

(2005) 02 MAD CK 0080

In the Madras High Court

Case No : Writ Petition No. 4073 of 2005 and W.P.M.P. No's. 4530 and 4531 of 2005

Sri Amman Associates

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 4 BC 299 : (2005) 4 CTC 399 : (2006) 3 MLJ 630

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : C. Selvaraju for S. Mani, for the Appellant; S. Venkatesh, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—The petitioner prays for a certiorarified mandamus to call for the records pertaining to the Notification issued by

the third respondent in Tender Notice dated 24.01.2005, to quash condition Nos. 5 and 8 and to direct the respondents to scrutinize all the

tenders including the petitioner without insisting on these two conditions.

2. The dispute lies in a narrow compass, namely, as to whether the two conditions, which are prescribed in the impugned tender notification as

condition Nos. 5 and 8, are valid or not? The said conditions are as follows:-

5) Percentage Tender schedule will be issued to Registered contractors of this Department with appropriate class who are having their own

Central Hot Mix Plant, Electronic Sensor Paver Finisher and Vibratory road roller conforming to MORT & H specifications, for which they should

produce necessary documents for the ownership of plants with necessary sales

tax clearance certificate etc. The evidence on the purchase of plants such as vouchers, invoices and other connected documents alone is not sufficient for purchase of tender documents but the plants should be physically available with the contractor. The Divisional Engineer (NH) concerned will issue the documents to the contractors only after satisfying himself on the ownership as well as the conformity of the plant to the prescribed specifications. The plant should be in working condition at the time of inspection.

8) The intending contractors should have completed 40% of quantity of similar nature of each major item such as B.M. SDBC, PC and concrete works as involved in this tender during the last 5 years. The tenders of such of those contractors who do not fulfill this condition will be summarily rejected.

3. A perusal of the above conditions discloses that the applying tenderer should possess 40% quantity of similar nature of major items of works and the tenderer should also own the required machineries.

4. According to Mr. C. Selvaraju, learned Senior Counsel appearing for the petitioner, by the existing regulations issued by the Government of India, vide letter dated 18.05.1993, the said conditions as such were contemplated only with reference to the works of value more than Rs.500 lakhs. As regards the works of lesser value, such requirements were not insisted upon even till last year. The Government has not issued any amended notification nor such conditions are insisted in other Divisions. It is only in Salem Division such requirements are insisted upon. Therefore, the learned Senior Counsel contends that the conditions thus imposed are invalid and unenforceable.

5. Learned Special Government Pleader however contends that it is certainly open to the authorities to prescribe such conditions as may be necessary to ensure quick execution of the work and also efficient discharge of the requirements. Reference is made to the time limit prescribed by the Government of India for utilising the funds within a period of five months and therefore, the respondents require quicker and proper execution.

Learned Special Government Pleader relied on the Judgment of a Division Bench of this Court in Y. Swamidhas and 2 Ors. vs. The Chief

Engineer, National Highways, Chennai-5 and 4 Ors. 2001 (4) CTC 257 and that of

the Supreme Court in Directorate of Education and Ors. vs.

Educomp Datamatics Ltd. and Ors. 2004 (3) CTC 295 in support of his contention that in such matters, the courts will not generally interfere

unless there is any discrimination.

6. I considered the submissions of both sides. The requirement of 40% previous experience and the requirement of ownership of the machineries

are insisted upon to ensure quick and efficient execution of the work. These are matters which are within the exclusive discretion of the authorities

and as long as there is no discriminatory or arbitrary exercise of the power, this Court cannot interfere. The object of requiring the contractor to

own machineries by themselves is accentuated by the necessity to ensure prompt execution of the work. A Division Bench of this Court, in the

decision reported in 2001 (4) CTC 257, had to deal with a similar issue and it was held by the Bench as follows:-

5. Learned counsel for the appellants submits that there is no nexus for imposition of condition for ownership of machinery even at the threshold,

at the time of furnishing the tender schedule and that it is suffice if the readiness and willingness of possession of machinery is shown at the time of

entering into contract if the bid is accepted. Mr. V. Prakash, learned counsel, also submits that the length of the road to be laid is only 3 kms.

costing Rs.3,90,000 and the cost of setting up the machinery will be more than the said tender work and that it is not at all feasible and viable for

the contractors owning the machinery to execute the above work. That is not the concern of this Court to examine. Whether the acceptance of

work and execution thereof is feasible and viable, is the concern of the party who makes a bid. The authority tendering the work is only concerned

about the execution and the money payable therefore. In every contract, there will be clauses for due execution of the work and the consequences

in default thereof. The laying of public road is important and urgent. Time schedule is three months from the date of awarding of contract. The

authorities cannot and need not wait for the contractors like appellants to acquire the machinery by way of lease from other owners. In fact, that is

a contingent situation. Even after contract is struck, there is no guarantee that machinery will be provided and if provided, as to the quality and

working condition of the machinery. The public work cannot wait, risking such

contingencies. As such, the authorities have rightly felt that there should be an imposition of ownership of the machinery, as if such machinery is at the ready disposal of such successful contractor/s they can readily start the work and successfully complete the same within the time schedule. What is more, in view of numerous such contractors owning machinery, by no stretch of imagination can it be said that the imposition of condition No. 5 is a tailor-made to suit one or a few individuals. In the circumstances, we find that the imposition of condition No. 5 has got a nexus with the object to be achieved, and that it is neither arbitrary nor unreasonable and there is no infringement of any Fundamental Right of the appellants. In the circumstances, the complaint of the appellants that they were unreasonably deprived of supply of tender schedules, cannot be countenanced and the writ appeals fail and are accordingly dismissed.

No costs. Consequently, C.M.P.s are also dismissed.

On the question of experience also, the same reasonings would apply. There is nothing wrong in the tendering authority to insist on experience in order to ensure better execution of the work.

7. As held by the Supreme Court in the Judgment stated above in 2004 (3) CTC 295, it is not for the courts to interfere with the terms of tender

notice unless it was shown that it was either arbitrary or discriminatory or actuated by malice. In this case, the learned Special Government Pleader

contends that in response to the impugned notice, four other contractors with their own machineries and past experience have applied for the

contract and hence, there is no justification for interference. I do not find any reason to sustain the contention of the petitioner.

8. In the result, the Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions are closed.