

**HIGH COURT FOR THE STATE OF TELANGANA :: AT
HYDERABAD**

WRIT PETITION NO.851 OF 2020

Between:

M/s. Harinath Enterprises, rep.by its Proprietor,
SriG.Kaspa Reddy, s/o. Simon Reddy,
Aged about 52 years, r/o. D.No.12-1-508/70/3/103,
Baildi Lok Nivas, Laxmi Nagar, Lalapet, Secunderabad
and others.

..... Petitioners

And

The State of Telangana, rep. by its Prl Secretary,
Municipal Administration Department,
BRKR Bhavan, Hyderabad and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 21.01.2020

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

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.... Respondents

!Counsel for the petitioners : Sri Bajrang Singh Thakur
Counsel for the Respondents : Govt.Pleader for Municipal
Administration & Urban
Development

<Gist :

>Head Note:

? Cases referred:

(2003) 4 SCC 289
(2007) 4 SCC 737
2011) 13 SCC 167
2012) 8 SCC 216
(1997) 1 SCC 738
(2006) 10 SCC 1
AIR 2004 SC 1962
(2009) 6 SCC 171
W.P. No. 572 of 2014 dated 30.12.2014

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.851 OF 2020

ORDER :

Tender notification was issued on 04.01.2020 for providing Supervisors and Workers on outsource basis in Entomology Wing of Serilingampally Zone of GHMC for a period of 11 months. The scope of work is to deploy the Anti-Larval Units and special/fogging units consisting of one Entomology Field Assistant, Superior Field Worker and Field Workers, strength depends on the type of unit. The tender documents require the bidder to deploy the respective manpower with requisite minimum qualifications as mentioned in the tender document. Clause 2(c) prescribes the manpower so deployed should be able to perform the services mentioned therein. Clause-3 deals with eligibility criteria, which prescribes turn over in the last three financial years, minimum similar value of work experience in any Municipal Corporation, minimum turnover, submission of IT returns for three years and all other statutory compliances.

2. Petitioners challenge the tender conditions on the ground that 15 packages are made by clubbing 5 to 11 units for each package; allowing the persons who have not served as contractors for eradication of Mosquitoes; imposing penalty conditions in clause-11-(A)(3) if agency/contractor/worker is absent during the working hours.

3. According to the petitioners, they are the contractors performing outsourcing contract in Entomology eradication units in all the Municipal circles and earlier for each unit tenders were

called separately and work was allotted, and in the said manner, petitioners secured the works and performed to the satisfaction of the respondent authorities. Petitioners have participated in more than one unit and obtained contract for more than one unit. On account of clubbing of several units into few packages, the turn over requirement is increased and the existing contractors cannot comply with the stringent conditions.

4. Learned counsel for petitioners submit that the terms of tender notification are unconstitutional, intended to deprive the existing small contractors having utilized their services for long time and the same is arbitrary and illegal. The conditions are made to suit the big contractors.

5. In other words, what is challenged in the writ petition is, reorganizing the sanitation units to control spread of larval in GHMC limits and prescribing certain stringent eligibility criteria in the tender notification to undertake the job of larval control.

6. In matters of formulating tender conditions, employer has wider latitude and scope of judicial review is minimal. At the threshold, Court cannot interject the tender process on the ground that some of the terms of invitation to tender are not palatable to a person who is not fitting into the parameters. It is within the domain of employer to prescribe tender conditions. Court may interfere, in exercise of power of judicial review, to assess the terms of tender notification, within the limited parameters of judicial review, if such conditions are palpably and demonstrably illegal, irrational, tailor made to suit a contractor, *mala fide*, against

public interest and no reasonable man could have stipulated such conditions.

7. The wholesome rule in regard to judicial interference in administrative decisions is that if the employer takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, Courts should keep off the same [paragraph 18, **Federation of Rly. Officers Assn. v. Union of India**¹]. Legality of policy and not the wisdom or soundness of the policy is the subject of judicial review [paragraph 16, **Directorate of Film Festivals v. Gaurav Ashwin Jain**²]. On the scope of judicial review against the decisions of executive, more particularly decisions involving technical matters, in **Union of India v. J.O., Suryavamshi**³, Supreme Court warned the Courts to resist the temptation to usurp the power of executive.

8. At this stage a brief recapitulation of the law on judicial review on contracts and particularly on tender conditions is necessary.

8.1. In **MICHIGAN RUBBER (INDIA) LTD. V. STATE OF KARNATAKA**⁴, Supreme Court held:

23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

¹ (2003) 4 SCC 289

² (2007) 4 SCC 737

³ (2011) 13 SCC 167

⁴ (2012) 8 SCC 216

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

(emphasis supplied)

8.2. In **Asia Foundation & Construction Ltd. Vs. Trafalgar House Construction (I) Ltd.**⁵, while referring to guidelines laid down in **Tata Cellular v. Union of India** [(1994) 6 SCC 651], Supreme Court held as under:

"9. The High Court in construing certain clauses of the bid documents has come to the conclusion that such a correction was permissible and, therefore, the Bank could not have insisted upon granting the contract in favour of the appellant. We are of the considered opinion that it was not within the permissible limits of interference for a court of law, particularly when there has been no allegation of malice or ulterior motive and particularly when the court has not found any mala fides or favouritism in the grant of contract in favour of the appellant. In *Tata Cellular v. Union of India* [(1994) 6 SCC 651] this Court has held that:

"The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers,
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from

⁵ (1997) 1 SCC 738

case to case. **Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:**

(i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it;

(ii) **Irrationality**, namely, Wednesbury unreasonableness.

