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W.P.No.28167 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2024

DELIVERED ON : 09.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.28167 of 2024
and W.M.P.No.30714 of 2024

S.N.Jeevagan

... Petitioner

-Vs-

1. The Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board (CMWSSB),
Chintadripet,
Chennai – 600002.

2. Metro Water Tanker Lorry
Contractors Association,
represented by its President,
P.S.Sundaram
(R2 impleaded as per order
dated 25.09.2024
in W.M.P.No.31040 of 2024
in W.P.No.28167 of 2024)

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Declaration, declare the eligibility criteria of participating vehicle stated in clause 'A' of I(C) of Tender No.MAT/OT/006/2024-2025 as null and void and directing the respondent to restore the eligibility of participating vehicles to 7-year-old



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vehicles (as it used to be in the previous tenders) and issue appropriate Corrigendum in that regard with extension of deadline for submission of bids to Oct.15, 2024 or such other reasonable date.

For Petitioner : Mr.M.Velmurugan
For R1 : Mr.Krishna Ravindran
Standing Counsel
For R2 : Mr.R.Nalliappan

ORDER

This Writ Petition has been filed for the issuance of Writ of Declaration, declaring that the eligibility criteria for participating vehicle stated in clause 'A' of I(C) of Tender No.MAT/OT/006/2024-2025 dated 09.08.2024 as null and void.

2. The petitioner is one of the Contractors of the respondents providing Tanker Lorry service in water supply within the city of Chennai. The petitioner was given contract of providing water supply through tanker lorry from the year 2013. The petitioner owned two water tanker lorries. While being so, the respondents, on 09.08.2024 floated tender and invited bids for water tanker lorry service in the city of Chennai.

3. As per the tender notification, the eligibility criteria in terms of



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the model of the water tanker lorries has been set out in clause 'A' of I(C).

Accordingly, the water tanker lorries of capacities 18000 litres, 12000 litres, 9000 litres and 6000 litres of the year 2020 and later year model satisfying the pollution norms will alone be considered for evaluation in the tender.

4. Whereas, in the year 2020 notification, it says about the eligibility of the tanker lorries of capacity 16000 litres, 9000 litres and 6000 litres of year 2013 or later year's model satisfying the pollution norms will alone be considered for evaluation in the tender. In the very same notification, clause 2(e) says that the board may relax the condition with regard to the year of model of the vehicle in case of non-availability of specified model of vehicles, provided other conditions of this contract are satisfied. Therefore, the difference between the present tender notification as well as 2020 notification is about the eligibility criteria of water tanker lorries for participation is that as per earlier notification up to 7 years old water tanker lorry models are eligible to participate and as per the present notification, upto five years old water tanker lorry models are eligible to participate in the tender. Therefore, the petitioner and



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others who were possessing the lorry models below the year 2020 cannot participate in the tender.

5. The learned counsel for the petitioner would submit that it is violative of Article 14 of the Constitution of India. The said clause has been introduced in order to satisfy under the same group of persons. The said condition is not uniformly applied across various segments of the heavy vehicles fleet deployed by the respondent as well as the broader fleets in various other usages in the city. It is also discrimination between the five years old model vehicles and seven years old model vehicles.

6. In fact, the contract itself is only for three years. Though if the petitioner is allowed to participate in the tender, his vehicle can be used only for one year and thereafter, the petitioner has to replace the vehicle which is not older than seven years. It is also violative of Article 19(1) (g) of the Constitution of India. The person's right to carry on business as enshrined under the said Article is violated by introducing new eligibility criteria. Therefore, by dis-entitling the petitioner to participate in the tender is arbitrary and whose sole business is supplying water tanker



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lorries to the respondents and as such, the petitioner is put through a tremendous stress of the impending financial crisis looming over him.

7. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Tata Cellular vs. Union of India***, held that the Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere of quasi-administrative. It must be free from arbitrariness not affected by bias or actuated by malafides. By referring this Judgment, the Hon'ble Division Bench of Delhi High Court in the case of ***Dhingra Construction Co Vs Municipal Corporation of Delhi and others***, reported in ***2004 SCC OnLine Del 1096***, held that the Courts can interfere when the policy or the award of contract is arbitrary or discriminatory, is malafide or it has no nexus with the object it seeks to achieve. The power of judicial review has to be used to interdict state agencies policies, or actions, in the realm of award of contracts, with great care and circumspection and not merely because according to courts, the policy or measure is incorrect.



