In the High Court of Judicature at Madras

Reserved on : 23.12.2014 & Delivered on : 23-1-2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Writ Petition No.25781 of 2014 and MP.Nos.1 and 2 of 2014

V.Srinivasan ...Petitioner

Vs

The Executive Engineer, Tamilnadu
Water Supply & Drainage Board,
Rural Water Supply Schemes Division,
Villupuram Division, Villupuram. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to issue tender specifications for the tender notice No.06/DB/2014 dated 11.8.2014 on the basis of the petitioner's application dated 20.8.2014.

For Petitioner : Mr.V.Raghavachari
For Respondent : Mr.Vijay Narayan, SC for Mr.S.Eraskine Leo

ORDER

The petitioner, who is a registered contractor with the respondent Board, has come up with the above writ petition seeking the issue of a Writ of Mandamus to direct the respondent to issue tender specifications in respect of a tender notice dated 11.8.2014.

2. Heard Mr.V.Raghavachari, learned counsel for the petitioner and Mr. Vijay Narayan, learned Senior Counsel appearing on behalf of Mr.S.Eraskine Leo, learned Standing Counsel for the respondent Board.

3. The respondent floated a tender on 11.8.2014, for about 20 items of works. The petitioner claims to have applied for the tender schedule in respect of seven out of those 20 items of works. According to the petitioner, he took demand drafts on 19.8.2014 and sent them along with a covering letter dated 20.8.2014, requesting the respondent to release the tender schedules so as to enable him to participate in the bidding process.

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4. According to the petitioner, the time for sale of tender documents was extended first upto 5.9.2014 and later upto 19.9.2014. However, the petitioner was not issued with the tender specifications, forcing him to come up with the above writ petition.

5. On 19.9.2014, I ordered notice in the writ petition and also directed the respondent not to award the contract in pursuance of the tender. Thereafter, the respondent came up with an application for vacating the interim order of injunction. Hence, the writ petition itself was taken up for disposal.

6. As stated earlier, the one and only grievance of the petitioner is that despite the petitioner applying for tender specifications, he was not issued with the same.

7. But, in the counter affidavit, the respondent has taken a stand that the petitioner did not apply for tender schedule at all. It is stated by the respondent in the counter affidavit that in the tender notice dated 11.8.2014, the tenders were floated for the construction of 20 check dams. The last date for sale of the tender schedule was extended upto 18.8.2014. The positive case of the respondent is that the petitioner did not apply for tender schedule at all.

8. The petitioner has produced in his typed set of papers, a copy of the application form dated 20.8.2014, allegedly sent by speed post, enclosing seven demand drafts for the seven contracts, for which, he wanted to apply. The petitioner has also produced the xerox copy of proof of delivery from the office of the speed post. It is on the basis of the copy of the application dated 20.8.2014 and the Postal Department's proof of delivery that the petitioner contends that he made applications for the issue of a tender schedule.

9. But, according to the respondent, what the petitioner sent was only a request for enhancement of his status as a contractor from Class V to Class IV. In order to establish this, the respondent has produced the xerox copies of (i) the relevant pages of the tapal register; (ii) the letter dated 18.8.2014 sent by the petitioner; and (iii) the register relating to tender.

10. In the inward tapal register, there is an indication that the petitioner sent a letter dated 18.8.2014. It is given Serial No.2656. It is indicated therein that what the petitioner sought was only an enhancement of his status as a Class IV contractor.

11. Even the tender register shows that what was received from the petitioner was only an application for enhancement of the contractor status.

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12. However, it is contended by Mr.V.Raghavachari, learned counsel for the petitioner that there are obvious corrections found in the copy of the letter sent by him on 18.8.2014. The copy of the letter dated 18.8.2014 sent by the petitioner for enhancement of his status, was originally initialled by the concerned official with a date 18.8.2014. But, the date 18.8.2014 stands corrected as 21.8.2014 and the same is very visible to the naked eye. According to the learned counsel, the petitioner submitted one application on 18.8.2014 for enhancement of his status. He sent another application on 20.8.2014 seeking tender schedules for the present contract. But, according to the petitioner, the respondent has fabricated the records and produced the letter for enhancement as the only letter received.

13. In the light of the above dispute, which cannot actually be adjudicated beyond a point, I summoned the original application dated 18.8.2014. The original application dated 18.8.2014 submitted by the petitioner contains certain annexures, which the respondent Board could not have manufactured or fabricated. The petitioner did not come up with a case that he had sent two applications simultaneously, one on 18.8.2014 for enhancement of status and another on 20.8.2014 for tender schedule. It was only after the respondent took a stand that they did not receive any application for tender schedule that the petitioner came up with the second story.

14. No reasons are stated by the petitioner as to why the respondent wanted to deliberately keep the petitioner out of this tender. The respondent has gone on record to the effect that even after August 2014, the petitioner was awarded certain contracts. Therefore, there appears to be no mala fides on the part of the respondent to deprive a particular contract to the petitioner. Even according to the petitioner, he has been a registered contractor from the year 2003 and he had also done several projects for the respondent. Unless there are mala fides, there is no reason for the respondent to deliberately refuse a tender schedule to the petitioner in respect of one contract, especially when several contracts were awarded to the petitioner both before and after this particular contract.

15. The question as to whether the letter dated 18.8.2014 is tampered, cannot be adjudicated in detail in a writ petition. The explanation given by the petitioner that the letter for enhancement of status was handed over in person on 18.8.2014 and that the same was later sent by registered post with acknowledgement due, cannot now be verified. Therefore, there are no grounds to interfere with the impugned award of contracts.

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16. Hence, the writ petition is dismissed. No costs. Consequently, the above MPs are also dismissed.

Sd/-
Assistant Registrar
Dated:2.2.15

True Copy

Sub Assistant Registrar

To

The Executive Engineer, Tamilnadu Water Supply & Drainage Board,
Rural Water Supply Schemes Division, Villupuram Division, Villupuram.

+1 cc to Mr.V.Ragahavachari,Advocate,SR.3465

+1 cc to Mr.S.Eroykine Leo, Advocate,SR.3486.

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Order in
WP.No.25781 of 2014 &
MP.Nos.1 and 2 of 2014

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