

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2015

Coram :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No 3622 OF 2015

and

M.P.No.1 of 2015

R. Rajendren

.. Petitioner

vs.

1. The District Collector,
Namakkal District,
Namakkal.
2. The President, Selection Grade,
Vellur Town Panchayat,
Paramathi Velur Taluk,
Namakkal District.
3. The Executive Officer,
Selection Grade,
Vellur Town Panchayat,
Paramathi Velur Taluk,
Namakkal District.
4. Sivakumar,

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the third respondent in Na.Ka.No.344/2014/A4 dated 02.02.2015 and quash the same and consequently direct the 3rd respondent to award the tender vide proceedings in Na.Ka.No.344/2014/A4 dated 06.01.2015 .

For Petitioner : Mr.N. Suryasenthil

For Respondents : M/s.P.Rajalakshmi
Govt. Advocate (R1)
Mr.R.M.Muthukumar (R2 and R3)
No appearance for R4

O R D E R

Heard the learned counsel for the petitioner and learned Government Advocate appearing for 1st respondent and the counsel appearing for respondents 2 and 3.

2. The petitioner seeks for issuance of Writ of Certiorarified Mandamus to quash the impugned tender notification dated 2.2.2015 and consequently prays to direct the 3rd respondent to award the tender vide proceedings in Na.Ka.No.344/2014/A4 dated 6.1.2015.

3. For collecting of toll from the Daily Market and collection of toll from Daily Vandipettai toll, a tender was invited by the Government by the notification dated 6.1.2005. It is not in dispute that the petitioner was the highest bidder having offered a sum of Rs.3,10,000/- . The 4th respondent is said to have offered only Rs.2,61,400/-. When the petitioner was confident that the tender would be confirmed and work order would be issued, a re-tender notification was issued by the 3rd respondent Town Panchayat and therefore the petitioner has filed this Writ Petition stating that the respondent Town Panchayat has purposely issued the impugned tender notification, so that the petitioner should not be awarded the work and there is a cordial which has been formed between the 4th respondent and 2nd respondent themselves and for all these years, he alone is the successful tenderer and the petitioner being a new entrant, the Town Panchayat is also keeping acting in the manner detrimental to the interest of the petitioner.

4. learned counsel for the respondents pointed out that in terms of Clause 24 of the tender notification dated 6.1.2015, (first tender) grants power for the respondent to call for re-tender, in the event, any persons offers more than 25 percent of the bid amount within 24 hours.

5. It is submitted by the learned counsel for the respondent Town Panchayat that because an offer was made offering more than 25 % more than petitioner's bid within a period of 24 hours, re-notification has been issued and there is no illegality or arbitrariness in their action.

6. Learned counsel for the petitioner submitted that absolutely there is no reasons assigned by the respondent Town Panchayat to invoke Clause 24 of the tender notification dated 6.1.2015. On a perusal of the impugned tender notification dated 2.2.2015, it is seen that the upset price has been fixed at Rs.3,10,000/- which is the offer made by the petitioner. Therefore it is evident that power under Clause 24 of the earlier tender notification has been exercised since an additional offer has been received by the respondent Town Panchayat. Therefore prima facie, there is no error in the impugned re-tender notification.

7. Furthermore, the interest of the petitioner is sufficiently safe guarded in the light of the clause 5 of the tender notification dated 2.2.2015 which states that even if there are no other bidders quoting the amount higher than the admitted scale, then the tender shall be confirmed in favour of the highest bidder and action will be taken to collect the balance amount from the successful bidder.

8. In the circumstances, this court is of the view that there is no error or illegality in the re-tender called for by the 3rd respondent since the respondent Town Panchayat is intending to augment their financial resources. Further, the petitioner would express his apprehension that there will not be fairness in procedures, since cordial has been formed and 4th respondent is said to have been a tenderer for all these years and the same is offered in his name or in the names of two others in his association.

9. In the light of the above submission, while upholding the impugned re-tender notification, there will be a direction to the 1st respondent to appoint an observer who shall be present when the tender notification dated 2.2.2015 is implemented and the tenders are opened on 18.2.2015, so as to ensure that the provisions of the Tender Transparency Act are scrupulously followed and there shall be fairness in procedure and ensure that no cordial formed and ensure that the the tender should be offered in favour of the highest bidder.

10. The Writ Petition is disposed of in the above terms. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

msr

To

1. The District Collector,
Namakkal District,
Namakkal.

2. The President, Selection Grade,
Vellur Town Panchayat,
Paramathi Velur Taluk,
Namakkal District.

3. The Executive Officer,
Selection Grade,
Vellur Town Panchayat
Paramathi Velur Taluk,
Namakkal District.

1 cc to M/s. R.M. Muthukumar, Advocate, sr. 8180

W.P.No 3622 OF 2015

RSI (CO)
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