



W.A.Nos.1104 & 1106 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2024

PRONOUNCED ON : 25.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.A.Nos.1104 & 1106 of 2021

and

CMP.Nos.6963, 6965, 6968 & 6969 of 2020

WA.No.1104/2021

G.Mohan

... Appellant

Vs.

1. Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
2. The Chennai Executive Officer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
3. The Superintending Engineer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.



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4. N.Karthik

... Respondents

WA.No.1106/2021

Viswanath Rajan
Represented by his Authorised Signatory
Mrs.M.Shakthipriya Moovendan

... Appellant

Vs.

1. Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
2. The Chennai Executive Officer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
3. The Superintending Engineer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
4. A.Chinnadurai

... Respondents

Prayer: Writ Appeals filed under Clause 15 of Letters Patent praying to set aside the order dated 05.03.2021 passed in W.P.Nos.12286 & 14017 of 2020 respectively.



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For Appellant : Mr.Sathish Parasaran
in both WAs Senior Counsel for Mr.S.Ramesh

For Respondents : Mr.P.Kumaresan
in both WAs Additional Advocate General
assisted by Mrs.P.Veena Suresh
Standing Counsel for CMDA for R1 to R3
R4 in WA.1104/2021: Mr.A.Kumar
Senior Counsel for Mr.R.Prabhu Ram
R4 in WA.1106/2021: Mr.T.Mohan
Senior Counsel
for Mr.M.Santhanaraman

COMMON JUDGMENT

[Judgment of the Court was made by **C.KUMARAPPAN, J.**]

The instant intra-Court writ appeals are arising against the common order dated 05.03.2021 passed in WP.Nos.12286 & 14017 of 2020.

2. The appellants herein are the writ petitioners. The issues involved in WA.Nos.1104 & 1106 of 2021 are in respect of the allotment of Shop No.VN-124 and Shop No.VG-88 respectively in Koyambedu market, through a tender process.

3. The appellants have challenged the communication dated 06.08.2020, by and in which, both of them were informed about the cancellation of their Tender application.



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4. The brief facts which are necessary to decide both the writ appeals are that, the first respondent-“Chennai Metropolitan Development Authority” [hereinafter shall be referred to as “CMDA” for the sake of convenience] has floated Tender on 28.11.2019 for the allotment of shop No.VN-124 and VG-88. The said Tender document contain instruction, which include method of conducting Tender and other terms and conditions. One of the specific condition of the Tender is that, the date of price bid opening, will be informed to the parties through Newspapers and in CMDA website. To put it differently, the Tender document did not contain the date as to when and where the tender applications will be opened.

5. In pursuance of the above Tender notification, the petitioners have submitted their respective Tender document on 07.01.2020. In the meanwhile, on 06.01.2020, an Addendum was issued requiring the applicants to submit certain further documents mentioned therein on or before 23.01.2020. It appears that the petitioners have submitted those documents as stipulated in the Addendum. Though they have submitted the required documents within the specified time frame, till August 2020, they were kept under dark and did not inform about the date of opening of the Tender. Hence, the petitioner in WA.No.1104 of 2021 has sent letter dated



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05.08.2020 to CMDA enquiring as to the stage of the Tender. Curiously on the next date qua 06.08.2020, CMDA has informed to the petitioners that their tender application was rejected in the pre-qualification process.

6. After receipt of the impugned communication dated 06.08.2020, the petitioners have raised as many as 12 queries under Right to Information Act. In the reply received from the Authorities for the RTI queries, the petitioners came to know about the awarding of Tender in favour of the respective 4th respondent, which necessitated the petitioners to challenge such awarding of Tender. Hence, the petitioners preferred the impugned writ petitions.

7. Resisting the above contention, the CMDA pleaded that in respect of Shop No.VN-124, out of 5 Tenderers, the 4th respondent-Karthik was the only eligible tenderer. They would further submit that the Tender application of writ petitioner-G.Mohan was rejected on the ground that lack of experience in a vegetable trade. According to CMDA, such decision is well within sub-clause 2 of Clause 32 of The Tamil Nadu Transparency in Tenders Act, 1998, as the petitioner has failed in pre-qualification stage.



