

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.Nos.27606 to 27611 of 2015
and
M.P.Nos.1 to 1 & 2 to 2 of 2015

M/s.Yoghasai
rep by its Partner P.Arunkumar
S/o.K.Pattabiraman,
No.5/F1, First Street,
Gopalapuram,
Chennai - 600 086.

...Petitioner in all WPs

-Vs-

1. The State of Tamil Nadu
rep by its Secretary to Government,
Highways Department,
Fort St.George, Chennai - 600 009.
2. The Chief Engineer,
Highways (Construction and Maintenance),
Guindy,
Chennai - 600 032.Respondents 1 & 2 in all WPs
3. The Superintending Engineer,
Highways Department (C & M),
Madurai Circle,
Azhagarkoil Road,
Madurai - 2.3rd Respondent in W.P.No.27606/2015
- 4.The Superintending Engineer
Highways (Construction & Maintenance Circle)
Ellis Chatram Road,
Vazhudhareddy,
Kandamanady Post,
Villupuram 605 401.3rd Respondent in W.P.No.27607/15
and 27610/15

5. The Superintending Engineer
Highways Department
(Construction and Maintenance)
Reserve Line Road
Palayamkottai,
Tirunelveli-2 ...3rd Respondent in W.P.No.27608/2015
6. The Superintending Engineer
Highways Department (C & M)
Chennai Circle
No.299, Anna Salai
Chennai-600 006. ...3rd Respondent in W.P.No.27609/2015
7. The Superintending Engineer
Highways Department
(Construction and Maintenance)
Pudukkottai Road.
Subramaniamapuram,
Trichy-20. ...3rd Respondent in W.P.No.27611/2015

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the Impugned Tender Notification issued by the 3rd respondent in Tender Notice Nos. (1)14/2015-2016/Tha.Va.A dated 28.7.2015 (2) 7/2015-16/HDO, dated 21.07.2015 (3) 10/2015-16/D1, dated 27.07.2015 (4) 08/2015-16/HDO, dated 22.07.2015 (5) 6/2015-16/HDO, dated : 20.07.2015 and (6) 12/2015-16 HDO, dated : 27.07.2015 respectively, and quash the same and consequently directing the respondents to issue fresh notification calling for e-tender by following e-tender method.

For Petitioner : Mr.R.Thirugnanam
in all WPS for M/s.J.Antony Jesus

For Respondents : Mr.P.H.Aravind Pandian, AAG
in all WPs Asst. by Mr.A.Kumar, Spl.G.P.

COMMON ORDER

As the issues involved in these Writ Petitions are one and the same, they are disposed of by this common order.

2. The learned counsel for the petitioner submitted that the order passed by a Division Bench of this Court in W.P.No.28210 of 2014 dated 29.10.2014 has not been complied within the stipulated period, therefore, the present tender process, without having

recourse to the e-tendering system, cannot be sustained in the eye of law. The learned counsel also placed reliance on the interim order passed in M.P.No.2 of 2015 in W.P.No.26352 of 2015 dated 25.08.2015.

3.The learned Additional Advocate General appearing for the respondents submitted that the order passed by this Court is being considered by the Government. As the decision is likely to be taken at the Government level by way of a policy, a Government Order has been passed and further action is in progress. It is also further submitted that the petitioner is not prevented from participating in the tender proceedings. Their tender would be considered based upon the tender conditions and the rules and regulations governing thereof and therefore, no interference is required.

4.This Court in W.P.No.28210 of 2014 dated 29.10.2014 has passed the following order:

"2.In our view, ultimately the tender process has to be managed by the Government authorities and one cannot presume a lack of faith, whether it be a e-tender system or a physical tender system, unless the specific case of malpractice is pointed out. However, there can be little doubt that a e-tendering system facilitates the process and it is not even necessary to visit the office of the concerned authorities, removing man to man contact, which has its own repercussions. The State Government should examine as to why there should not be a consistent policy so long as the facility is available for e-tendering system and the necessary decision in this behalf may be taken within one month of communication of this order."

