

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.08.2016

Coram:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.22453 of 2016

and

W.M.P.Nos.19161 and 19162 of 2016

Sri.Veerasundari & Co.,
rep.by its Managing Partner,
S.Palanisamy Petitioner

vs.

The Commissioner,
Dharapuram Municipality,
Dharapuram, Tiruppur District ... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the entire records relating to the impugned order made by the respondent in his proceedings Na.Ka.No.3217/2015/E1, dated 13.06.2016 and consequential notice made in Na.Ka.No.3217/2015/E1, dated 17.06.2016, published in Dailythanthi newspaper on 19.06.2016 by the respondent and quash the same consequently direct the respondent to issue work order to the petitioner on the basis of the tender opened on 27.05.2016.

For petitioner : Mr.C.Prakasam

For respondent : Mr.P.Srinivas

ORDER

The petitioner is a registered contractor with the respondent Municipality, which called for tenders for strengthening, widening and renewal of BT surface to the roads at the cost of Rs.2 crores for the year 2016-2017. Publication was given in newspapers. The petitioner submitted tender and the date of opening tender was on 27.5.2016. The petitioner states that they are L1 and they were informed that after getting administrative sanction, the result of the tenders would be announced. However, on 19.06.2016, the respondent called for

fresh tenders, without cancelling the first tender Notification and therefore, the petitioner has challenged the second tender Notification, dated 13.06.2016 and the consequential notice dated 17.6.2016, published in the Dailythanthi newspaper on 19.06.2016.

2. Heard Mr.C.Prakasam, the learned counsel appearing for the petitioner and Mr.P.Srinivan, the learned counsel appearing for the respondent.

3. It is stated that for non-attestation by the Notary Public, the petitioner's earlier tender was rejected and non-certification by Notary Public will not go to the root of the matter and therefore, the petitioner's tender alone has to be accepted, as per the earlier tender Notification and the second tender Notification has to be quashed.

4. However, Mr.P.Srinivas, the learned counsel appearing for the respondent would submit that when a procedure has been contemplated, the same has to be followed in letter and spirit and there should not be any deviation. If any non-compliance is noted, the same has to be rejected. Further, the petitioner participated in the second tender and their bid turned out to be L2 and the third party's bid is L1. Therefore, the learned counsel seeks to dismiss the writ petition.

5. Though non-attestation of a Notary Public will not go to the root of the matter, while submitting the tender, as an experienced contractor, the petitioner should have been vigilant enough to see that all the terms are complied with. Even otherwise, the petitioner has participated in the auction proceedings, pursuant to their second tender and therefore, the petitioner's contention has become only academic. Having participated in the second tender, the petitioner waived their right to challenge the first tender. Moreover, the petitioner also is stated to be L2 and therefore, the writ petition is liable to be dismissed, in view of the subsequent developments.

Accordingly, the writ petition is dismissed. No costs. Connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

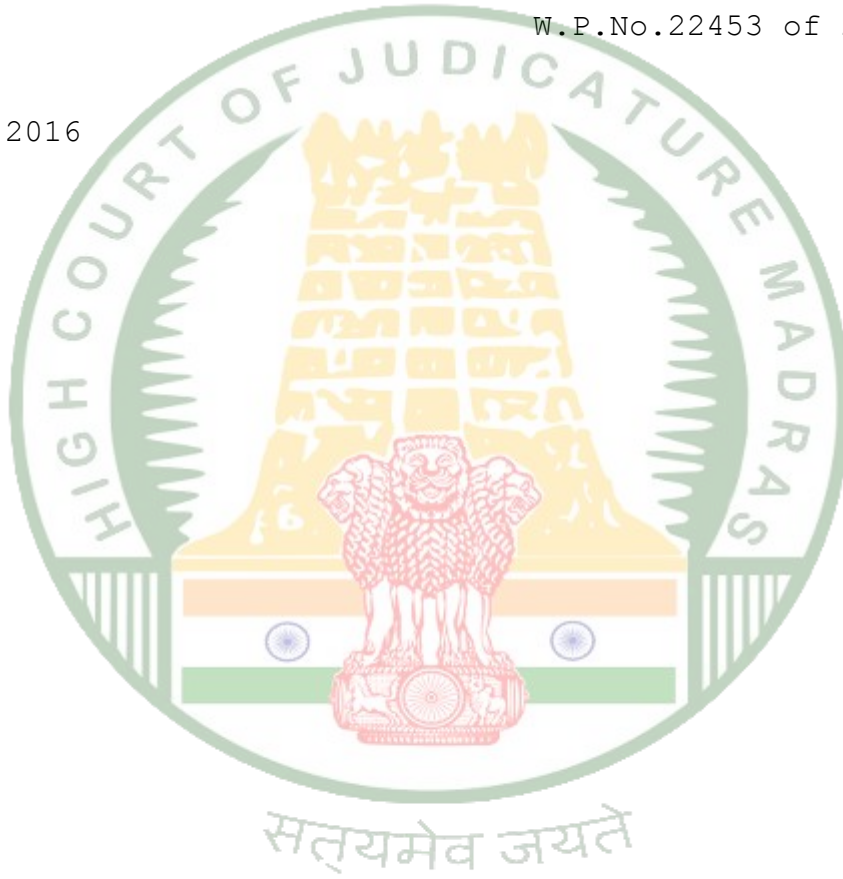
msk

To
The Commissioner,
Dharapuram Municipality,
Dharapuram, Tiruppur District

1 cc to M/s.C.Prakasam, Advocate, sr.48082
1 cc to M/s.P.Srinivas, Advocate, sr.47788

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rp co
kra 07.09.2016



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