IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.08.2024

PRONOUNCED ON : 25.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.13739, 13742, 14099 & 14104 of 2024
and W.M.P.Nos.14905, 14906, 14908, 14910,
15296, 15297, 15289 & 15291 of 2024

Skyrams Outdoor Advertising India Private Ltd.,
Rep by its authorised signatory N.Balaji,
No.MF-7, Cipet Girls Hostel, Main Road,
Thiru Vi. Ka. Industrial Estate,
Ekkatuthangal, Chennai – 600 032. ... Petitioner in W.P.Nos. 13739 & 13742 of 2024

Laqshya Media Ltd.,
Rep by its Authorised Signatory
B.Thameem,
Laqshya House,
Next to Rameshwar Temple,
Saraswathi Baug, Society Road,
Jaogeshwari (East),
Mumbai – 400 060. ... Petitioner in W.P.Nos. 14099 & 10104 of 2024

-Vs-

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

2. The Superintending Engineer,

Bus Route Roads Department,
Greater Chennai Corporation,
Amma Maligai, Rippon Building,
Chennai – 600 003. ...Respondents in all WPs.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first respondent in tender dated 18.03.2021 bearing No. RFP Ref.BRR.C.No. B4/0971/2024 and RFPRef.BRR.C.No. B4/0972/2024 respectively, and quash the same.

In all W.Ps.

For Petitioners : Mr.P.J.Rishikesh

For Respondents : Mr.R.Ramanlal
Additional Advocate General
Assisted by Mr.D.B.R.Prabhu
Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging the tender notifications issued by the first respondent dated 18.03.2024, thereby floated two tenders to renovate, operate, maintain and transfer of 363 & 402 modern bus shelters in Chennai Corporation area.

2. The first respondent originally floated tender for construction, operation and maintenance of modern bus shelters in Chennai Corporation Area on Build, Operate and Transfer (hereinafter

after referred to as "BOT") basis. It was divided into three packages and each package has 50 bus shelter, thereby the first respondent desired to replace the existing bus shelters and construct new bus shelters with eco-friendly designed shelters. It was for a period of 15 years. As per the tender conditions, the tenderer shall construct modern bus stops within a period of three months and shall maintain it for 15 years. The tenderer have right to collect revenues from advertisements out of each bus shelter and shall remit a portion of the revenue to the respondents as annual concession fee.

3. The petitioners were successfully awarded the contract at the rate of Rs.1,85,300/- per bus shelter for one year. Thereafter, it was fixed as Rs.1,85,800/-. On negotiation, the final quote was fixed at the rate of Rs.2,11,580/- per bus shelter per year. Accordingly, the petitioners and the respondents had entered into Letter of Acceptance and executed an agreement on 31.12.2015. The petitioners have to pay the concession fee of Rs.2,11,580/- per bus shelter per year which would increase at the rate of 5% per year for the first ten years and 15% for the remaining five years. Accordingly, the petitioners constructed bus shelters and are paying concession fee every year. During Covid-19 pandemic situation,

the petitioners sought for waiver of payment of concessionaire fees and the same was not considered by the first respondent. Due to which, a dispute arose between the petitioners and the first respondent and the arbitration proceedings are under process with regard to payment of concession fee.

4. While being so, the first respondent floated an another tender notification on 23.02.2023, for renovation, operations and maintenance of 844 bus shelters divided into 12 corridors. The contract was awarded for the sum of Rs.11,843/- per month for 844 bus shelters. It was lower than the price fixed by the first respondent insofar as the petitioners as concession fee and as such the petitioners approached this Court in W.P.No.7962 of 2023, challenging the tender notification dated 23.02.2023. However there were no bidders in the tender and as such it was not acted upon and the writ petition was also disposed of. The petitioners also filed application under Section 9 of the Arbitration and Conciliation Act, to restore the economic balance under the contracts executed between the petitioners and the first respondent dated 31.12.2015. It was also closed, since there was no bidders for the tender notification dated 23.02.2023. While being so, the first respondent now

floated the tender notification dated 18.03.2024 for renovation, operation, maintenance and transfer of 402 & 363 modern bus shelters in two packages. Challenging the said tender notifications the petitioners filed the present writ petitions.

5. The learned counsel appearing for the petitioners submitted that as per the tender documents, the concessionaire fee was fixed at Rs.14.50 crores per year for each of the 402 & 363 bus shelters respectively. It is paltry and lower than the rate which was fixed at the petitioners in the year 2015. The monthly concessionaire fee comes around Rs.30,058/- for one bus shelter. It also includes the statutory license fee which is levied by the Municipal Administration and Water Supply Department. The license fee is Rs.6,600/- per sq.mtr and the new tenders are floated for bus shelter of a standard size of 22 sq.mtr. Therefore, the license fee payable per bus shelter is Rs.1,45,200 /- sq. mtr., per year, which comes to Rs.12,100/- per month for one bus shelter. Therefore, actual concessionaire fee is less than Rs.18,000/- which is 40% approximately less than the concessionaire fee being paid by the petitioners, as per the earlier contract executed between the petitioners and the first respondent in the year 2015. It would create huge disparity

and would be contrary to the terms of the contract entered between the petitioners and the first respondent. It is clear discrimination and against the principles of equality enshrined under Article 14 of the Constitution of India. It would also impacts the business of the petitioners and also would cause huge loss to the first respondent also.

