

M/S. Jothi and Com. Vs. Tamil Nadu Pollution Control Board and Others

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Court : Chennai

Decided On : Aug-03-1993

Reported in : AIR1994Mad50

Judge : Lakshmanan, J.

Acts : [Constitution of India](#) - Articles 12 and 226; Companies Act - 1956

Appeal No. : W.M.P. Nos. 6849, 6870, 13537 & 13538 of 1993 in W.P. No. 4257 of 1993 & 10720,13536, 17528

Appellant : M/S. Jothi and Com.

Respondent : Tamil Nadu Pollution Control Board and Others

Advocate for Def. : N. R. Chandran, ;Sr. Counsel, for M/s. V. Ramasubramanian & ;R. Muniswaran, ;K. Ethiraj, Adv. and ;K. Swaminathan, Addl. Govt. Pleader

Advocate for Pet/Ap. : Mohan Parasaran and ;V. S. Subramanian, Adv.

Judgement :

ORDER

1. Writ Petitions Nos. 4267 and 6770 of 1993 were filed by one M/s. Jothi & Company with the following prayers:--

to issue a writ of certiorarified mandamus or any other appropriate writ of certiorarified mandamus, calling for the records comprised in the proceedings of

the second respondent, dated 26-12-1993, and quash the same and consequently issue a mandamus directing the respondents 1 and 2 to consider and finalise the award of the contract pertaining to collection and conveyance system of common Effluent Treatment Plant at Pammal Palla-varam based on the offer/bids submitted by the petitioner and other tenderers based on the decision of the Tender Committee of the first respondent on 5-1-1993 and pass.....

'to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of a writ of mandamus forbearing the respondents 1 and 2 from placing orders on respondents 6 and 7 for pipes and on the 8th respondent from pumps and accept the same or to deal with any other private persons, corporation, partnership or entities in relation to the contract for the supply of pipes and pumps or any other projects in connection with the execution of the contract pertaining to collection and conveyance system of common effluent treatment plant at Pammal Pallavaram and pass...'

Along with W.P. No. 4257 of 1993, petitioner filed W.R.P. Nos. 6869 and 6870 of 1993, for injunction and stay respectively as per the following prayer;

to pass an order of interim injunction restraining the first and second respondents from finalising or awarding the contract pursuant to the decision of the tender committee dated 25-2-1993 as communicated in the letter of second respondent dated 26-2-1993 in respect of collection and conveyance system of common effluent treatment plant at Pallavaram pending disposal of the above writ petition and pass,

to direct stay of the operation of and all proceedings pursuant to the proceedings of the second respondent, dated 26-2-1993 communicating the decision of the Tender Committee of the first respondent dated 25-2-1993 in respect of the award of the tender relating to collection and conveyance system of common Effluent Treatment Plan at Pammal Pallavaram pending disposal of the above writ petition and pass.....'

2. The second respondent in W.P. filed W.M.P. No. 13537 and 13538 of 1993 to vacate the injunction and stay granted by this Court on 5-3-1993.

3. Likewise the petitioner in W.P. No. 4257 of 1993 filed W.M.P. No. 10720 of 1993 for injunction restraining the respondents 1 and 2 therein from placing orders on respondents 6 and 8 for supply of pipes, pumps etc., for the project relating to construction of the project in question. Interim order was granted on 12-4-1993. To vacate the said order respondents 2, 7 and 8 have filed W.M.P. Nos. 13536, 13528 and 21253 of 1993.

4. All the above W.M. Ps. were heard together by consent of all parties.

5. Mr. Mohan Parasaran, learned counsel for the petitioner in both the writ petitions contends that the petitioners bid should be accepted since that is the lowest and that the respondents 1 and 2 in W.P. No. 4257 of 1993 went against their decision and wanted to call for a fresh revised bid with a view to help the fifth respondent. There was no warrant or justification for inviting fresh final commercial offer, where there is not any change in the scope of the contract, as was notified on 24-12-1992. His argument is that since respondents 1 and 2 have a public duty and public function to be performed by them cannot while implementing the contract pertaining to construction of collection and conveyance system of common effluent treatment plant award the contract or place orders with private parties through private negotiations without involving fair competition.

6. Mr. N. R. Chandran, learned senior counsel appearing for second respondent submits that second respondent company have taken a decision to execute the work by themselves on a sound and scientific reason, which results in a saving of above 15 per cent, of the total project of rupees three crores. Mere grant of subsidy by Central and State Government does not make the project a public one and that the second respondent being a private company, there is also no public interest involving in the matter.

7. Mr. V. S. Subbranyan, learned counsel for respondent -- 7 states that since respondent 7 has received the orders from the second respondent, which is a private company, there is no question of orders being placed through public offices and there is nothing wrong in purchase order being granted through private negotiation and hence the orders placed on respondent 7 for pipes is neither illegal nor constitute the abuse of process of law.

8. Mr. K. Ethiraj, adopted the arguments of the learned counsel for seventh respondent.

9. Mr. Swaminathan, learned Additional Government Pleader appearing for the Tamil Nadu Pollution Control Board while specifically denying the allegation that the Tamil Nadu Pollution Control Board has acted arbitrarily, submits that it is only the second respondent meeting all the costs of the proposed project and that second respondent cannot be called as a State within the meaning of Art. 12 of the [Constitution of India](#) and hence the writ petition is not maintainable. According to the learned counsel, the role played by Tamil Nadu Pollution Control Board is only to advise the second respondent company in selecting suitable designs for the effluent treatment plant and advise them suitably in this regard.

