impugned Judgment and order passed by the High Court dismissing the writ petitions is concerned, what was challenged before the High Court was one of the tender conditions/clauses. The High Court has specifically observed and noted the justification for providing clause 1.12(V). The said clause was to be applied to all the tenderers/bidders. It cannot be said that such clause was a tailor made to suit a particular bidder. It was applicable to all. Owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is found to be arbitrary, mala fide and/or tailor made. The bidder/tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or convenient to him. As per the settled proposition of law as such it is an offer to the prospective bidder/tenderer to compete and submit the tender considering the terms and conditions mentioned in the tender document.

5.2 In the case of Silppi Constructions Contractors vs. Union of India, (2020) 16 SCC 489, it is observed in para 20 as under:

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the



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experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case." (Emphasis supplied).

14. In M/s.Om Gurusai Construction Company Vs. M/s.V.N.Reddy and others reported in 2023 INSC 760. The Apex Court observed as follows:

In this case, the tendering authority, after due verification, about the non-operation of the banks on 15.03.2021 and 16.03.2021 due to the strike by the bank employees, had accepted the additional performance security on 17.03.2021 and awarded the work to the appellant. It is well settled by a long line of judgments that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. It has



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also been held that the constitutional courts must defer to this understanding and appreciation of the tender documents by the employer unless there is mala fide or perversity in the understanding or appreciation. (Emphasis supplied) [See *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited*, (2016) 16 SCC 818 and *Uflex Limited v. Government of Tamil Nadu*, (2022) 1 SCC 165)].

15. In *Silppi Constructions Contractors Vs Union of India* and another etc., reported in 2020 (16) SCC 489. The Hon'ble Apex Court while discussing the scope of judicial intention in tender matters observed as follows:

15. In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.* MANU/SC/1003/2016 : (2016) 16 SCC 818 : 2016 KHC 6606 it was held that a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of malafides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision. The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. It is.



possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given. (Emphasis Supplied)

..... 19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clearcut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving



technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

16. In the light of the authoritative pronouncement by the Apex Court in the above mentioned case laws, we can safely come to a conclusion in cases where tender conditions are capable of more than one interpretation, the interpretation of the author of the tender is final. In other words the author of the tender is the final authority to interpret the same and the same can be interfered with by the Courts only, if the interpretation is vitiated by malafides, arbitrariness, irrationality or perversity. In the light of the above conclusion based on the Judgment of the Hon'ble Apex Court, the decision relied on by the learned counsel for the petitioner in ***Everest***



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Federation Limited reported in 2021 SCC online Mad 5206, will not advance the case of the petitioner.

17. In the case on hand, the tender conditions extracted above is capable of being interpreted in two ways which are as follows:

(a) 40kms from boundaries of the City;

(b) 40kms from '0' point of the City ('0' point is the point from which the distance of the City is measured with reference to other cities).

18. The first respondent Corporation floated tenders for laying of road in all the parts of the City. In order to give level playing field, in respect of the works to be carried out in various corners of the City, the first respondent appeared to have chosen the '0' point of the city to be the starting point for measuring the distance of 40kms. This Court does not see any arbitrariness or irrationality in the decision of the first respondent in choosing the '0' point as the starting point for calculating the distance. As per the decisions of the Apex Court in Balaji Ventures Pvt Limited cited supra, the author of the tender documents is the best Judge as to how the



documents have to be interpreted, when the tender documents are capable of being interpreted in two ways. The interpretation of the respondents that 40kms distance shall be from the 'O' point of the City does not appear to be arbitrary or irrational.

19. Coming to the question of malafides raised by the petitioner, it is the specific contention of the petitioner that the respondents failed to issue machinery certificate to the petitioner and he was constrained to approach this Court in earlier writ petition and therefore, the respondents have adopted a restrictive interpretation so as to exclude the petitioner. As per the averment found in the counter affidavit, the distance of 40kms from the 'O' point was uniformly adopted in respect of all the bidders, who participated in the tender, when it is not shown the petitioner has been singled out by a new interpretation given by the author of the tender documents, we cannot come to a conclusion, there is malafides on the part of the author in interpreting the tender conditions. In ***Sri Sai Sreenivasa Constructions Vs. T.Siva Prasad Reddy and others reported in 2003 (4) ALT 708*** relied on by the learned counsel for the petitioner, the tender conditions imposing distance limit for having Hot Mix Plant was challenged



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by the petitioner therein. In the case on hand, the petitioner has not challenged the relevant tender conditions. He only challenged the tender summary report mainly on the ground of malafides. Therefore, the said decision will not help the arguments of the learned counsel for the petitioner.

20. The learned Additional Advocate General produced a list of 47 bidders signed by 3rd respondent, wherein, the distance between the Central Hot Mix Plant of the bidders and the '0' point of the City are mentioned. Perusal of the same would suggest only two bidders namely the petitioner at Serial No.47 and one Saravana Projects at Serial No.10 are having Central hot Mix Plant site beyond 40kms, all others are having plant sites within 40kms. It is stated by the learned counsel for the petitioner, the bidders in Serial Nos.5 and 39 are having Central Hot Mix Plant at the distance of 42 kms and 43.3 kms from '0' point. However, in the list submitted by the 3rd respondent, the distance between the Central Hot Mix Plant and '0' point was wrongly mentioned as 40kms and 39 kms.



21. The learned counsel for the petitioner also produced google map, in support of his submission, which is included in page Nos. 15 and 18 of additional typed set of papers filed on 25.08.2023. A perusal of same would suggest the road distance as calculated by google maps goes beyond 40kms. The tender conditions only talks about radial distance not distance by road. When '0' point is taken as starting point in respect of all the bidders uniformly the petitioner cannot say the decision of the respondents is vitiated by malafides. In respect of bidders serial Nos.5 and 39 namely D.Kumar and sons and New Bharat Electrical and Enterprises, it was submitted by the respondents that if radial distance is taken into consideration their plant is within 40kms. However, no material have been placed before the Court to establish how radial distance was calculated. In such circumstances, in case, the bidder in serial Nos,5 and 39 are declared as successful bidders by the respondents, the petitioner is certainly entitled to challenge the grant of contract to them on the grounds of malafides.

22. The learned Additional Advocate General submitted that even before filing of writ petition on 17.08.2023, the successful bids were accepted and letters of acceptance were issued to the successful bidders. He



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also produced three letters of acceptance issued in favour of Gurusurthy Engineering Enterprises, Sri Thyagarajan Enterprises, in respect of zone 12, 13, 14 and 15 of Chennai Corporation. When '0' point is taken as the starting point in respect of all the tenderers, this Court does not find any malafides in the interpretation given by the respondents. Therefore, this Court does not find any reason to interfere with the impugned tender summary reports uploaded by the respondents in the official website. Accordingly, these writ petitions are dismissed.

23. However, if it is found by the petitioner that any of the bidders, who are declared as successful by the respondent corporation failed to satisfy distance condition of 40kms from the '0' point of the City, it is open to the petitioner to challenge the letter of acceptance issued by the respondents by impleading the successful bidders. With these liberty all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

07.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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