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8. Similarly, in respect of Shop No.VG-88, out of 10 bidders, 5 of them have withdrawn their EMD, and among the remaining 5, only 2 of them viz., Chinnadurai, who is the 4th respondent in WA.No.1106 of 2021 and one Mr.Aravinda Prabhu become eligible. However, Mr.Aravinda Prabhu has given a request to made over the Tender application in favour of one Mr.Jagan. In view of his such incongruous request, his Tender was rejected. Therefore, even for Shop No.VG-88 there was a lone eligible tenderer, who is none other than the 4th respondent-Mr.Chinnadurai. Therefore, the sum and substance of the contention of CMDA is that, though there were five bidders for shop No.VN-124 and, 10 bidders for Shop No.VG-88, at the end of the Tender process, there was only one eligible Tenderer for each shop. Therefore, contended that without any other go, the Tender was finalised in favour of the available eligible Tenderer qua Mr.Karthik and Mr.Chinnadurai.

9. The Writ Court, after having considered the submissions of either side, ultimately dismissed both the writ petitions by heavily relying upon the Division Bench judgment of this Court in WP.No.11576 of 2020 [**A.MaruthuPandiyan Vs. The Member Secretary, & 3 others**] which



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arising out of the same Tender notification. While harmoniously perusing the above Division Bench judgment, the tender was rejected on the basis of non-compliance of the Tender conditions.

10. But, while considering the facts in the present case, the challenge made by the petitioners is that they have fulfilled all the Tender conditions. Whereas, the Tender Accepting Authority viz., CMDA with ulterior motive, on irrational and unreasonable reasons, that too with *mala fide* intentions, disqualified their tenders. Therefore, we are of the firm opinion that the reliance of the Division Bench judgment, by the learned Single Judge, to the present facts cannot be countenanced.

11. Before we get into the contention raised by either side, this Court deems it appropriate to analyse the legal position of the “Tender Jurisdiction”. It is well settled principle of law that the judicial review under “Tender Jurisdiction” has its own limitations. Such judicial review of the administrative actions may be entertained only to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides*. The purpose of judicial review must only to check whether the choice or the decision of the authority is made “lawfully” and not to check “soundness” of the decision.



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12. It is appropriate to mention that, in evaluating Tenders and awarding contracts, the parties to be governed by the principles of commercial prudence. Therefore, to that extent, the principles of equity and natural justice have to stay at a distance. It is also relevant to refer that the Tendering Authority should act transparently and in conformity with certain healthy standards and norms. As such in the decision of awarding of tenders, the interference by the Court is very limited.

13. It is appropriate to refer the oft quoted judgment of Hon'ble Supreme Court in ***Michigan Rubber (India) Limited Vs. State of Karnataka and others*** reported in **(2012) 8 SCC 216**. The relevant paragraph is paragraph 23 and the same reads 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



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purview of the executive and the courts hardly have any role 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 claim a fundamental right to carry on business with the Government.”

(Emphasis supplied by this Court)

14. In ***Afcons Infrastructure Ltd., Vs. Nagpur Metro Rail Corpn. Ltd.***, reported in ***(2016) 16 SCC 818***, the Hon'ble Supreme Court has succinctly explained the contours within which the judicial interference can



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be made. It has ratiocinated that the decision making process in accepting or rejecting the bid should not be interfered with. However, held that the interference is permissible only if the decision making process is arbitrary or irrational to an extent that no responsible Authority acting reasonably, and in accordance with law, would have reached such decision. In the above judgment, it has been cautioned that the Constitutional Courts are expected to exercise restraint in interfering with administrative decision and ought not to substitute their view for all the Administrative decision. It is further held that mere disagreement with the decision making process is not a ground to interfere tender process. In paragraph 15 of the *Afcons* judgment [cited supra], the Hon'ble Supreme Court held as follows:-

*“15. We may add 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. The constitutional courts must defer to this understanding and appreciation of the tender documents, **unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. 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 by this Court)



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15. Therefore, as per the above ratios, the constitutional Courts can interfere with the decision of the Tender Accepting Authority, when their decision are *mala fide* or perverse or when the reasonable authority would not have reached such decision. In this regard, it is also useful to refer the judgment of the Hon'ble Supreme Court in (i) ***Municipal Corporation, Ujjain and another Vs. BVG India Limited and others*** reported in (2018) 5 SCC 462, (ii) ***Uflex Limited Vs. Government of Tamil Nadu and others*** reported in (2022) 1 SCC 165.