The said order has been passed so as to enable the Government to formulate a policy. The policy is under consideration. In the meanwhile, the respondents are proceeding with the physical tender. The petitioner cannot be termed as "person aggrieved", since they were not prevented from participating in the tender subject to the conditions about the qualification. The qualification of the petitioner to participate is not an issue before this Court. On a mere apprehension that the decision might be taken on extraneous consideration, this Court cannot entertain these Writ Petitions. There is no direct connection between the order passed by the Division Bench in W.P.No.28210 of 2014 dated 29.10.2014 and the present physical tender, proposed to be proceeded by the respondents.

5.The Writ Petitions are disposed of giving liberty to the petitioner to participate in the tender, if they are otherwise

qualified. The petitioner has not made out a case alleging that by not following the e-tender process they are affected and they are also not prevented from participating in the physical tender. The Writ Petitions are premature in nature. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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6. The Superintending Engineer
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Chennai-600 006.

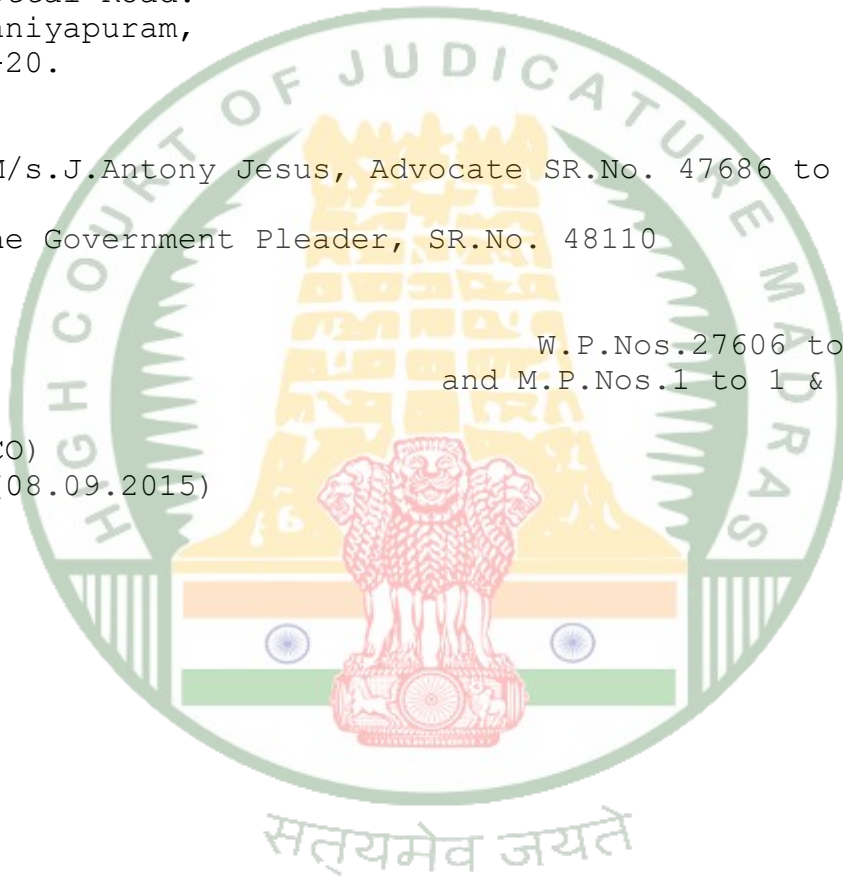
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Highways Department
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Pudukkottai Road.
Subramaniyapuram,
Trichy-20.

6 CCs to M/s.J.Antony Jesus, Advocate SR.No. 47686 to 47701

1 CC to the Government Pleader, SR.No. 48110

W.P.Nos.27606 to 27611 of 2015
and M.P.Nos.1 to 1 & 2 to 2 of 2015

GR + ALA(CO)
PSI, PMK (08.09.2015)



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