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8. The first respondent filed counter and on the submissions made by the learned counsel appearing for the first respondent revealed that based on past experience and considering the perennial and vital nature of the work undertaken by the tankers, it has restricted the models of vehicles to be model of the year 2020 or later, due to the reason that the tender is for a period of three years. During this period, several vehicles face repairs and maintenance and are out of work for several days. It causes severe disruptions in the supply of water to the needy people. In the previous tender of the year 2020, the vehicles of the model year 2013 and later were permitted to participate in the tender. Now, those vehicles had become 10 years old and have serious mechanical problems. Therefore, as a policy decision to restrict the model year of the vehicle from 2020 onwards alone should be hired for supplying water. Therefore, the respondents had taken a policy decision based on its past experience and it cannot be subjected for judicial scrutiny, only if found to be illegal or unreasonable.

9. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2023 SCC OnLine SC 671**,



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in the case of ***Tata Motors Limited Vs Brihan Mumbai Electric Supply and Transport Undertaking and others***, wherein it was held that ordinarily a 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 unless something very gross or palpable is pointed out. The Court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of huge money.

10. The learned counsel for the second respondent submitted that from the year 2020 onwards BS VI norms vehicles are implemented in India by replacing the BS IV norms vehicles. Under BS VI norms, the permissible levels of pollutants such as carbon monoxide, hydrocarbons, nitrogen oxide and particulate matter are much lower than those of the previous BS IV norms. It is the most advanced emission standards for automobiles in India and are equivalent to the Euro VI in Europe. It is most advanced emission standards for automobiles in India and are



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equivalent to the Euro VI norms in Europe. The vehicles from the year 2020 are having advanced mechanical system and since there is multiple technological developments, in order to avoid the accident and breakdown. Therefore, the age of the vehicle could not be relaxed for the convenience of the tenderers to participate in the tender. The second respondent is always at freedom to provide the eligibility criteria. Therefore, it cannot be challenged unless it is found to be arbitrary, malafide or tailor made the second respondent. Therefore, the petitioner has no locus to challenge the tender notification in respect of eligibility criteria.

11. He further submitted that admittedly the petitioner possess only two lorries. Even though if he is permitted to participate in the tender, his vehicles become eight years old, immediately after completion of one year of the contract and he has to unnecessarily replace the said vehicle to continue the contract.

12. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2022 SCC OnLine SC**



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1967, in which the Hon'ble Supreme Court of India held that the tender conditions as per the notification has to be applied to all the tenderers. It cannot be said that such clause was a tailor made to suit a particular bidder. The owner should always have the freedom to provide the eligibility criteria and the terms and conditions of the bid unless it is found to be arbitrary, malafide and tailor made. Therefore, the bidder cannot be permitted to challenge the bid condition/clause which might not suit him.

13. Heard the learned counsel on either side and perused the materials available on record.

14. The only point arise in this writ petition is that whether the person who owned seven years old lorry can be permitted to participate in the tender notification issued by the first respondent?

15. The first respondent issued tender notification for hiring of water tanker lorries of 18000 litres, 12000 litres, 9000 litres and 6000 litres capacity, on contract basis for the period of three years i.e., from



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2024 to 2027 for 450 vehicles of various capacities. As per the said notification, the eligibility criteria is mentioned in clause A I(C) which reads as follows:-

“I(C) Eligibility Criteria – 'A'- “Water tanker lorries of capacity 18000 litres, 12000 litres, 9000 litres and 6000 litres of year 2020 and later model satisfying the pollution norms will alone be considered for evaluation in the tender.”

16. Thus, only lorries of the year 2020 and later model can be considered for evaluation in the tender. But in the year 2020, the respondents challenged the tender notification in which the eligibility criteria was mentioned in Clause I A as follows:-

“ 2020: Clause I A-eligibility- “Tanker lorries of capacity 16000 litres, 9000 litres and 6000 litres of year 2013 or later year's model satisfying the pollution norms will alone be considered for evaluation in the tender.”

