

(2009) 08 MAD CK 0318

Madras High Court

Case No: W.A. No. 1300 of 2008

Tamil Nadu Kattidamaiyam
Poriyalarkal Sangam

APPELLANT

Vs

The Secretary to Government
State of Tamil Nadu Rural
Development and Panchayat Raj
Department and The Director of
Rural Development and
Panchayat Raj Department

RESPONDENT

Date of Decision: Aug. 7, 2009

Acts Referred:

- Tamil Nadu Transparency in Tenders Act, 1998 - Section 10, 16, 2, 3, 9

Hon'ble Judges: S.J. Mukhopadhaya, J; Raja Elango, J

Bench: Division Bench

Advocate: K.M. Vijayan for B. Saravanan, for the Appellant; P.S. Raman, A.A.G. assisted by D. Sreenivasan, Additional Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

S.J. Mukhopadhaya, J.

By G.O.Ms. No. 1, Rural Development and Panchayati Raj Department dated 2nd January, 2007, the respondents stipulated that "Kattida Maiyam", a society registered under the Societies Registration Act for construction of low cost houses, should participate as an equal agency in all tender activities. The learned single Judge having refused to interfere with the said order, the present appeal has been preferred.

2. It appears that the District Building Centres in each district in the State of Tamil Nadu were established through the Housing and Urban Development Department vide G.O. No. 475 dated 5th November, 1990 with the District Collector as its Chairman and the Project Officer, DRDA as the Member Secretary. There is a

governing body constituted by the district level officials, representatives of Housing and Urban Development Department, Anna University and Lead Bank etc., as its members to govern the activities of the building centres. They were established to promote low cost technology houses and with the usage of having local knowledge of local labour through low cost technologies, training programmes of its workmen in cost effective building technologies, marketing of low cost construction materials etc., for the benefit of the people in the districts. Kattida Maiyam carried out certain construction activities under nomination method. By the impugned Government Order dated 2nd January, 2007, instead of nominating Kattida Maiyams to perform certain construction activities, they have been ordered to participate as an equal agency in all tender activities, the writ petition was preferred.

3. The main plea was taken on behalf of the State that in view of the Tamil Nadu Transparency in Tenders Act, 1998 (for short, "the Act, 1998"), u/s 3, there is a prohibition of procurement except by tender. The Kattida Maiyams have been asked to participate as an equal agency in all tender activities.

4. In reply, the learned senior counsel appearing on behalf of the appellant submitted that under Clause (c) of Section 16, the provisions of the Act, 1998 will not apply to other institutions, which includes the society formed by the Government. He also placed reliance on the Schedule appended to the Act. It was further contended on behalf of the appellant that Kattida Maiyam is a society formed by the Government.

5. We have heard the learned Counsel for the parties and noticed their rival contentions. u/s 3, there is a prohibition of procurement except by tender. No procurement can be made by the procuring entity except by tender. Under Sub-section (2) therein, the provisions of Sections 9 and 10 i.e., the functions of tender inviting Authority and evaluation and acceptance of tender shall not apply to any procurement made by a procuring entity. Procuring entity has been shown under the Schedule, which includes (i) Government departments; (ii) Public Sector Undertakings of the Government; (iii) Statutory Boards formed by the Government; (iv) Local Bodies in the State; (v) Co-operative institutions in the State; (vi) Universities and (vii) Societies formed by the Government. Therefore the procuring entity, though can derive the advantage of Sub-section (2) to Section 3, but that cannot be relied upon for exemption u/s 16.

6. Section 16(c) relates to non-application in certain cases of Government departments etc., as evident from the said provision and quoted hereunder:

16. The provisions of Sections 9 and 10 shall not apply to procurement:

(c) from certain departments of Government, public sector undertakings, statutory boards and such other institutions only in respect of goods manufactured or services provided by them for a period not exceeding four years from the date of commencement of this Act.

7. Admittedly, Kattida Maiyam is not a department of Government nor a public sector undertaking nor a statutory board. It cannot be held to be either an institution equated with the State Government departments or public sector undertaking or statutory board. It is a society registered under the Societies Registration Act. Merely because one or other officer of the State being a member of the society will not make it a society formed by the Government. It will be evident that apart from the government officials, private individuals are also members of the society, which includes representatives of rotary clubs etc. Therefore, Kattida Maiyam cannot take advantage of the exemption u/s 16. Apart from the aforesaid fact, it will be evident that none of the Kattida Maiyams have made any grievance against the impugned Government Order dated 2nd January, 2007 stipulating that they should participate as equal agency in the tender activities. The appellants are an association of its workmen or individual member. In no manner they are going to be affected if Kattida Maiyam participates as an equal agency in all tender activities. If work is allotted, having competed in the tender process, the workmen will not suffer, but will only gain advantage of. In this background also, we find that the writ petition was not maintainable at the instance of the writ petitioner. In the absence of any merit, we find that no ground is made out to interfere with the order passed by the learned single Judge. The writ appeal is, accordingly, dismissed, but there shall be no order as to costs.