

High Court of Karnataka

Daily Orders of the Case Number: WP 24739/2012 for the date of order 19/08/2013

Honble Justice N.KUMAR AND

B.V.NAGARATHNA

19/08/2013

Order in WP 24739/2012

NKJ & BVNJ: W.P.NO.46601/2012 C/W.

19/08/2013 W.P.Nos.24739-24740/2012,

30450/2012 & 46523/2012

The contractors who are service providers in collection and transportation of municipal solid waste and street sweeping, cleaning of the roads, footpaths, public toilets, urinals, open spaces of the Corporation like schools, colleges, health centres, burial grounds and transportation of waste to designated sites, preferred the writ petitions challenging the notification issued by the Bengaluru Mahanagara Palike inviting tenders through e-procurement regarding solid waste disposal and management from all the zones of Bruhat Bengaluru Mahanagara Palike as per the Karnataka Public Transparency Act, 2000.

The interim orders granted in the said writ petitions came in the way of tenders being finalized.

2. In the meanwhile, public spirited persons preferred W.P.Nos.24739/2012 and 30450/2012 complaining of improper management of municipal solid waste and transportation management and for direction. The Division Bench headed by the Honble Chief Justice of this Court dealing with Public Interest Litigation referred the aforesaid writ petitions to the Division Bench for being heard along with the other Public Interest Litigations in order to avoid conflicting orders. That is how the writ petitions were listed before the Division Bench along with these public interest litigations. Therefore, this Court heard those writ petitions expeditiously and partly allowed the writ petitions by an order of this Court dated 26/04/2013 and also issued the following directions:

(i) The tender notification should specify the exact area, showing the area by means of a sketch of each package.

(ii) A person is entitled to bid for all the packages. But, he shall not be awarded more than five packages of his choice.

(iii) Benami contracts and name lending should be strictly prohibited. If a person to whom a contract is awarded is found to be a benamidar, or name lender of the officials of the Corporation or the Corporators, including nominated members, or other elected members, the said contract is liable to be terminated.

(iv) There shall be no sub-contract or introduction of a new agency or clandestine arrangement for providing service. If the contract is assigned in any such manner, the contract is liable to termination.

(v) Specifications of the vehicles must be strictly in accordance with schedule II Sl.No.4 of the Municipal Solid Wastes (Management and Handling Rules), 2000. Vehicles used for transportation of wastes shall be covered. Waste should not be visible to public, nor exposed to open environment preventing their scattering.

(vi) The technical evaluation must be strictly through e-portal and not through department/officials so that intervention of the authorities or outside agencies can be curbed.

(vii) The mobilization of men and material as stipulated in clause 15.9.3 of the tender document should be done in the presence of RTO, the BBMP, vehicle supervisor, representatives of Residents Welfare Association and Suchi Mitra.

(viii) No objection certificate from representatives of Residents Welfare Association and Suchi Mitra is to be obtained before release of payment on the monthly bills.

(ix) Once the contract is entered into, the particulars such as the name of the contractor with fathers name, the address, the phone numbers, the number of vehicles employed with registration numbers and the make, number of persons employed shall be displayed in the website of the Corporation for the information of the general public.

(x) The tender notification shall be issued at least 120 days before the existing contract expires so that new contract can be awarded immediately after the expiry of the previous contract.

95. In the light of the above discussion, we pass the following:-

O R D E R

(a) Writ Petitions are partly allowed.

(b) The tender condition prescribing concession to SC/ST individual both in respect of E.M.D. amount and solvency is hereby quashed. However, those SC/ST individuals who have secured the contract, in the event of their making good the shortfall namely 90% within two months from today, their contracts shall not be cancelled.

(c) The BBMP shall initiate steps to award contracts in respect of 30 packages which is awarded to B.V.G India which they have offered to surrender.

(d) The contract awarded to B.V.G. India in respect of (9+3) 12 packages, where they are functioning shall not be disturbed.

(e) In respect of 8 packages awarded to B.V.G. India where breach is alleged, the BBMP shall take steps immediately to resolve the dispute, and in the event the said contracts are terminated, in respect of the same also the tender process shall begin immediately.

f) While framing the tender conditions the Corporation shall bear in mind the observations and directions issued in this order supra and also the orders passed from time to time in the connected public interest litigation and the steps taken and commitment, received by the Corporation from the bulk generators of garbage, as well as industrial houses and group housing associations.

(g) The terms and conditions of tender shall be in conformity with the Municipal Solid Waste (Management and Handling) Rules,

2000.

(h) Parties to bear their own costs.

3. The order passed by this court was challenged by the contractors before the Apex Court in the case of B.R.Ganesh V/s. State of Karnataka & others (SLP (Civil) Nos.23700-23785/2013), which came to be dismissed on 01/08/2013. Therefore, the order passed by this Court, where the aforesaid directions have been given have been upheld.

4. It is submitted by the Corporation in pursuance to the directions issued, fresh tenders have been called for. Now again the said notification has been challenged before this Court in W.P.No.32851/2013 and other connected matters, where after hearing both the parties, an interim order is passed on 26/07/2013 directing the corporation not to open and evaluate the tender documents and finalise the bid. In view of the aforesaid interim order, further directions issued by this Court has come to a standstill.

5. In the meanwhile, we have also issued directions in the public interest litigation insofar as restoring Subramanyapura Lake is concerned, by evicting encroachers of the tank bed. On the last occasion on 28/06/2013, the Chief Engineer, BWSSB, Chief Engineer SWM, Executive Engineer, KSAB, Tahsildar Bangalore South and Superintendent of Survey and Settlement were present in the Court, assuring the Court that by the next hearing date they will be able to implement the orders without any explanation and sought for time.

6. Today it is submitted that they have not implemented the orders passed by this Court because of an interim order of status-quo passed on 02/08/2013 in W.P.No.32882-903/2013. Under the circumstances, the directions issued by this Court in the public interest litigation and the directions issued by this Court in the aforesaid decision, which is now affirmed by the Apex Court are not implemented by the authorities on the ground that the High Court had stayed their actions.

7. Under the circumstances, we deem it proper to place this matter before the Honble chief Justice for appropriate orders. Lest, to avoid such unfortunate situations which would be not only against the public interest which comes in the way of implementing the orders passed by this Court to solve this garbage problem, which has brought a very bad name to the City of Bangalore, which was otherwise known as a Garden City.

Call on 30/08/2013.

**(N. KUMAR)
JUDGE**

**(B.V.NAGARATHNA)
JUDGE**

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