16. It is also pertinent to mention here that in the case of ***M.Vasudevan Vs. The Chief Executive Officer, Chennai Metropolitan Development Authority, Chennai and others*** reported in 2005 SCC OnLine Mad 154, the Division Bench of this Court by referring the case ***S.Selvarani Vs. The Commissioner, Karaikudi Municipality*** reported in 2005 Writ LR 30 (Madras), held that though the highest Tenderer has no absolute and indefeasible right to get a contract, when the decision of the Tender Accepting Authority is arbitrary, re-Tender can be ordered to raise the Revenue of the Government. It is also relevant to mention here that the Government is the guardian of the financial interest of the State. Therefore, it is expected to protect the financial interest of the State.



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17. On having set forth the contours for our analysis, we now proceed to deal with the factual matrix, so that we do not deviate from the path, we have set for ourselves.

18. Mr.P.Kumaresan, learned Additional Advocate General would contend that they followed all due procedures, and that since the petitioner did not meet the required eligibility criteria, he was not in the final fray. It was further contended that during the pre-qualification stage, his tender was rejected. Therefore, the learned Additional Advocate General would contend that the petitioner has no locus to challenge the allotment of shops in favour of the respective 4th respondents. He would further contend that there is no *mala fide* in allotting the shops to the successful bidders. It is the further contention of the learned Additional Advocate General that there are no grounds to interfere with the administrative decision of the authority, as the decision has been taken by the competent persons and on following the due procedures. Therefore, prayed to dismiss the Writ Appeals.

19. As a sequel, it is the contention of the learned Senior Counsels Mr.T.Mohan and Mr.A.Kumar, who are appearing on behalf of the



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successful bidders viz., Mr.Karthik and Mr.Chinnadurai that the Tender notification has been earlier challenged by one Aravind Prabhu and Marudhu Pandian. Whereas, the Hon'ble Supreme Court has upheld Tender notification. Therefore, contended that there are no grounds in the present Writ Appeal to interfere with the Tender Notification.

20. It was also the contention of learned Senior Counsel Mr.T.Mohan appearing for the 4th respondent in WA.No.1106 of 2021 that, under The Tamil Nadu Tender Transparency Rules, if Rules and Tender condition has not been met with, the rejection of Tender cannot be held to be irrational. It was also the contention of the learned Senior Counsel that in judicial review, adjudication in respect of the Tender process is very much restrictive, more so in the case on hand, the Tender of the petitioner has been rightly rejected. Therefore, there is no scope for judicial review. The learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in ***N.G.Projects Limited Vs. Vinod Kumar Jain and others*** reported in ***(2022) 6 SCC 127***.

21. Similarly, Mr.A.Kumar, learned Senior Counsel appearing for the 4th respondent in WA.No.1104 of 2021 would contend that the appellant has



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not qualified at pre-qualification stage, and that the appellant had only experienced in the fruit vending and not in vegetable vending. The learned Senior Counsel would also contend that, the additional documents required by way of Addendum has not been submitted by the appellant. Therefore, would contend that the rejection of the Tender/bid application of the petitioners is indubitably a correct decision. Hence, contended that there is no scope for any judicial interference. The learned Senior Counsel also relied upon the judgment of this Court in the case of *Shamsons Polymers Pvt., Limited Vs. Tamil Nadu Textbook and Educational Services Corporation and others* made in *WP.No.20406 of 2018* to buttress his contention.

22. Now, the primordial responsibility of this Court is, to find out, whether the rejection of Tender/bid application of the petitioners would come within the parameters of unreasonableness, irrationality or arbitrariness. Further, we must also see, whether such order could be passed by a responsible Authority, while acting reasonably and in accordance with law. Admittedly, the Tender document does not reflect as to when and where the Tender would be opened. What the Tender documents says that “**date of**



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price bid opening will be informed in the Newspapers and CMDA Website later”.

