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W.P. No. 34887 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 34887 of 2023

and

W.M.P. Nos. 34880 and 34881 of 2023

P. Babu

... Petitioner

-VS-

1. The District Collector
Salem District
Salem -636 001.
2. The Assistant Director of Town Panchayat,
Collectorate Campus,
Salem District.
3. The Executive Officer,
Veeraganur Town Panchayat,
Thalaivasal Taluk,
Salem District – 636 116.
4. The Chairman,
Veeraganur Town Panchayat
Thalaivasal Taluk,
Salem District 636 116.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned tender notice in Na.Ka.No.342/2023 dated 24.11.2023 issued by the 3rd and 4th respondent and quash the same and consequently, to direct the 3rd and 4th respondent to conduct the tender in the Month of February



W.P. No. 34887 of 2023

2024 as usual by fixing the nominal EMD amount towards the year 2024-2025 by following the procedures as contemplated by the Act and pass further orders.

For Petitioner : Ms. S.Vinodha

For Respondents : Mr. S.J. Mohamed Sathik (RR1 and 2)
Government Advocate

Mr. S.Silambarasan, AAG (RR3 and 4)
Assisted by Mr. M.Murali

ORDER

Heard Ms. S.Vinodha, Learned Counsel for the Petitioner, Mr. S.J. Mohamed Sathik, Learned Government Advocate, appearing for the First and Second Respondents and Mr. S.Silambarasan, Learned Additional Advocate General assisted by Mr. M.Murali, Learned Counsel, appearing for the Third and Fourth Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner seeks to challenge the notification in Na.Ka. No. dated 24.11.2023 published by the Third and Fourth Respondents calling for tenders to award the contract for weekly Monday market, goat and bullock Saturday Market, daily vegetable market, bus toll, slaughter house, pay and use modern toilet and certain other facilities in Veeraganur Town Panchayat in this Writ



W.P. No. 34887 of 2023

WEB COPY

3. In response to the contentions raised, Learned Counsel for the Third and Fourth Respondents has filed a memo dated 14.12.2023 in which it has been stated as follows :-

“It is respectfully submitted that the above auction cum tender notice has been effected by way of paper publication in Daily Tamil Murasu, dated 01.11.2023. Further, the same has been affixed in the notice board of the 3rd Respondent Panchayat Office. Apart from this, auction notice has been advertised in the Panchayat locality through panchayat officials in the presence of general public. While so, there is no question of malafide as alleged by the Petitioner and these Respondents had acted in a very transparent manner in the auction cum tender notice dated 24.11.2023.

It is respectfully submitted that since the present lease expires in the month of March 2024 in order to lease out further period the above notice has been issued by the above Respondents. Due to the anticipation of general



W.P. No. 34887 of 2023

WEB COPY

election the above process has been preponed for one month.”

4. At this juncture, it must be noticed that the Hon'ble Supreme Court of India in ***Michigan Rubber (India) Limited -vs- State of Karnataka*** [(2012) 8 SCC 216], after referring to earlier decisions, has laid down the law relating to interference of the Constitutional Courts in contractual matters as follows:-

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role



W.P. No. 34887 of 2023

WEB COPY

to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again interference by court is very restrictive since no person can



W.P. No. 34887 of 2023

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While reiterating the limited scope of judicial review in matters of relating to the award of contracts by the State and its instrumentalities, it has been observed in ***Maa Binda Express Carrier -vs- North-East Frontier Railway*** [(2014) 3 SCC 760] as follows:-

“8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of



W.P. No. 34887 of 2023

WEB COPY

public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.”

