



W.P(MD)No.3609 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3609 of 2023

and

W.M.P(MD)Nos.3360 to 3366 of 2023

A.Arul Jakcup

... Petitioner

Vs

1.Tamil Nadu Civil Supplies Corporation,
Represented by its
Managing Director,
No.12, Thambu Swamy Road,
Kilpauk,
Chennai.

2.The Regional Director,
Tamil Nadu Civil Supplies Corporation,
Dindigul District,
Dindigul.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the e-tender notification dated 10.02.2023 issued by the second respondent in his proceedings in NIT No. B1/0669/2023 dated 09.02.2023 TNCSC/22-23/ET/68 and quash the same as illegal ii) Writ of Certiorari calling for the records relating to the e-tender notification dated 13.02.2023 issued by the second respondent in his proceedings in NIT No.B1/0719/2023 dated 11.02.2023 and



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quash the same as illegal iii) Writ of Certiorari calling for the records relating to the e-tender notification dated 13.02.2023 issued by the second Respondent in his proceedings in NIT NO.B1/0720/2023 dated 11.02.2023 and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.G.Mohan Kumar
Standing Counsel

ORDER

Heard the learned Senior Counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Standing Counsel for the respondents.

2.The second respondent herein issued the impugned tender notification dated 10.02.2023 calling for bids from eligible participants for the work of transportation for the following work: “Appointment of Transport Contractors for transportation of paddy, custom milled rice, coarse grains gunnies and stocks related to procurement and public distribution system activities from various direct purchase centres / storage points / buffer godowns / rail head



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wagons to various storage points / godowns / modern rive mills / rail heads-wagons / FCI to storage points / amudham ration shop / corporation retail shop movement etc., within the district and outside the district as entrusted by Tamil Nadu Civil Supplies Corporation – as specified in the nature of work for the period March 2023 to February 2025.” The last date for submission of the tenders was fixed as 24.02.2023. The tender is only for Dindigul region. Some of the clauses in the tender notification rendered the petitioner ineligible to participate. Hence, the present writ petition came to be filed.

3.The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He trained his guns on several clauses of the impugned tender notification. He called upon this Court to set aside the impugned tender notification and grant relief as sought for. The matter was listed for admission on 22.02.2023. On the said date, the following interim order was passed:

“(a) The petitioner notwithstanding the institution of these writ petitions can take part in the tender process.

(b) The respondents shall carry out the technical scrutiny and file a status report on 27.02.2023.

(c) The price bids shall not be opened till 27.02.2023 evening.”



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4.Today when the matter was taken up for hearing, the learned Additional Advocate General submitted that the petitioner participated in the tender process but then he had been found disqualified at the technical stage itself. He drew my attention to clause 6(10) of the tender notification is reads as follows:

“10.Minimum Transport Vehicles required: The tenderer should have dedicated 30 transport vehicles of 10/17 MTs or above capacity for performing the contract. Out of these, atleast 10 vehicles should be tenderers own vehicles and the remaining 20 vehicles can be with a minimum of one year hire agreement with the owners. Tipper Vehicles will not be considered. The tenderer shall furnish copies of RC book, fitness certificate and valid permit of own/hired vehicles declared in the tender along with hire agreement in case of hired vehicles. The tenderer shall furnish particulars of vehicles owned/hired in the format at **Annexure 3(a) / 3(b)**. The tenderer should not repeat the same lorries number, incase he/she is applying more than one tender. The District Level Committee shall decide to engage transport contractor depending upon volume of procurement, geographical locations of the purchase centres and rice custom mills and other local factors. The district will be considered as one UNIT for selection and engagement of transport contractor.”

5.The learned Additional Advocate General pointed out that the petitioner is owning four transport vehicles and that therefore he could not meet



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the eligibility criteria. The learned Senior Counsel pointed out that this clause is arbitrary.

6.I cannot endorse the contentions of the learned Senior Counsel. The Hon'ble Apex Court in the recent decision reported in **2022 LiveLaw (SC) 295 (Balaji Ventures Private Limited Vs Maharashtra State Power Generation Company Limited & Another)** had held as follows:

“5.1Owner 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 experts unless the



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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.”

5.3 In the case of *Montecarlo Limited vs. National Thermal Power Corporation Limited, (2016) 15 SCC 272*, it is observed and held that the tender inviting authority is the best person to understand and appreciate its requirement and tender documents, so long as there are no mala fides/arbitrariness etc. It is further observed and held that the Government must have freedom of contract and such action can be tested by applying Wednesbury principle and also examining whether it suffers from arbitrariness or bias or mala fides.”

7. My attention has also been drawn to the justification set out in the counter affidavit filed by the Corporation. I am more than satisfied that the relevant clause does not suffer from any arbitrariness. There is yet another recent decision of the Hon’ble Apex Court reported in *(2022) 6 SCC 127*



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(N.G.Projects Limited Vs Vinod Kumar Jain & Others) which favours the

stand taken by the respondent Corporation. Paragraph No.23 of the said decision is as follows:

“23....the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”



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I therefore do not find any merit in the challenge to the validity of the aforesaid eligibility clause.

8.At this stage, the learned Senior Counsel pointed out that the tender value is above two crores. And as per Rule 20(i) of the Tamil Transparency in Tenders Rules, 2000, the tender inviting authority ought to have provided atleast 30 days time between the date of notification and the last date for submission of tenders. If only 30 days time had been given, the petitioner would have very well mobilized the necessary resources and met the eligibility criteria. It is true that Rule 20(1) states that for tenders in excess of two crores in value, 30 days' minimum time should be allowed between the date of publication of notice inviting tender and the last date of submission of tenders. But Rule 20(2) is as follows:

“20. Minimum time for submission of tenders.- (2) Any reduction in the time stipulated as per sub-rule (1) has to be specifically authorized by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing.”

In this case, the second respondent is the tender inviting authority. The first respondent who is superior to the tender inviting authority had already permitted reduction in the time stipulated as per Sub Rule 1. The relevant communication was made available, I went through the same. It is seen that



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earlier the Corporation was following single window system. There was only one contractor for the entire State of Tamil Nadu. Dispute had arisen between the Corporation and the contractor. The matter was referred to arbitration. In the arbitration, it was agreed that the earlier contract would stand terminated with effect from 28.02.2022. In the very nature of things, the Corporation had to make emergent alternative arrangements. That is why the reduction in time stipulated in Rule 20(1) had to be authorized specifically by the first respondent. I do not find any arbitrariness in the approach adopted by the respondent Corporation. Since both these grounds urged by the learned Senior Counsel fail, it is not necessary to consider the other contentions advanced by him.

9.This writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.02.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambu Swamy Road,
Kilpauk, Chennai.



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G.R.SWAMINATHAN, J.

MGA

2.The Regional Director,
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