

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.11.2015

| Date of Reserving the Order | Date of Pronouncing the Order |
|-----------------------------|-------------------------------|
| 04.11.2015                  | 27 .11.2015                   |

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.27208 of 2015

M/s.Namakkal Integrated Waste  
Management Pvt., Ltd.,  
Rep., by its Managing Director Mr.A.Senthil,  
Door No.21/24, Ganesapuram,  
Namakkal Town & District. ... Petitioner

Vs.

1. The Director of Municipal Administration,  
Chepauk,  
Chennai.
2. The Namakkal Municipality,  
Rep., by its Commissioner,  
Paramathi Road,  
Namakkal - 637 001. ... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records of the second respondent pursuant to the tender notification for the disposal of solid waste management dt. Nil and quash the same.

For petitioner .. Mr.V.Karthikeyan  
For Respondents .. Mr.S.Diwakar AGP for R1  
Mr.R.Sivakumar for  
Mr.M.Rajamathivannan for R2

O R D E R

The petitioner has filed this Writ Petition challenging the notification issued by the second respondent calling for tenders

for a Solid Waste Management Project in the respondent Municipality.

2. The case of the petitioner is that they were declared as the highest bidder in the tender proceedings conducted by the second respondent for Solid Waste Management and a concession agreement was executed on 10.03.2008. In terms of the agreement, the petitioner will be allotted a vacant site and the petitioner is required to develop the same, fit to be used for the purpose of Solid Waste Management. The petitioner is said to have spent nearly Rs.3,00,00,000/-, for the purpose of machinery, construction of compound wall and for developing the site. It is stated that the second respondent issued the work order only on 27.01.2011, authorising the petitioner to commence commercial operations from 01.02.2011. Further, it is submitted that the dues payable to the petitioner have been cleared only upto August 2008 and ultimately the agreement was cancelled which according to the petitioner is on untenable grounds. The said cancellation had been challenged by the petitioner in W.P.No.14058 of 2013 and the said Writ Petition was pending, when the present Writ Petition was filed.

3. The petitioner is now aggrieved by the fresh notification issued by the second respondent and it is stated that the entire materials and machinery purchased by the petitioner is in the custody of the second respondent and they will defraud the exchequer by stating as if they have purchased the machinery. The learned counsel for the petitioner after elaborately referring to the factual matrix submitted that the petitioner has invested enormous funds in developing the site, for processing the solid waste and the materials which have been purchased by the petitioner during 2008, when the contract was awarded to the petitioner is still in possession of the second respondent and if the petitioner is not allowed to perform the terms of the agreement they would incur huge financial loss. Further, it is submitted that change of administration of the second respondent Municipality cannot be a ground to change or review the policy decision taken by the earlier administration at the whimsy and fancies of the persons now newly elected.

4. At the time when the Writ Petition was entertained, an interim order was granted on 28.08.2013, directing the second respondent not to finalise the tender until further orders.

5. The learned counsel for the respondent submitted that the impugned tender has been called for strictly as per the provisions of the Tamil Nadu Transparency in Tenders Act, (Act), giving wide publicity and the same was also published in the official website of the Government as well as in the notice board of the second respondent office as per the procedure stipulated under the Act. It is submitted that this fact is

well within the knowledge of the petitioner. It is submitted that the pursuant to the tender notification dated 30.07.2015, pre-bid meeting of interested persons, was held on 14.08.2015 in which eight firms from all over the State participated seeking clarifications. Further, it is submitted that Nine Village Panchayats which were under the erstwhile Panchayat area have been merged with the second respondent Municipality resulting in increase in pollution and consequently resulting in increase in the solid waste, which is generated from 21Metric.Ton to 46 Metric.Ton per day. Therefore, it is submitted that the second respondent passed a resolution on 09.06.2015 and resolved to approve a project at the cost of Rs.852.50 lakhs, for eight categories of work and these infrastructure facilities are in addition to the facilities created under the earlier concession agreement, dated 10.03.2008, entered between the petitioner and the second respondent Municipality. Therefore, it is stated that the present project does not in any manner affect the rights of the petitioner. The learned counsel referred to the other averments made in the counter affidavit which are relating to the termination of the concession agreement and those averments need not be gone into, since the petitioner has subsequently withdrawn the earlier Writ Petition in W.P.No.14058 of 2013, with liberty to initiate arbitration proceedings.

