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M. Vasudevan Vs. the Chief Executive Officer, Chennai Metropolitan Development Authority,

M. Vasudevan Vs. the Chief Executive Officer, Chennai Metropolitan Development Authority,

SooperKanoon Citation : sooperkanoon.com/795189

Court : Chennai

Decided On : Feb-25-2005

Reported in : AIR2006Mad45

Judge : Markandey Katju, C.J. and ;D. Murugesan, J.

Acts : Tamil Nadu Transparency in Tenders Act, 1998 - Sections 12

Appeal No. : W.A. No. 417 of 2005

Appellant : M. Vasudevan

Respondent : The Chief Executive Officer, Chennai Metropolitan Development Authority, ;d. Jayakumar and Genguva R

Advocate for Def. : N. Sampath, Adv. for R-1

Advocate for Pet/Ap. : R. Krishnamurthy, Senior Counsel for ;S. Thanka Sivan, Adv.

Disposition : Appeal dismissed

Judgement :

Markandey Katju, C.J.

1. This writ appeal has been filed against the impugned judgment of the learned single Judge dated 7.2.2005. We have heard learned senior counsel for the appellant and find no merit in this appeal.

2. The petitioner challenged the re-tender notification dated 11.10 .2004 in respect of tender issued by the first respondent relating to the collection of parking fee for Madhavaram bus and truck terminal.

3. Earlier, tenders had been called and the third respondent had made the highest bid of Rs. 56.27 lakhs while the petitioner's bid was only Rs. 34 lakhs. Since the third respondent failed to submit eligibility certificate and since the petitioner was not willing to increase his bid, the first respondent decided to issue the re-tender notification.

4. Mr. R. Krishnamurthy, learned senior counsel appearing for the appellant submitted that no reasons have been given in the order rejecting the petitioner's tender. He relied on section 12 of the Tamil Nadu Transparency in Tenders Act, 1998 and has contended that reasons must be given for rejecting the tender.

5. We do not accept this contention. An order rejecting tender is not a quasi judicial order nor is it even an administrative order which affects rights and liabilities. Hence neither reasons have to be given in the said order nor opportunity of hearing has to be given before passing the said order.

6. It is only when the contract is finalised that a right accrues in favour of some party. Hence even the highest tenderer has no absolute and indefeasible right to get a contract vide *S. Selvarani v. The Commissioner, Karaikudi Municipality and Anr.* 2005 W.L.R. 30.

7. No doubt the respondents cannot act arbitrarily in this connection. But, in this case the reason for rejecting the petitioner's tender is writ large. The petitioner offered only Rs. 34 lakhs whereas the third respondent offered Rs. 56.27 lakhs. Thus, there was a huge difference of over Rs. 22 lakhs between the bid of these two parties and hence it can be obviously deduced that the first respondent wanted to get a higher amount for the contract. A sum of Rs. 22 lakhs is not a

small amount when the first respondent thinks that it can get much higher amount than the petitioner's offer. This is a good enough reason for ordering re-tender. Raising revenue is also one of the objects of public auctions/tenders.

8. Learned counsel for the petitioner/appellant then submitted that the eligibility requirement has been relaxed by the first respondent just to suit the third respondent. In this connection we asked the learned senior counsel whether there were any rules prescribing the eligibility qualification and he informed us that there appeared to be none. In the absence of any rules it is open to the authorities to change the eligibility requirements and this Court cannot interfere in this connection. In *Sterling Computers Ltd. v. M & N Publications Ltd.* it was held by the Supreme Court vide paragraph 12 as follows: 'Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of 'play in the joints' to the executive.'

9. In this case the first respondent on a consideration of the overall situation decided to relax the eligibility requirements, and in our opinion it cannot be said that it did not act bona fide in this connection.

10. It must be understood that the contract in question was not a contract for some highly specialised work such as setting up a highly technical factory or establishment. It was only a contract for collection of parking fee which cannot be said to be a very highly specialised work. Hence in this situation the eligibility requirement can certainly be relaxed as it would not have much effect on the contract involved.

11. At any event it is not for this Court to interfere in such administrative decisions and the Court must exercise judicial restraint as held in a Division Bench decision of this Court in *Rama. Muthuramalingam v. The Deputy Superintendent of Police,*

Mannargudi .

12. With the above observations this writ appeal is dismissed. No costs. Consequently, WAMP Nos.747 and 748 of 2005 are also dismissed.

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