23. It is common knowledge that the “Tamil Nadu Transparency in Tenders Act” [hereinafter shall be referred to as “Act”], has been enacted to provide transparency in Tender process, with avowed object to eliminate irregularities, interference and corrupt practices. It was also enacted to promote the integrity of processes and promote fairness of Public confidence in the processing of Tenders by ensuring transparency in the procedures relating to procurement. Therefore, the main plank and primordial requirement for a valid tender is transparency in all stages.

24. Section 8 of the Act stipulates that the Tender should be open only in the presence of the tenderers, in such place and time as specified in the Tender document. For ready reference, Section 8 is extracted hereunder:-

“8. Opening of tender:- *The Tender Accepting Authority or any other officer authorised by it, shall open the tenders in the presence of tenderers present and who have submitted tenders in such time and in such place as may be specified in the tender document.”*



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25. Similarly, Section 4 of the Act as mandated that, no tender shall be invited or accepted except in accordance with the procedures specified in this Act. For Ready reference, Section 4 of the Act is extracted hereunder:-

“4. Regulation of tenders:- No tender shall be invited or accepted by any authority after the commencement of this Act, except in accordance with the procedure specified in this Act and the rules made thereunder.”

26. Therefore, the conjoint reading of Sections 4 and 8 of the Act would manifestly and mandatorily make it clear that there is a duty cast upon the Tender Accepting Authority to inform the time and place as to when the tender document will be opened. Admittedly, the tender document does not disclose the same. But in the reply given by CMDA, for the queries raised under the Right To Information Act informed that only the qualified persons, those who have qualified under the pre-qualification stage alone were informed about the tender opening that too through phone.

27. As a matter of fact, the pre qualification stage is also part of tender opening. Therefore, even the pre qualification stage must be done in the presence of all the tenderers. Admittedly, evaluation of pre qualification criteria was not done in the presence of all tenderers. Therefore, the



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contention of CMDA that this petitioner was not qualified has to be rejected as the decision has been taken in secrecy, contrary to Section 8 of the Act.

28. There is also another angle to the above aspect. It is pertinent to mention that at the time of submitting tender documents, the petitioners not only submitted the tender documents, but also enclosed the caution deposit of Rs.1,02,00,000/- by way of a Demand Draft. The petitioners even at the beginning, have also raised the apprehension about the fairness of the tender process, while submitting the documents as sought in the Addendum. Wherein, he has categorically mentioned that the tender process has been undertaken only to favour a particular person. In spite of sending such complaint/letter on 20.01.2020, no intimation was given by the CMDA to the petitioners during the alleged pre qualification stage. As a matter of fact, when, where and in whose presence the pre-qualification process was conducted was not stated. To put it in nutshell, the confirmation of tender with 4th respondent was intimated after a period of 7 months, that too when the petitioner questioned about the outcome of the tender.

29. The learned Senior Counsel appearing for the 4th respondent in WA.No.1106 of 2021 by relying upon the judgment of ***Vinod Kumar Jain's***



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case [cited supra] would contend that the Court, while exercising jurisdiction under judicial review should not find fault with magnifying glass and should not interfere with the decisions of the Tender Accepting Authority. The relevant paragraphs are paragraphs 22 & 23 and the same read as follows:-

“22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e. not satisfying the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.

23. In view of the above judgments of this Court, 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



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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 mala fide 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.”

30. Absolutely, this Court does not have any grievance over the proposition laid down in the above judgment. However, on facts, the above reported case is distinguishable from the case in hand. In the reported case, Tender Accepting Authority, on the expert opinion awarded infrastructural contract, which has danger of price escalation. But such is not the position in the case in hand. Similarly, the fact of the ***Shamsons Polymers Pvt. Limited*** case (cited supra) is not applicable to the present facts of the case.



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But what is essential here is, whether decision making process of the Tender Accepting Authority was transparent, as mandated under Section 8 of the Act. Otherwise, such tender becomes invalid by virtue of Section 4 of the Act. Though the petitioners' tenders were rejected, no information was given as to the date of evaluation of pre qualification stage and tender opening date, either under the impugned rejection notice or in the reply under the Right to Information Act.

