(2003) 10 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 26151 of 2003 and W.P.M.P. No''s. 32017 and 32595 of 2003

V. Krishnamurthy APPELLANT

Vs

Airport Authority of India and Others RESPONDENT

Date of Decision : 28-10-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 10 MAD CK 0041

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : G. Rajagopal, for S. Chandrasekar, for the Appellant; Vijay Narayan, K. Ramagopal, for 4th respondent and G. Masilamani, for V.K. Sathyamurthy, for Respondents 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—By consent of all the parties and in view of urgency, writ petition itself is taken up for disposal. Amended prayer in the

writ petition is as follows:

To issue a Writ of Mandamus or any appropriate writ, or order forbearing the respondents 1 to 3 from receiving or considering the Tender Forms

for Car Rental Services for Chennai Airports that may be submitted by the respondents 4, 5 and 6 or any other person claiming through them"".

2. The case of the petitioner is briefly stated hereunder:- According to him, he is running a Car rental Services in the name of ""Aviation Express"" in

Madras Airport from July, 1987. He started the said service with 50 vehicles in the year 1987 and presently Car Services have been increased to

more than 100 cars, which is exclusively used for the benefit of the Air Passengers in International and National Airports. While so, the Airport

Authority of India has caused an advertisement in the Newspapers on 17-8-2003 inviting Tender forms for operation of Car Rental Services at

Kamaraj Domestic and Anna International Airports arrival area of Chennai Airport, for the year 2003-2008. The minimum Reserve Licence fee

per month is fixed at Rs.1 lakh in addition to the Space Licence Fee and car parking. As per their advertisement, the parties fulfilling certain criteria

are alone eligible to purchase tender documents. The firm or individual who fulfil 2 years experience in managing similar kind of business having a

fleet of 10 A/c cars not older than 3 years duly registered in the name of the tenderer and experience during the last 10 years from the date of

publication of notice shall be taken into consideration. As per the Central Motor Vehicles Rules, any vehicle for transport permit from outside the

State cannot operate the vehicle for more than 3 months. Therefore, a person who intended to participate and purchase the tender documents

should have experience in managing similar kind of business as well as he should have permit issued by the concerned State Government. He came

to understand that the 4th and 5th respondents who are not having such qualification approached the tender issuing authority and obtained tender

documents which is contrary to the tender conditions and the Motor Vehicles Rules. In such a circumstance, the petitioner has filed the present writ

petition seeking appropriate direction, forbearing the respondents 1 to 3 from receiving or considering the tender forms for car rental services for

Chennai Airport that may be submitted by respondents 4 to 6.

3. On behalf of respondents 1 to 3, Assistant General Manager (Law) of the Airports Authority of India (International Airport Division) has filed a

counter affidavit wherein it is stated that the petitioner is running a Car Rental Services in the name of Aviation Express at Chennai Airport and has

been running the same from July, 1987 onwards by virtue of an Agreement with the Airport Authority of India, however, that would not confer on

the petitioner any right to run the services in perpetuity. The licence granted to the petitioner comes to an end on 30-09-2003. Therefore, the

Airport Authority of India issued a notice inviting tenders on 17-8-2003 for the purpose of operation of the Car Rental Services at the Kamaraj

Domestic Airport and the Anna International Airport for the period 2003 to 2008. In response to the said advertisement, the petitioner as well as respondents 4 and 5 have applied and have been found technically qualified to participate in the tender process and their financial bids are likely to

be opened shortly. The eligibility criteria for participation in the tender is 2 years experience in managing similar kind of business and having a fleet

of 10 A/c Cars which are not older than 3 years and which are duly registered in the name of the tenderer. The petitioner as well as respondents 4

and 5 satisfy this condition. The tenderer will have to comply with all the State and Central laws and Rule 85 (3) will not be a bar for the

participation of respondents 4 and 5 in the tender process.

4. Fourth respondent has filed a counter affidavit wherein it is stated that they are carrying on business of renting out cars to public and private

institutions on hire basis. Its head office is at Delhi and it has branches at Bombay, Kolkata, Chennai, Bangalore, Hyderabad and other important

cities in this country. It owns and plies over 400 air conditioned cars in this country and it has at present 45 Air Conditioned cars in Chennai. The

4th respondent company is one amongst the largest enterprise providing car rental services. It has fully complied with the conditions of the tender

and is entitled to have its offer considered by the first respondent.