5.1. He further submitted that during the terms of the agreement the use of bus stops for advertising purposes is made impossible or loses its value by reason of matters outside the control of the petitioners herein than the petitioners had a right to require an amendment of the agreement ensure that they restore the economic balance of the contract. The first respondent has the obligation to ensure that it does not prejudicially affect the earning capacity of the petitioners qua the bus shelters operated by them. As per the present tender notification for the paltry sum the petitioners' capacity to earn revenue from advertisement would virtually become zero. The petitioners' investment is huge and it continues to pay a high concessionaire fee. But if the respondents issue the present tender fixing a paltry fee then the petitioners would have no other choice but to suffer huge losses with virtually no income. This is the legitimate expectation of the petitioners who had invested huge monies and are awaiting to complete the contract to break even. Therefore, floating the tender notification is against the legitimate expectation of the petitioners to in giving cooperation to complete the contract. If the tenders are allowed to be floated then it would spoil the entire business of the petitioners. In support of his contention, he relied upon the several judgments.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. The second respondent filed counter and on the submission made by the learned Additional Advocate General revealed that the petitioners have not participated in the tender and as such they have no locus to challenge the tender notification, since the petitioners neither interested nor affected party. The petitioners cannot challenge the tender conditions without even participating in the tender notification. The petitioners stated that there will be huge monetary loss to the respondents corporation. It is premature and even as per the petitioners, the tender notification dated 18.03.2024 projected base monthly concessionaire fees is higher to the concessionaire fees of the petitioners' existing contract

dated 31.12.2015. The petitioners awarded for Rs.17,631/- per month per bus shelter and it comes around Rs.2,11,580/- per year per bus shelter.

8. Further the contract, which was executed between the petitioners and the respondents, is a Built, Operate and Transfer (BOT) model and as per the present tender notification dated 18.03.2024, it is a Renovate, Operate, Maintain and Transfer (ROT) model. Therefore, both tenders are completely different from each other and substantial investment made under the BOT model, compared to the absence of capital expenditure required under the ROT model, highlights the fundamental differences between these approaches. Therefore, both models are unique circumstances and financial implications.

9. That apart, the tender conditions cannot be challenged in the light of the judgment of the Hon'ble Supreme Court of India reported in ***2022 SCC Online SC 113*** in the case of ***Agmatel India Private Limited Vs. Resoursys Telecom and ors.,*** which held that the author of the tender document is taken to be the best person to understand and appreciate its requirements and if its interpretation is manifestly in consonance with the

language of the tender document or sub serving the purchase of the tender, the Court would prefer to keep restraint. However, particular product was to be treated as similar category product, could not have been a matter of interpretative exercise by the Court, particularly when the view taken by the tender inviting authority and its evaluation committee has not been shown to be absurd or irrational or suffering from *malafide*.

10. Further, the tender notification cannot open for judicial scrutiny unless establish a case on the grounds of arbitrariness, *malafide* or irrationality. In this regard, it is relevant to rely upon the judgment reported in ***2023 Live Law (SC) 467*** in the case of ***Tata Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking.***, in which the Hon'ble Supreme Court of India held as follows :-

> *"No judicial review in commercial matters unless a case of arbitrariness, malafide or irrationality is made out. The Court should not ordinarily interfere in matters relating to tender or contract. A writ court should refrain from imposing its decision over the employer with respect to whether or not to accept the bid of a tenderer, unless something very gross or*

palpable is pointed out. The courts must realize 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 Judge's robes do not have the necessary expertise to adjudicate upon technical issued beyond our domain. 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."

In the case on hand, the petitioners failed to establish a case or arbitrariness, *malafide* and irrationality.

11. That apart, challenging the notification is premature on the sole ground that it is only tender notification and without knowing the price quoted by the bidders, the petitioners cannot say that the price inducted in the tender notification is less than the price which was allotted in favour of the petitioners in the year 2015 and caused monetary loss. Further, the petitioners had not participated in the tender notification and no persons who participated in the tender have challenged the tender

notification. Therefore, there is no question of legitimate expectation of the petitioners and the judgment relied upon by the petitioners are not helpful to the case on hand.

12. In view of the above, this Court finds no infirmity or illegality in the tender notifications floated by the first respondent and all the Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

.09.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts

G.K.ILANTHIRAIYAN. J,

rts

To

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   Greater Chennai Corporation
   Greater Chennai Corporation,
   Rippon Building,
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2. The Superintending Engineer,
   Bus Route Roads Department,

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PRE DELIVERY COMMON ORDER IN
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