



WEB COPY

W.A.No.1337 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2024

PRONOUNCED ON : 19.08.2024

CORAM

THE HONOURABLE Mr.JUSTICE **S.M.SUBRAMANIAM**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

W.A.No.1337 of 2022

and

CMP.No.8509 of 2022

The Managing Director and Tender Inviting Authority,
Tamil Nadu Textbook and Educational Services Corporation,
EVK Sampath Maaligai,
D.P.I Campus,
68, College Road,
Chennai-600 006.

... Appellant

Vs.

M/s.XO Footwear Pvt., Ltd.,
Rep. by its Director Mr.Nalin Gupta,
Regd. Off: A-122, Mangolpuri Industrial Area,
Phase-II, New Delhi-110 034.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 21.04.2022 in W.P.No.9046 of 2022.



W.A.No.1337 of 2022

For Appellant : Mr.D.Ravichander

For Respondent : Mr.Satish Parasaran
Senior Counsel
for Mr.Ali Hassankhan

J U D G M E N T

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

“Tamil Nadu Textbook and Educational Services Corporation”
[hereinafter shall be referred to as “Corporation”] has filed the instant writ appeal aggrieved with the order of the learned Single Judge passed in WP.No.9046 of 2022 dated 21.04.2022.

2. The short facts which are necessary for the disposal of the present writ appeal is that, the Corporation has floated tender for the supply of socks for school children on Annual Rate contract basis for the year 2022-2023. The said tender notification was advertised on 20.12.2021 informing the time schedule that, Pre-Bid meeting on 04.01.2022 and the last date for submission of Tender was on 20.01.2022. It was also mentioned that the technical bid will also be opened on the same date. However, a Corrigendum was issued subsequently by extending the tender opening date.



W.A.No.1337 of 2022

WEB COPY

3. In the tender form, the Corporation has directed the bidders to submit a declaration in respect of their status whether they have been blacklisted or not vide Annexure-VI. For ready reference, Annexure-VI is extracted hereunder:-

“DECLARATION

*I/We having the registered office at
..... hereby declare that the
Firm/Company or its Partners/ Shareholders have not been
blacklisted by Central/any State Government and its Public
Sector Undertakings/Corporations.”*

4. However, it appears that the bidder, qua the writ petitioner has not submitted declaration, and when it came to light to this appellant that the petitioner was blacklisted in the past, they have called for an explanation from the petitioner vide impugned notice dated 01.03.2022. In the said notice, the Corporation has mentioned about the confirmation of debarment qua blacklisting of the petitioner by the Jharkhand High Court as well as the Hon'ble Supreme Court of India. Therefore, the Corporation/Appellant has requested the petitioner to provide their views on the above information.



W.A.No.1337 of 2022

WEB COPY

5. Immediately, on receipt of such notice, the petitioner sent a reply on 03.03.2022 denying the statement made in the Corporation notice. Thereafter, immediately, they filed the impugned writ petition on 07.04.2022, praying for a writ of Mandamus, directing the respondent to consider the petitioner as qualified in the technical bid and for further direction to the Corporation to open and consider the financial bid of the petitioner.

6. The Writ Court, after considering the either side submission though has not granted any relief in favour of the petitioner, has found that the writ petition is maintainable against the impugned show cause notice and has also directed in paragraph 49 of the writ order that whenever any unsuccessful tenderer raises an objection, the Tender Accepting Authority has to dispose of those objections as expeditiously as possible, preferably within 48 hours. Only against these observations, the Corporation has preferred the instant writ appeal. As a matter of fact, the tender process has already been completed and awarded to some other bidder.

7. The learned Special Government Pleader would vehemently contend that the prayer of this petitioner seeking for a Mandamus to

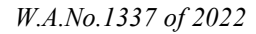


W.A.No.1337 of 2022

WEB COPY

consider the petitioner as a qualified bidder in a technical bid cannot be sought for. It is also the submission of the learned Special Government Pleader that under “The Tamil Nadu Transparency in Tenders Rules, 2000” [hereinafter shall be referred to as “Tender Transparency Rule”], the Tender Issuing Authority is competent to seek *bona fide* clarification from the bidders under Rule 27(4) of the Tender Transparency Rule. Therefore, contended that filing of writ petition against the notice seeking *bona fide* clarification is not maintainable, and if such writ permitted, then it will hamper in providing welfare measures to the citizen, and would result in the danger of price rise. It was also the submission of the learned Special Government Pleader that time limit given by the learned Single Judge, directing the Corporation to dispose of the objections within 48 hours is beyond the scope of the writ petition and contrary to the Rules. Hence, the learned Special Government Pleader prayed to interfere with the order of the learned Single Judge.

8. Per contra, the learned Senior Counsel Mr.Satish Parasaran appearing on behalf of the writ petitioner would vehemently contend that the writ petition emanated based upon the show cause notice issued by the Corporation on 01.03.2022, whereby they have attempted to reject the



10. It is well settled principle of law that, if tender process is challenged before the Writ Court, while exercising the power of judicial



W.A.No.1337 of 2022

review, this Court should not substitute its views in the commercial wisdom of the tender issuing authority.