5. The 5th respondent has filed a counter affidavit wherein it is stated that it is a private limited company incorporated under the Companies Act of

which Abdul Hazar is the Managing Director. He is also the proprietor of Akbar Travels of India Car Rental Services which is a proprietary

concern which own and operate more than 100 air conditioned luxury cars. The writ petition is wholly misconceived. The said proprietary concern

has got experience in managing similar kinds of business for more than 2 years and they are functioning their car rental services at the Mumbai

Airport and Bangalore Airport both under the control of the Airport Authority of India. The vehicles owned by Abdul Nazar, proprietor, Akbar

Travels India Car Rental Services have All India permits who can operate all over India and are registered either in Mumbai or Bangalore. It is

always open to the said tenderer, if becomes successful to have their vehicles re-registered in Chennai so as to comply with the provisions

contained in Rule 85 (3) of the said Rules.

6. The newly impleaded 6th respondent has filed a counter affidavit. The 6th respondent is none other than the proprietor of Akbar Travels of

India Car Rental Service. Akbar Travels is the 5th respondent in the writ petition. Since similar averments have been made by the 6th respondent,

I am not referring the same once again.

7. In the light of the above pleadings, I have heard Mr. G. Rajagopal, learned senior counsel for the petitioner, Mr. Vijay Narayan, learned counsel

for respondents 1 to 3-Airport Authority of India, Mr. K. Ramagopal, learned counsel for the 4th respondent and Mr. G. Masilamani, learned

senior counsel for respondents 5 and 6.

8. The only point for consideration in this writ petition is, whether direction to be issued to respondents 1 to 3 from receiving or considering the

tender forms for Car Rental Services for Chennai Airport submitted by respondents 4, 5 and 6 or any other person claiming through them?

9. There is no dispute that petitioner was running Car Rental Services in the name of ""Aviation Express"" in Madras Airport from July, 1987 by

virtue of an agreement with the Airport Authority of India. It is also not disputed that the licence granted to the petitioner expired on 30-9-2003.

Therefore, the Airport Authority of India issued notice inviting tenders on 17-8-2003 for the purpose of operation of Car Rental Services at

Kamaraj Domestic and Anna International Airports Arrival Area of Chennai Airport for the year 2003-2008. As per the Tender notice, the

eligibility criteria for participation in the Tender is two years'' experience in managing similar kind of business and having a fleet of 10 air

conditioned cars which are not older than 3 years duly registered in the name of the tenderer. Mr. G. Rajagopal, learned senior counsel for the

petitioner, by pointing out the above clauses, would contend that inasmuch as respondents 4 to 6 are not eligible to purchase tender schedule and

due to this ineligibility, their tender forms should not be accepted by the respondents 1 to 3. By pointing out Rule 85 (3) of Central Motor Vehicles

Rules, 1989 (hereinafter referred to as ""the Rules""), he would submit that any vehicle which remains outside the home State for more than 3 months

shall not eligible for tourist permit in the home State. He also contended that inasmuch as respondents 4 to 6 are not having registered vehicles in

this State, they are not eligible to receive tender documents and their offer should not be considered by the respondents 1 to 3. He also contended

that the respondents 4 to 6 did not have experience in similar kind of business.

After going through the particulars furnished in the counter affidavit

filed by respondents 1 to 3 as well as respondents 4 to 6 and the argument of the respective counsel, I am unable to accept the contentions raised

by the learned senior counsel for the petitioner for the following reasons.

10. The conditions for participation in the tender are as follows:

(i) Two years experience in managing similar kind of business;

(ii) He must possess a fleet of 10 air conditioned cars which are not older than 3 years and which are duly registered in the name of the tenderer.

It is useful to refer the statement of law laid down by the Supreme Court in Ramana Dayaram Shetty v. International Airport Authority of India,

reported in AIT 1979 S.C. 1628 wherein it was held that the authority cannot accept tender of person who does not fulfil the requisite

qualifications.