10. Elaborate arguments were advanced by the learned counsel for the respective parties. Hence I pass the following detailed order. In order to appreciate the contentions it is necessary to refer to the following few facts;

a. The second respondent Pallavaram Tanners Industrial Effluent Treatment Company (P) Limited is a private limited company incorporated under the Companies Act and the entire share capital is fully contributed by the owners of Tanneries in and around Pallavaram.

b. A tender notice was issued under the name of Tamil Nadu Pollution Control Board, inviting tenders from reputed contractors in the execution of Effluent Treatment Plant and Collection and conveyance system. It is mentioned in the tender notice that the tenders will be received at the Tamil Nadu Pollution Control Board, Madras on behalf of the second respondent. It is further mentioned that the second respondent-company Board has right to reject any or all of the tenders received or postpone the due dates without assigning any reason thereof. What is necessary to notice is that the Tamil Nadu Pollution Control Board is said to be co-ordinating with the second respondent for setting up and effluent treatment plant for treatment of trade effluent generated from the cluster of Tanneries suitable around Pallavaram. It is also mentioned in the tender notice that the tender schedule should be obtained from the second respondent. On 5-1-1993 discussions took place in which the Chairman of Pollution Control Board, and

Managing Director of second respondent and the representative of some of the tenderers including the petitioner had taken part in the said discussion. It was decided in the said meeting that the revised bids furnished on 5-1-1993 should not be opened and the tenderers should work out revised prices on the basis of the original rate quoted in their earlier bids deleting the item not included within the scope of the work and that the tenderers should submit their revised prices on 7-1-1993 to second respondent. Thereafter, on 2-2-1993 the tender committee after considering the various offers a final sealed price bid should be obtained on or before 3.00 p.m. on 4-3-1993.

11. The decision of the tender committee was communicated to the petitioner in the letter dated 26-2-1993 and he was directed to send his final commercial offer on the basis of scope of work before 3.00 p.m. on 4-3-1993. On 4-3-1993 the petitioner has sent a letter to the second respondent objecting to the decision taken on 25-2-1993. Thereafter on 4-3-1993 the second respondent has placed orders on respondents 6 to 8 in W.P. No. 6770 of 1993, viz., 6. Ori Plasti, No. 40, Second Road, Calcutta, 7. Kamcswari Enterprises, T. Nagar, and 8. M/s. Kishore Pumps, Pimpri, Pune for purchase of pipes and pumps.

12. Mr. N. R. Chandran, learned counsel for second respondent had raised a preliminary objection that the writ petition itself is not maintainable because the second respondent is a private limited company, which in establishing an effluent treatment plant and collection and conveyance system for treatment of trade effluent let out by Tanneries located in Pallavaram area and that the first respondent Pollution Control Board is only co-ordinating with second respondent. He also invited my attention to some of the conditions mentioned in the tender notice. Even the tenders were invited only FOR AND ON BEHALF OF SECOND RESPONDENT COMPANY BY THE TAMIL NADU POLLUTION CONTROL BOARD. According to the learned counsel, the first respondent is co-ordinating with second respondent because the State and Central Governments are giving 25% total cost by way of subsidy. In my opinion by the mere fact that subsidy is given to the second respondent, it would not be a State within the meaning of Art. 12 of the [Constitution of India](#). The learned counsel appearing for the other contesting respondents and counsel for the Pollution Control Board raised the

same contentions.

13. Mr. Mohan Parasaran, while meeting the preliminary objections would submit that the second respondent is performing a public function and that therefore the writ petition is maintainable. I am unable to uphold the plea raised by the writ petitioner. I make it abundantly clear that I am considering the above preliminary objection only in a prima facie manner for the limited purpose of disposing of M.P.

14. It is the primary duty of Tanneries to take steps to prevent the discharge of untreated and effluent with a view to prevent pollution on account of the discharge of the effluent from the Tanneries the owners of Tanneries have established the second respondent by contributing share capital. Therefore it will not be correct to say that the second respondent is discharging a public function. On the contrary, the second respondent is only discharging the duty cast on its shareholders.

15. I am of the opinion that the Pollution Control Board is merely co-ordinating with second respondent for setting up the effluent treatment plant because of the subsidy granted by the State and Central Government in meeting the project cost. From this, it cannot be inferred that the Pollution Control Board is establishing the effluent treatment plant. Looked at in this light, the main prayer of the writ petitioner is only against the second respondent. It is the case of the second respondent that it has placed orders on respondents 5, 6 to 8 for pipes and pumps. It is clear from the prayer that relief is asked for against first respondent also to give the colour of jurisdiction. I am also of the view that any project of such a magnitude will have the problem of escalation if it is delayed, which is specifically so in the instant case due to heavy inflationary trend in the market. Consequently, I do not find any reason or justification to continue the interim orders. Besides, the balance of convenience lies in favour of not continuing the interim orders. Already orders have been placed on respondents 6 to 8 by the 2nd respondent for supply of pipes and pumps. The respondents have made out a prima facie case. The effluent treatment plant is constructed in public interest to prevent pollution by discharge of effluent let out by Tanneries. Therefore, W.M.Ps. Nos. 6809, 6870 and 10720 of 1993 are dismissed and W.M.Ps. Nos. 13536, 13537, 13538, 17528 and 21253 of 1993 are allowed. No costs.

16. Order accordingly.

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