6. The learned counsel for the second respondent referred to the typed set of papers filed by them to demonstrate that wide publicity was given to the tender notification in English and Tamil dailies and its publication in State Tender Bulletin. A sketch showing the Kosavampatti Compost yard lay out has been filed in page 42 of the typed set of papers showing the proposed works for which the impugned tender has been called for.

7. Heard the learned counsels appearing on either side and perused the materials placed on record.

8. Though the prayer sought for in the Writ Petition does not directly challenge the tender notification, but the grounds raised by the petitioner and the arguments advanced by the learned counsel are in effect challenge to the impugned tender. The impugned tender is challenged broadly on two grounds, firstly by contending that the petitioner should be permitted to carry on his works as per the concession agreement, dated 10.03.2008 as they have invested substantial amount of money and the therefore, the impugned tender should not be proceeded with. The second ground of challenge which was urged during the course of argument is that the impugned tender has not been given wide publicity and persons were not aware about the tender. With regard to the first ground of challenge, it is not in dispute that the concession agreement executed in favour of the petitioner, dated 10.03.2008, has since been cancelled. The petitioner filed a Writ Petition challenging the said

cancellation in W.P.No.14058 of 2013, which has been dismissed as withdrawn by order dated 05.11.2015 and the order reads as follows:-

Reference may be made to the order dated 04.11.2015 which reads as follows:-

'After hearing the argument of the learned counsel for the petitioner, this Court pointed out that the order impugned in this writ petition is an order cancelling the contract and in terms of Article 11 of the Concession Agreement dated 10 March 2008, Dispute Resolution is provided under the agreement which has to be done by way of arbitration.

2. Therefore, this Court put it to the learned counsel for the petitioner that the writ petition would not be maintainable and if the petitioner has any grievance, he has to question the same by initiating arbitration and if the petitioner claims for any interim direction, the petitioner's remedy is to move the appropriate Court under Section 9 of the Arbitration and Conciliation Act.

3. Faced with this situation, this Court even suggested that the petitioner may withdraw the writ petition with liberty to proceed under the Arbitration and Conciliation Act.

4. The learned counsel seeks for a day's adjournment.'

2. Today when the matter was taken up, the learned counsel appearing for the petitioner submits that the petitioner may be permitted to withdraw the writ petition and pursue his remedy as provided under the Concession Agreement by resorting to arbitration. He has also made an endorsement in the writ petition to that effect.

3. In view of the submission and endorsement made by the learned counsel for the petitioner, the writ petition is dismissed as withdrawn. No costs. Liberty sought for, is granted.

4. The learned counsel for the petitioner submitted that the petitioner had the benefit of an order of status quo with effect from 09.05.2013.

Since the petitioner was prosecuting the matter before the wrong Forum, this Court is inclined to direct the respondents to maintain status quo for a further period of four weeks from today.

9. In the light of the above, the petitioner is no longer the concessioner of the respondent Municipality and therefore, to state that he should be permitted to perform his part of the contract under the agreement cannot be sustained and it goes without saying that the said cancellation order is subject to the final outcome of the Arbitration proceedings, which the petitioner has agreed to initiate. Therefore, the first ground of which, the impugned tender has been challenged stands rejected.

10. Secondly, it is contended that the impugned tender notification was not given wide publicity. From the counter affidavit filed by the second respondent as well as the documents annexed in the typed set of papers filed along with the counter shows that the tender was widely published in English and Tamil dailies on 30.07.2015, published in the State Tender Bulletin for the month of August 2015, published in the official website of the Government of Tamil Nadu and also stated to be affixed in the notice board in the office of the second respondent. Therefore, this Court is not inclined to accept the submission made by the petitioner that there was no wide publicity to the tender. If the paper publication has been effected and the tender notification has been published in the official website and displayed in the notice board of the respondent, it is sufficient compliance of the provisions of the Act and therefore, the action of the second respondent cannot be faulted. That apart, the tender process has already begun and a pre-bid meeting was held on 14.08.2015 much prior to the petitioner filing the present Writ Petition, which was filed only on 28.08.2015. Thus on the grounds raised by the petitioner, the impugned tender notification cannot be quashed.

11. Accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

pbn

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Director of Municipal Administration,  
Chepauk, Chennai.

2. The Commissioner,  
Namakkal Municipality,  
Paramathi Road,  
Namakkal - 637 001.

+ 1 cc to Mr.M.Raja Mathivanan, Advocate SR 64548

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