In the counter affidavit filed on behalf of respondents 1 to 3, it is specifically stated that the petitioner as well as respondents 4 and 5 satisfy the

above conditions. The 6th respondent who was impleaded in his counter affidavit also asserted and furnished details regarding his eligibility. As

rightly argued, merely because the petitioner has been running a car rental services at Chennai Airport from July, 1987, cannot claim that contract

should continue to be renewed in perpetuity in his favour even after expiry of his licence period. There is no dispute that the licence granted to the

petitioner came to an end on 30-9-2003. The respondents 1 to 3 being a State or other Authority within the meaning of Articles 12 and 226 of the

Constitution in the matter of grant of largesse it has to secure the best possible price for the grant of privilege to provide car rental services and for

this purpose, the tender process has been recognised as a fair method for distribution of such largesse. In the light of the eligibility criteria and in

view of the details furnished in the counter affidavit of respondents 4 to 6 and also of the fact that respondents 1 to 3 also stated that the petitioner

as well as respondents 4 to 6 satisfy those conditions, I hold that respondents 4 to 6 are entitled to purchase tender schedule and if the same are in

order, the respondents 1 to 3 are bound to consider the same.

11. Coming to the contention regarding non compliance of Rule 85 (3) of Central Motor Vehicle Rules, 1989, it is relevant to refer sub-rule (3)

upon which, heavy reliance was made by the learned senior counsel for the petitioner. Rule 85 (3) reads thus:

Rule 85. Additional conditions of tourist permit.- The following shall be the additional conditions of every tourist permit granted to a tourist vehicle

other than a motor cab under sub-section (9) of Section 88, namely:-

(1) xx

(3) The tourist vehicle shall either commence its journey, or end its journey, circular or otherwise, in the home State, subject to the condition that

the vehicle shall not remain outside the home State for a period of more than three months. The permit holder shall see that every return of the

tourist vehicle to the home State is reported to the authority which issued the permit:

There is no dispute that the tender will have to comply with all the State and Central laws and Rule 85 (3) will not be a bar for the participation of

respondents 4 to 6 in the tender process. The submission relating to Rule 85 (3) is misconceived, as rightly argued by the respondents, all that the

sub-rule provides for is that ""a tourist vehicle shall either commence its journey or end its journey in the home State, subject to the condition that

the vehicle shall not remain outside the home State for a period of more than three months..."" The above rule cannot be interpreted to mean that a

person who intends to participate in the tender should have been issued permits by the Tamil Nadu State Government. Nor could it be construed

that the vehicle should be registered in Tamil Nadu only. It is always open to the tender, if becomes successful to have their vehicles re-registered

in Chennai so as to comply with the provisions contained in Rule 85 (3) of the Rules. Just because the vehicles of the respondents 4 to 6 are

registered in other States, it cannot be said that they cannot satisfy the Rules under the Motor Vehicles Act or the State Government. The Motor

Vehicles Act provides for plying of vehicles which are registered in other States. More over, it is not open to the petitioner to dictate as to how the

respondents 4 to 6 will run their vehicles. In other words, it is the subjective satisfaction of the Authority and the petitioner has no say in the matter.

Accordingly, I reject the said contention of the learned senior counsel for the petitioner.

12. It is also brought to my notice that Government of India, Ministry of Finance

and Company Affairs, Department of Revenue, Central Board of

Direct Taxes in their communication dated 13-02-2003 has informed that the contractors shall not be required to get income tax clearance

certificate from the Income Tax Department, as there will be no need to furnish such certificate while submitting tenders to Government

Departments. In the light of the above communication, the production of income tax clearance certificate is also not required.

13. On merits, I am satisfied that the petitioner has not made out a case for issuance of a Writ of Mandamus as claimed. The fixation of eligibility

criteria is a matter which concerns only with Airport Authority of India and the Supreme Court has taken a view that a eligibility condition in a

tender notification cannot be challenged. Even otherwise, I am satisfied that it is the specific stand of respondents 1 to 3 that apart from the

petitioner, respondents 4 to 6 have also satisfied and complied with the eligibility criteria. It is also relevant to refer the principles laid down by the

Supreme Court in Tata Cellular Vs. Union of India, The scope of judicial review in a matter relating to decision making process in awarding

Government contracts is dealt with in this decision. Para 94 which is relevant is as follows:

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be

substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally

speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not,

such decisions are made qualitatively by experts.

(5) 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 or quasi- administrative sphere. However, the decision must not only be tested by the application of

Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or

actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

By applying these principles in the light of the materials placed in the form of affidavit, counter affidavit and the documents submitted by the

petitioner, respondents 4 to 6 as produced by the learned counsel for the Airport Authority, I am satisfied that there is no ground for interference

by this Court. The Airport Authority of India is free to proceed further in the matter and decide the same in accordance with law. Consequently,

the Writ Petition fails and the same is dismissed. No costs. W.P.M.P. Nos. 32017 and 32595 of 2003 are closed.