17. Accordingly, the lorries of the year 2013 or later years models can be considered for evaluation in the tender. i.e., a person who owns seven years old lorry can participate in the tender. The tender is for a period of three years. i.e., the lorry of the year 2013 can be operated till it becomes ten years old. Considering various aspects such as pollution, frequent repairs and maintenance problems, the respondent now reduced the age of the vehicles upto five years i.e., vehicle of the year 2020 and



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later can be evaluated for tender. The tender period is for a period of three years.

18. Thus, it is clear that the vehicle can be operated till it becomes eight years old. Even though the eligibility criteria is modified as that the seven years old vehicles can be considered for evaluation in the tender, the said vehicle can be operated only for one year i.e., till the age of eight years. After completion of eight years old, the vehicle can be replaced for remaining period of two years contract. Necessarily, the said vehicle has to be replaced by new model vehicle. Because of the change of eligibility criteria, the petitioner could not be able to participate in the tender.

19. Admittedly, the petitioner was a successful bidder in the last three consecutive tender floated by the respondents ie., of the year 2013, 2017 and 2020. The petitioner owned two water tank lorries and are used for the purpose of providing water. Therefore, the petitioner did not challenge the entire notification and challenges insofar as the eligibility criteria of the notification. Even as per the eligibility criteria of the notification of the year 2024, the vehicles of the year 2020 onwards can



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be evaluated for tender. It means five years and below five years old vehicle can participate in the tender. The period of tender is three years. Therefore, the vehicle can be operated till it becomes eight years old. If the eligibility criteria is relaxed by relaxing the model of the vehicle from the year 2018, it can be permitted to operate for only one year and necessarily the said vehicle has to be replaced by another vehicle to complete the remaining period of contract by the successful bidder. Therefore, no impediment would be caused to the respondent, if the model of the year of the lorry is relaxed. Therefore, the Judgments relied upon by the learned counsel for the respondents are not applicable to the case on hand.

20. The eligibility criteria as mentioned in the notification cannot be said as malafide or tailored one. However, the relaxation of the model of the vehicle no way affects the policy decision of the first respondent, since anyway the respondent is considering the vehicles of the year 2020 for evaluation in the tender. If the said vehicle is awarded contract, in the third year of the tender, it becomes eight years old. When the respondent permitted to operate eight year old vehicles, the first respondent cannot



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prevent the seven years old vehicle to participate in the tender. In fact, after becoming old of eight years, the vehicle cannot be permitted to operate for remaining period of the contract.

21. In fact, Section III of the notification says about the general conditions of contract, in which clause 2 says about the negotiations, obtaining willingness and fixing of seniority for the award of work order. Accordingly, the tender will be evaluated as per the Tamil Nadu Transparency in Tenders Act, 1998 and Tamil Nadu Transparency in Tenders Rules, 2000 there under lorries in the descending order of year of manufacture viz., from 2024 to 2020 will be considered. The lowest rate quoted/negotiation rate offered by the tenderer for each capacity will be considered for award of contract. Further, depending upon the field requirement, the willingness will be asked from the other eligible tenderers for accepting L1 rate. Those who have offered their willingness for accepting L1 rate will be considered in the above order. The seniority of the selected hired water tanker lorries should be fixed for L1



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contractors based on the model of the Water Tanker Lorries from the descending orders like 2024 to 2020.

22. Therefore, mere allowing the petitioner to participate in the tender would not amount to award of contract. The contract will be awarded in the descending order of manufacture i.e, from 2024. Therefore, if the vehicles of the year 2018 is permitted to participate, it would not cause any serious impediment while awarding contract.

23. In view of the above, the first respondent is directed to issue addendum to the tender notification dated 09.08.2024, insofar as clause A of I-(C) to the effect that the water tanker lorries of the year 2018 and later model satisfying the pollution norms will alone be considered for evaluation in the tender, forthwith and extend the last date for submission of bids by one week thereafter.

24. With the above direction, this writ petition is disposed of. Consequently, connected Miscellaneous petition is closed. No costs.

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Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order
mn

G.K.ILANTHIRAIYAN. J,

mn

To

The Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board (CMWSSB),
Chintadripet,
Chennai – 600002.

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