

(2013) 10 MAD CK 0097

In the Madras High Court

Case No : Writ Petition (MD) No. 15620 of 2013 and M.P. (MD) . No. 1 of 2013

A. Pandi

APPELLANT

Vs

The Managing Director, Christy Friedgram Industry, A-2 and
A-3, SIDCO Industrial Estate and Rasi Nutri Foods

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : AIR 2014 Mad 57

Hon'ble Judges : M. Venugopal, J;M. Jaichandren, J

Bench : Division Bench

Advocate : V. Selvaraj, for M/s. I. Vel Prateep, for the Appellant; A.L. Somayaji, Advocate General for Mr. D. Mayarajan for R.1, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard Mr. V. Selvaraj, learned Senior Counsel for M/s. I. Vel Prateep, appearing on behalf of the petitioner, as well as Mr. A.L. Somayaji, learned Advocate General, assisted by Mr. D. Mayarajan, appearing on behalf of the first respondent. There is no appearance on behalf of the second and the third respondents. The present Writ Petition has been filed by the petitioner, as a Public Interest Litigation. The petitioner has stated that he is working for the benefit of the farmers and the agricultural traders. As he is well acquainted with the agricultural operations, he had started a `Centre for Public Cause", dealing with the issues relating to agriculturists, farm labourers and persons, who are below the poverty line.

2. The petitioner has further stated that the present Writ Petition has been filed relating to the tender floated by the first respondent, on 15.04.2013, for the supply of one lakh metric tones of Urid dhal and Canadian yellow lentil and fifty thousand metric tonnes of Toor dhal, to the Public Distribution System, functioning in the State of Tamil Nadu, at a fixed rate.

3. It has been further stated that, due to the tender process, the price of the

commodities would be fixed, for the whole year, for avoiding price fluctuations, and to reduce the administrative work, substantially. As such, the tender floated by the first respondent would be beneficial to the Public Distribution System of the State of Tamil Nadu, resulting in the essential commodities reaching the consumers, directly.

4. The petitioner has further stated that the tender in question was in the form of a "Two Bids System". The technical bid had been opened by the first respondent. Accordingly, the second and the third respondents were qualified in the technical bid. However, the first respondent had not finalized the tender in question, even after declaring the date for the opening of the price bid. The date for the opening of the price bid was being postponed, only with a view to benefit the lowest bidder, by finalizing the tender when the market prices are favourable to the bidder. Thus, the delay in finalization of the tender is causing heavy financial loss to the public exchequer.

5. The petitioner has further stated that the date of the opening of the bid was fixed, on 15.04.2013. The bid was valid for a period of three months. i.e. upto 15.07.2013. Thereafter, the offer has been extended for a further period of three months, at the request of the first respondent. The extraordinary delay caused by the first respondent in finalizing the final bid amount is causing serious financial loss to the public exchequer, as short term tenders are being accepted from the same respondents, who had participated in the earlier tender.

6. It has also been stated that crores of rupees are being spent, by the State Government, by delaying the finalization of the tender process, as the prices of the dhals are going up. Further, after 15.07.2013, the second and the third respondents would not be bound by the tender process. Therefore, the first respondent should finalised the tender process, as expeditiously as possible, without any further delay.

7. Mr. A.L. Somayaji, learned Advocate General, assisted by Mr. D. Mayarajan, appearing on behalf of the first respondent had submitted that the present Writ Petition, filed by the petitioner, cannot be termed as a Public Interest Litigation. The Writ Petition has been filed only on the instigation of the second and the third respondents. There is no right vested in the petitioner to compel the first respondent to complete the tender process and to finalize it in favour of the second and the third respondents. It is for the first respondent to conclude the contract with the second and the third respondents, as per the terms and conditions of the tender. The first respondent, which is a Government owned corporation, cannot enter into contract with the second and the third respondents, on the compulsion of a third party to the tender process.

8. It has been further stated that the tender process could not be completed due to the price fluctuation in the prices of the various varieties of dhals. Infact, the tender process had taken place only as per the provisions of the Tamil Nadu Transparency in Tender Rules, 2000. The tenders submitted by the second and

the third respondents would be scrutinized by the Committee and thereafter, it would be confirmed by the Board of Directors of the Tamil Nadu Civil Supplies Corporation.

9. It has also been stated that the second and the third respondents have not come before this Court, questioning the terms and conditions of the tender. Only a third party to the tender process has filed the present Writ Petition claiming that it is a public interest litigation. Further, there is no allegation that the tender process is mala fide in nature or that the tender process is illegal, being contrary to law. As such, there is no merit in the Writ Petition and therefore, it is liable to be dismissed.

10. The learned Advocate General appearing on behalf of the first respondent had relied on the following decisions of the Supreme Court in support of his contentions:

(i) In *Tata Cellular Vs. Union of India*, , the Supreme Court had held as follows:-

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case....

11. In view of the submissions made by the learned counsel appearing on behalf of the petitioner, as well as the learned counsel for the first respondent, and on a

perusal of the records available, and on considering the decisions cited supra, we are of the considered view that the petitioner has not made out a case for this Court to interfere with the impugned proceedings of the first respondent. We are also of the considered view that it would not be open to the petitioner to question or challenge every step being taken by the first respondent, relating to the tender process, without showing that the said process adopted by the first respondent, is vitiated by arbitrariness or illegality.

12. We are also aware that there are certain inherent limitations in the exercise of the power of judicial review, by this court, in such matters. Unless it is shown, in clear terms, that the decision making authority had acted in an unfair and arbitrary manner, this Court would be reluctant to interfere with the said process adopted by the authorities concerned.

13. A mere allegation made by the petitioner, claiming to be a public spirited person, that the process chosen by the first respondent would cause serious financial loss to the public exchequer, cannot be a sufficient ground to interfere with the impugned proceedings of the first respondent.

14. It is a well established position of law that the authorities of the State would be presumed to act fairly, as per the procedures established by law. Therefore, the onus would be on a person questioning the validity of such acts to prove, convincingly, that such acts are arbitrary, illegal and void. Generally, it is left to the wisdom of the authorities of the State to act in a particular manner to protect the financial interests of the State. Therefore, this Court cannot proceed on the presumption that the tender process in question, adopted by the first respondent, is bad in the eye of law. This Court cannot interfere in matters, where a fine balance is to be maintained between the administrative discretion vested in the authorities concerned in deciding such matters and the public interest involved, like a bull in a china shop. In such view of the matter, we are of the considered view that the present Writ Petition filed by the petitioner, questioning the tender process adopted by the first respondent, is devoid of merits. Hence, it is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.