

(2005) 08 MAD CK 0158
In the Madras High Court
Case No : W.A. No. 1027 of 2005

G. Jayakrishnan

APPELLANT

Vs

Tamil Nadu State Marketing Corporation Ltd. and Others

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Transparency in Tenders Rules, 2000 — Rule 20(1)

Citation : AIR 2006 Mad 81 : (2006) 1 CTLJ 430 : (2005) 4 LW 289

Hon'ble Judges : Markandey Katju, C.J.; A. Kulasekaran, J

Bench : Division Bench

Advocate : K. Shrendranath, for the Appellant; B. Nedunchezian, (for No. 2) and C. Ravichandran, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, C.J.—Heard the learned Counsel for the appellant.

2. This writ appeal is filed against the impugned order dated 28-4-2005, passed by the learned single Judge vacating the interim order granted in favour of the appellant. The appellant had filed the writ petition seeking for the relief of Writ of Certiorartfied Mandamus, calling for the records connected with invitation of tender for transport of TASMAT materials in vans in Thirupur issued by the second respondent and published in Dhina Thanthi paper dated 27-12-2004 calling for tenders to be opened on 5-1-2005 and quash the same and consequently cancel the tender notification dated 27-12-2004.

3. Learned Counsel for the appellant first submitted that the tender notice was illegal as it was published only on 27-12-2004 in the newspaper but the last date for submitting the tender was 4-1-2005. Learned Counsel relied on Rule 20(1) of the Tamil Nadu Transparency in Tender Rules, 2000, which reads as under:

20. Minimum time for submission of tenders :

(1) The tender Inviting Authority shall ensure that adequate time is provided for

the submission of tenders and a minimum time is allowed between date of publication of the Notice inviting Tenders in the relevant tender Bulletin or in the newspapers whichever is later and the last date for submission of tenders. This minimum period shall be as follows :

(a) for tenders up to rupees two crores in value, fifteen days; and

(b) for tenders in excess of rupees two crores in value, thirty days.

(2) Any reduction in the time stipulated as per Sub-rule (1) has to be specifically authorised by an authority superior to the Tender inviting authority for reasons to be recorded in writing.

Learned Counsel for the appellant submitted that in the present case, the value of the tender is less than rupees two crore and hence, the minimum period, according to Rule 20(1) of the Rules, for submission of the tender forms should be fifteen days. Learned Counsel for the appellant has not disputed that the appellant has submitted his tender before 4-1-2005, which was the last, date prescribed by the respondents for submitting the tender. Hence, the appellant cannot be said to have suffered any prejudice even if Rule 20(1) of the said Rules was violated.

4. It may be mentioned that writ jurisdiction is discretionary jurisdiction -- vide Chandra Singh Vs. State of Rajasthan and Another, . Hence, even if there is violation of law, this Court is not bound to issue a writ vide R. Nanjappa v. District Collector, Coimbatore 2005 WLR 47. To obtain a writ, the petitioner must not only show violation of law, he must also show that he has suffered some prejudice on account of such violation of law. This is because writ jurisdiction is equity jurisdiction. To obtain a writ, the petitioner must satisfy the Court on both points, viz. (1) violation of law by the respondent and (2) on account of such violation, the petitioner has suffered some prejudice. If the petitioner only shows violation of law but fails to satisfy the Court that he has suffered some prejudice, no writ will be issued in his favour.

5. In this case, even assuming that Rule 20(1) of the said Rules has been violated, there is no prejudice caused to the petitioner inasmuch as admittedly the petitioner has submitted the tender application on 4-1-2005. After all the purpose of giving 15 days time is to give adequate time to people to submit their tenders. Hence, the petitioner suffered no prejudice due to violation of Rule 20(1). Hence, on this ground the petitioner cannot obtain a writ from this Court under Article 226 of the Constitution. This contention is, therefore, rejected.

6. Learned Counsel then submitted that the tender conditions were arbitrary and illegal. One of the tender conditions was that the bidders must have a turnover of Rs. 5,00,000/- in the preceding two years. Admittedly, the appellant does not have a turnover of Rs. 5,00,000/- in the preceding two years and hence he does not satisfy one of the essential eligibility requirements.

7. The Supreme Court in Directorate of Education and Others Vs. Educomp

Datamatics Ltd. and Others, has upheld the condition in the tender form requiring a turnover of more than Rs. 20 crore over the last three years. The Supreme Court observed that the purpose of imposing such a condition was to ensure that only companies having financial stability and capacity should participate in the tender. In our opinion, the same reasoning applies here also. Similar view was taken by a Division Bench of this Court, to which one of us (Markandey Katju, Chief Justice) was a party in W.A. No. 1498 of 2005 (A. Gopal v. Airports Authority of India), decided on 3-8-2005 (reported in AIR 2005 NOC 493. Since the appellant does not satisfy the eligibility criteria of having a minimum turnover of Rs. 5,00,000/- in the last two years, obviously he is not qualified to participate in the bidding process. Hence, it is not necessary for us to go into the question of validity of the other tender conditions which the appellant has challenged. The second contention is also rejected.

8. The writ petition therefore fails and the same is dismissed. In view of the dismissal of the writ petition itself, nothing survives in the writ appeal and the appeal is dismissed as infructuous. Connected WAMP No. 1879 of 2005 is closed.