11. The Hon'ble Supreme Court in ***Jagdish Mandal Vs. State of Orissa and others*** reported in (2007) 14 SCC 517 has clearly held that, before the Writ Court interfering with the tender, while exercising the power of judicial review, should pose itself the following questions:-

“(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or

(ii) Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(iii) whether public interest is affected.”

It was held that if the answers are in the negative, then the Writ Court should not interfere in the tender process under Article 226 of The Constitution of India.

12. Here, the one and the only ground to file this writ petition is that the letter dated 01.03.2022 is contrary to the factual position which believed



W.A.No.1337 of 2022

by the petitioner that he was not at all blacklisted as on the date of the submission of the tender. However, while looking at the Annexure VI of the Tender form, which is extracted elsewhere in this order, the Corporation has sought for mere declaration from the tenderers as to whether they have been blacklisted or not.

13. The harmonious reading of Annexure VI would only indicate whether they have been blacklisted or not at any point of time. The annexure does not seek any declaration whether they are blacklisted as on the date of submission of the tender. Here, the petitioner though admittedly was blacklisted in the past, has not informed such factual position before the tender issuing Authority inspite of a specific declaration format provided. The same necessitated the Corporation to clarify the position, by invoking power under Rule 27(4) of the Tender Transparency Rules. For ready reference, this Court deems it appropriate to extract Rule 27(4) of the Tender Transparency Rules:-

“27. Process of tender evaluation to be confidential until the award of the contract is notified. -

(1)



W.A.No.1337 of 2022

(2)

(3)

(4) *Notwithstanding anything contained in sub-rule(3), the Tender Inviting Authority or the Tender Accepting Authority, may seek bona fide clarifications from tenderers relating to the tenders submitted by them during the evaluation of tenders.”*

14. Any tender issuing Authority has got absolute right to know the reliability and trustworthy of a bidder in the context of a commercial transaction. In the case on hand, the tender issuing authority has floated tender on behalf of the Tamil Nadu Government to provide socks to the school going children. They have got every right to know the commercial reliability and trustworthy of the bidder in the light of their past conduct in the context of the transaction in question. Therefore, the writ petitioner cannot raise any objection at the threshold of the tender process to challenge the notice which sought the clarification. It is also pertinent to mention here that even the mere non consideration of bidder's representation thereof cannot be a ground to seek a Mandamus for consideration of their objection, when bids were still under consideration and evaluation not yet finalised. It



W.A.No.1337 of 2022

WEB COPY

is also relevant to refer that the Writ Court while exercising tender jurisdiction should maintain restraint in exercise of power of judicial review.

In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in ***Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) Vs. CSEPD-Trishe Consortium*** reported in ***(2017) 4 SCC 318***.

15. At this juncture, this Court would also like to look at the issue in a different perspective. Here, the petitioner has challenged the show cause notice dated 01.03.2022. It is well settled principle of law that mere issuance of show cause notice will not infringe the right of the party, and that only the ultimate decision will have effect in affecting the rights of the parties. To put it differently, the mere issuance of show cause notice seeking *bona fide* clarification will not give any cause of action to the writ petitioner, unless such show cause notice was issued by an incompetent person or such show cause notice was issued with *mala fide* intention. As we already discussed, the Corporation has got power to issue such notice by virtue of Rule 27(4) of Tender Transparency Act. Therefore, even if the petitioner has got any grounds in the writ petition, they do not have any



W.A.No.1337 of 2022

right to challenge the show cause notice as the same was issued by the competent authority that too by employing the power conferred under Rule 27(4) of the Tender Transparency Rules.

16. The yet another angle of the instant writ appeal is that, if at all the petitioner has got any grievances in respect of the show cause notice, they ought to have preferred an appeal before the Government as contemplated under Section 11 of the Act. Further, Section 11 statutorily provided 15 days to dispose of the appeal. It is obvious that when a Statute provide a maximum time period qua 15 days to dispose the appeal, any direction of granting 48 hours to dispose of the objections is contrary to Section 11 of the Tender Transparency Act. Whenever, a Statute is available, the Writ Court while exercising the power of judicial review cannot give a different time frame. Therefore, this Court is of the firm view that, though no relief was granted to the petitioner in the writ petition, the finding rendered by the learned Single Judge in paragraph 49 of the writ order is not in consonance and contrary to the provisions under Section 11 of the Tender Transparency Act.



W.A.No.1337 of 2022

WEB COPY

17. Thus, for all the above reasons, this Court has to necessarily interfere with the order of the learned Single Judge.

18. In the result, this Writ Appeal is allowed and the writ order impugned dated 21.04.2022 made in W.P.No.9046 of 2022 is set aside.
No costs. Consequently, connected CMP is also closed.

[S.M.S., J.] [C.K., J.]
19.08.2024

kmi
Index : Yes
Speaking order : Yes
Neutral Citation : Yes



WEB COPY



W.A.No.1337 of 2022

S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

kmi

Pre-delivery judgment in
W.A.No.1337 of 2022

19.08.2024