31. Even otherwise, in the counter statement of CMDA, the only reason for rejection stated is that the petitioners did not have experience in the vegetable trade for the past 5 years, and that they had only experience in fruit trade. In this regard, it is appropriate to extract Clause 2 of the Addendum:-

“2.The Application made by company/individual should have been in existence already in the perishable trade for the past 5 years as on December 2019 for running the godown.”

32. According to the above clause, what is required is the experience of past 5 years in perishable trade and the same does not specify any specific



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category of perishable goods such as meat, vegetables, fruits or flower. Ordinarily the word “perishable” includes all the perishable trade such as fruits, vegetables, flower etc. To understand the word perishable no semantics is required. In the case on hand, in respect of G.Mohan, he stated that he had experienced in perishable trade for two generations, which according to us fully satisfies the tender condition, which mandated 5 years experience in perishable goods.

33. However, the learned Additional Advocate General would contend that they did not submit any certificate to show that they are in the vegetable trade for the past 5 years. It is pertinent to mention here that the tender document do not specify as to the format of the declaration. It simply refers that they must have past 5 years experience in the perishable trade. Therefore, the statement made by the petitioner that they have been in the perishable trade for two generations would unequivocally and indubitably satisfies the tender condition. Therefore, the rejection order of the respondent that the declaration given by the petitioners vide letter dated 20.01.2020 is not in consonance with Addendum is manifestly and palpably unreasonable, arbitrary and irrational.



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34. To understand the meaning of word perishable no mastery requires. Therefore, we are of the firm view that the rejection of tender on the ground that there is no declaration in respect of 5 years past experience in vegetable vending cannot be accepted at all and the same is *ipso facto* arbitrary and irrational and that no reasonable authority would reject the petitioner's offer on the above reasoning.

35. Apart from that, the present tender is not only based upon the price bid, but also coupled with open auction. To put it differently, the highest among the price bid and open auction is the determinative factor for allotment of tender. Now that, we found the rejection of petitioner's tender is illegal. As a concomitant the allotment of tender in favour of the 4th respondent violates the above condition.

36. Here, the main contention of the petitioners is favouritism. Such contention has been raised at the very inception and the commencement of tender process, in the month of January itself. Though subsequently pandemic ravaged, it is not the ground for CMDA to contend that because of pandemic, they were not be followed the required procedure. Their



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unswerving contention is that they have followed all the mandatory procedures in accordance with law. But, through the discussions, which we have made herein above, we found that CMDA has followed incongruous procedures and had uncanny interpretation of the terms of tender. Besides, they pulverised the very transparency in tender process. The entire proclivity of the tender process has inherent obscurity, which usher a serious apprehension about the conduct of CMDA. Therefore, we have indubitable opinion that the entire tender process lacks the very mandatory requirement of transparency, which compels this Court to set aside the decision taken by CMDA in finalising the tender in favour of the respective 4th respondent.

37. However, while setting aside the allotment of shops stand in the name of the respective 4th respondents, we have no idea to transpose the unsuccessful bidders, who are the petitioners herein become the successful bidders, as our mission is only to ensure the hegemony of transparency. Therefore, though the petitioner contended that his bid is higher than the bid of the 4th respondent, as we found lack of transparency in the entire process of tender, we decided to set aside the entire tender process. As a concomitant, we also setting aside the allotment of shops awarded against the respective 4th respondents. Consequently, the present occupants of the shops



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are directed to be evicted.

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38. As already stated, it is the duty of the officials of CMDA to secure beneficial interest to the public ex-chequer and the officers, those who are responsible should act with ambivalent mindset so as to achieve the object of the Tender Transparency Act. Therefore, we direct the CMDA to call for a fresh tender based on current market value and complete the tender process within a period of four(4) months from the date of receipt of a copy of this judgment.

39. In the result, both the Writ Appeals are allowed with a direction as indicated herein above. No costs. Consequently, connected CMPs are also closed.

[S.M.S., J.] [C.K., J.]
25.07.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes

To

1. The Member Secretary,
Chennai Metropolitan Development Authority, Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road, Egmore, Chennai-600 008.
2. The Chennai Executive Officer,
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S.M.SUBRAMANIAM, J.
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