(iii) Procedural **impropriety**.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time.”

(emphasis supplied)

8.3. In **Reliance Airport Developers (P) Ltd. v. Airports**

Authority of India⁶, Supreme Court elaborated on these three parameters. Supreme Court observed:

“65. In other words, to characterise a decision of the administrator as “irrational” the court has to hold, on material, that it is a decision “so outrageous” as to be in total defiance of logic or moral standards. Adoption of “proportionality” into administrative law was left for the future.

8.4. In **Directorate of Education and others Vs. Educomp**

Datamatics Ltd and Others⁷, Supreme Court held as under:

“9. It is well settled now that the courts can scrutinise the award of the contracts by the Government or its agencies in exercise of their powers of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth by this Court in *Tata Cellular v. Union of India* [(1994) 6 SCC 651] .

10. In *Air India Ltd. v. Cochin International Airport Ltd.* [(2000) 2 SCC 617] this Court observed: (SCC p. 623, para 7)

“The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are **paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny.** It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its

⁶ (2006) 10 SCC 1

⁷ AIR 2004 SC 1962

corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedure laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness.”

11. This principle was again restated by this Court in *Monarch Infrastructure (P) Ltd. v. Commr., Ulhasnagar Municipal Corpn.* [(2000) 5 SCC 287] It was held that ***the terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge*** to prescribe the terms and conditions of the tender. It is not for the courts to say whether the conditions prescribed in the tender under consideration were better than the ones prescribed in the earlier tender invitations.

12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. ***The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical.*** The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide. (emphasis supplied)

8.5. In **Meerut Development Authority Vs Assn. of Management Studies**⁸, Supreme Court held as under:

“27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.”

8.6. In **The Krishna District Petrol & HSD Dealers Association, Vijayawada and The Executive Director, IOCL,**

⁸ (2009) 6 SCC 171

A.P.State Office, Himayathnagar, Hyderabad⁹ the scope of counter offer by the employer to accept transportation contract at the rate offered by L-1 tenderer was considered. In the judgment dated 30.12.2014 on considering the precedent decisions, this Court held:

“33. The principles that emerge from the above precedents are, the writ court has limited jurisdiction in matters concerning contracts and invitation to bid for contract; Court must adopt restraint in contract matters; the Court does not sit as a Court of appeal in such matters; the State/its instrumentalities have to be given greater latitude in formulating tender conditions and awarding of contracts; In matters concerning financial implications it should be left to the concerned authority to decide the conditions of eligibility and the price at which contract can be awarded; Courts cannot interfere in terms of invitation to tender; No one has a right to insist that the contract to be awarded to him; Courts can interfere only if actions of tendering authority is found to be malicious or misused statutory powers; That the process adopted and decision made is so arbitrary and irrational that no authority acting reasonably and in accordance with relevant law could have reached and if public interest is affected.”

9. It is a known fact that Mosquito Menace is widespread. Mosquitoes are the source of vector borne diseases, like Malaria, Dengue, Chickengunya, JE & Filaria etc. There are also other insects which cause health hazards. Thus, control of larval menace is an important task of urban local body and has larger public interest involved. The stark reality is the GHMC, for that matter all local bodies miserably failed in controlling the spread of larval. Therefore, in order to streamline the functioning of the larval control, if the respondent-Corporation intend to reorganize the functioning of anti-larval units/fogging units, merge small units, prescribe stringent conditions of eligibility, strict compliance of tender conditions, prescribe penalty clauses, the same cannot be interfered by the Court in exercise of judicial review merely on the ground that present conditions in the tender notification would

⁹ W.P. No. 572 of 2014 dated 30.12.2014

deprive the petitioners from participating in the tender process as they do not fulfill the required criteria.

10. On a reading of relevant clauses, the intendment of employer is clearly discernable. The employer assumes that the work floated by it can be properly executed if prospective bidder has experience of executing work of similar nature, has the required infrastructure, qualified man power and financial capacity. Employer is the best person to determine the eligibility criteria, terms of contract and assess the suitability of a prospective contractor, who can execute the work to the satisfaction of employer by meeting the standards. Further, it is apparent from precedent decisions noted above, what conditions can be prescribed in the tender document are best left to the employer.

11. Merely because earlier the contract was awarded on unit basis cannot be a ground to interject the tender process now initiated by merging the individual units into cluster. It is also seen from the tender conditions that GHMC requires qualified persons to manage the operations. It also requires the physical presence of the superior field worker/field worker and agency/contractor during the working hours at the work place. Clause-11 of Section-III of standard document, which deals with specific conditions, imposes penalties if the concerned worker or agency/contractor is not found. There are several technical parameters prescribed in the tender document. *Prima facie*, the various tender conditions clearly points out that GHMC was not satisfied with the earlier functioning of anti-larval eradication units and proposes to streamline them to provide better service to the people.

12. It is for the GHMC to choose appropriate eligibility criteria and Court cannot assess what conditions are required and be prescribed and suggest eligibility criteria different from the one chosen by it, more particularly in matters fixing parameters for identifying a contractor to attend to highly technical aspect of larval control. Court is ill-equipped to dwell into such matters. There is no allegation of malice or ulterior motive or that conditions were tailer made to suit a particular contractor. On detailed analysis of relevant criteria, I am of the considered opinion that there is no illegality in the conditions prescribed for eligibility in the tender notification warranting interference.

13. I see no merit in the writ petition. Writ petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 21.01.2020
Kkm

HONOURABLE SRI JUSTICE P.NAVEEN RAO



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