(emphasis supplied)

Again, in ***Bharat Coking Coal Limited -vs- AMR Dev Prabha*** [(2020) 16 SCC 759] the Hon'ble Supreme Court of India has restated the legal position on the maintainability of Writ Petition in interfering with the award of tender contracts by the State as follows:-



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“28. *The scope of judicial review in tenders has been explored in-depth in a catena of cases. It is settled that constitutional courts are concerned only with lawfulness of a decision, and not its soundness. [Central Coalfields Ltd. -vs- SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106; Siemens Aktiengesellschaft & Siemens Ltd. -vs- DMRC, (2014) 11 SCC 288]. Phrased differently, the courts ought not to sit in appeal over decisions of executive authorities or instrumentalities. Plausible decisions need not be overturned, and latitude ought to be granted to the State in exercise of executive power so that the constitutional separation of powers is not encroached upon. [Air India Ltd. -vs- Cochin International Airport Ltd. (2000) 2 SCC 617]. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction and remedy such ills. This is especially true given our unique domestic circumstances, which have demonstrated the need for judicial intervention numerous times. Hence, it would*



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only be the decision-making process which would be the subject of judicial enquiry, and not the end result (save as may be necessary to guide determination of the former).

29. This position of law has been succinctly summed up in ***Tata Cellular -vs- Union of India*** [***Tata Cellular -vs- Union of India***, (1994) 6 SCC 651] , where it was famously opined that: (SCC pp. 677-78, para 77) “77. ... Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under: (i) **Illegality**: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. (ii) **Irrationality**, namely, **Wednesbury** [**Associated Provincial Picture Houses Ltd. -vs- Wednesbury Corpn.**, (1948) 1 KB 223 (CA)]



unreasonableness. (iii) Procedural impropriety.”

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30. But merely because the accusations made are against the State or its instrumentalities does not mean that an aggrieved person can bypass established civil adjudicatory processes and directly seek writ relief. ***In determining whether to exercise their discretion, the writ courts ought not only confine themselves to the identity of the opposite party but also to the nature of the dispute and of the relief prayed for. Thus, although every wrong has a remedy, depending upon the nature of the wrong there would be different forums for redress.***

31. In cases where a constitutional right is infringed, writs would ordinarily be the appropriate remedy. In tender matters, such can be either when a party seeks to hold the State to its duty of treating all persons equally or prohibit it from acting arbitrarily; or when executive actions or legislative instruments are challenged for being in contravention to the freedom of carrying on trade and commerce. However, writs are impermissible when the



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allegation is solely with regard to violation of a contractual right or duty. Hence, the persons seeking writ relief must also actively satisfy the Court that the right it is seeking is one in public law, and not merely contractual. In doing so, a balance is maintained between the need for commercial freedom and the very real possibility of collusion, illegality and squandering of public resources.

....

33. Such conscious restraint is also necessary because judicial intervention by itself has effects of time and money, which if unchecked would have problematic ramifications on the State's ability to enter into contracts and trade with private entities. Further, it is not desirable or practicable for courts to review the thousands of contracts entered into by executive authorities every day. Courts also must be cognizant that often-a-times the private interest of a few can clash with public interest of the masses, and hence a requirement to demonstrate effect on “public interest” has been evolved by this Court. [*Jagdish Mandal-vs- State of*



W.P. No. 34887 of 2023

Orissa (2007) 14 SCC 517, para 22].

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34. It is thus imperative that in addition to arbitrariness, illegality or discrimination under Article 14 or encroachment of freedom under Article 19(1)(g), public interest too is demonstrated before remedy is sought. Although the threshold for the latter need not be high, but it is nevertheless essential to prevent bypassing of civil courts and use of constitutional avenues for enforcement of contractual obligations.”

(emphasis supplied)

Having regard to the aforesaid legal position *viz-a-viz* the cogent explanation of the Third and Fourth Respondents to the contentions raised by the Petitioner, there does not appear to be any justification to interfere with the impugned notification in the Writ Petition.

In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

14.12.2023

Index: Yes/No

NCC: Yes/No



W.P. No. 34887 of 2023

Note: Issue order copy by 31.01.2024.

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To

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W.P. No. 34887 of 2023

P.D. AUDIKESAVALU, J.

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W.P. No. 34887 of 2023

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