

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.08.2016

Coram:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.Nos.24988 & 24989 of 2016

S.Saidalavi ... Petitioner in both the W.Ps.

vs.

1.The Director of Municipalities,
Ezhilagam,
Chepauk, Chennai.

2.The District Collector,
The Nilgiris.

3.The Municipal Commissioner,
Nelliyalayam Municipality,
Pandalur Post, The Nilgiris... Respondents in both the W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the third respondent to adhere to the terms of the Tender Notice bearing Na.Ka.Nos.1310/2015/E1 and 1310/2016/E1, dated 01.07.2016, respectively, particularly with reference to the qualifications of the participants in the tender.

For petitioner : Ms.P.T.Asha for
M/s.Sarvabhauman Associates

For respondents : Mr.T.M.Pappiah, Special Govt. Pleader
for R1 and R2
Mr.C.Manishankar, Addl.Advocate General
Assisted by Mr.M.Digvijaya Pandian,A.G.P.
for R3

COMMON ORDER

The petitioner, who is a registered contractor with the third respondent has come before this Court, seeking writ of mandamus to direct the third respondent to adhere to the terms of the tender Notices bearing Na.Ka.Nos.1310/2015/E1 and 1310/2016/E1, dated 01.07.2016, respectively.

2. The case of the petitioner is that there are twenty nine contractors, including the petitioner, registered with the

third respondent Municipality. The petitioner is at Serial No.19 in the list displayed by the third respondent.

3. The third respondent issued two tender notices bearing Na.Ka.Nos.1310/2015/E1 and 1310/2016/E1, dated 01.07.2016, for various works. The tender notifications speak about the participation of the Registered contractors with the third respondent Municipality. As per the Notifications, after deposit of earnest money, the tenders will be accepted and it will be opened in the presence of the bidders, on 15.07.2016 and 14.07.2016, respectively. However, the third respondent allowed unregistered contractors also to participate in the tender process, by receiving bids from them, contrary to the Notifications and therefore, the petitioner has come before this Court seeking to direct the third respondent to adhere to the terms of the tender Notices bearing Na.Ka.Nos.1310/2015/E1 and 1310/2016/E1, dated 01.07.2016.

4. Heard Ms.P.T.Asha, learned counsel appearing for the petitioner, Mr.C.Manishankar, learned Additional Advocate General appearing for the third respondent and Mr.T.M.Pappiah, learned Special Government Pleader appearing for R1 and R2.

5. Even though many contentions were raised by the learned counsel for the petitioner, relying upon the Engineering Manual for Urban Local Bodies in Tamil Nadu, the learned counsel stressed the point that only Registered contractors alone are eligible to participate in the tender process.

6. On a perusal of the Engineering Manual for Urban Local Bodies in Tamil Nadu, it is discernible that there is no embargo on the Municipalities to receive the applications/bids from unregistered contractors. Annexure (1), namely, Rules for Registration of contractors with the Municipalities, describes about the process of registration of the contractors with the respective Municipality. Rule 1.1.3 gives the details about the processing of the application. The relevant Rule 1 is usefully extracted hereunder:

"1. As the works carried out in Municipalities are similar to works in P.W.D., Highways etc., tender schedules may be issued to contractors registered in appropriate class in P.W.D., TWAD, Highways/Central PWD/Railways. In addition to contractors registered with the Municipalities in the appropriate class. However, the successful contractor who has his name registered in other departments shall register himself as a contractor in the concerned Municipality in the appropriate class before issue of work order."

From the above it is clear that in addition to the contractors registered with the Municipalities in the appropriate class, the contractor, who has, his name registered in other departments shall also register himself as a contractor in the concerned Municipality in the appropriate class before issue of work order. What is contemplated is the contractors registered with other departments and municipalities can also participate in any Municipality and what is required to be done is to register himself or themselves as contractors in the concerned Municipality, in the appropriate class before issue of work order. Therefore, the sole point that only a registered contractors alone are entitled to participate in the tender process is not sustainable.

7. Moreover, allowing only a few registered contractors alone to participate in the tender process will prejudice the interest of the Municipality or Department and it will enable those people to form syndicate, so that nobody bids more than the amount decided by them. Any auction should be open to all, of course, with certain conditions. In this case, the vociferous contention of the learned counsel for the petitioner that only registered contractors alone are entitled to participate in the tender process is not sustainable in view of my discussion supra and accordingly, the said contention is rejected.

8. However, the third respondent should also be careful in the process of inviting contracts. When the Engineering Manual speaks about the procedure for inviting tenders and the classes of persons from whom it has to be invited, the same has to be scrupulously followed.

9. Since the petitioner contents that there is violation in the process, it is appropriate to direct the respondents to abandon the Notifications and invite fresh tenders, by following the Engineering Manual For Urban Local Bodies in Tamil Nadu and other Rules in existence, which will enable the appropriate persons to take part in the tender process and accordingly it is ordered.

The writ petitions are disposed of accordingly. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Director of Municipalities,
Ezhilagam,
Chepauk, Chennai.

2.The District Collector,
The Nilgiris.

3.The Municipal Commissioner,
Nelliyalayam Municipality,
Pandalur Post, The Nilgiris.

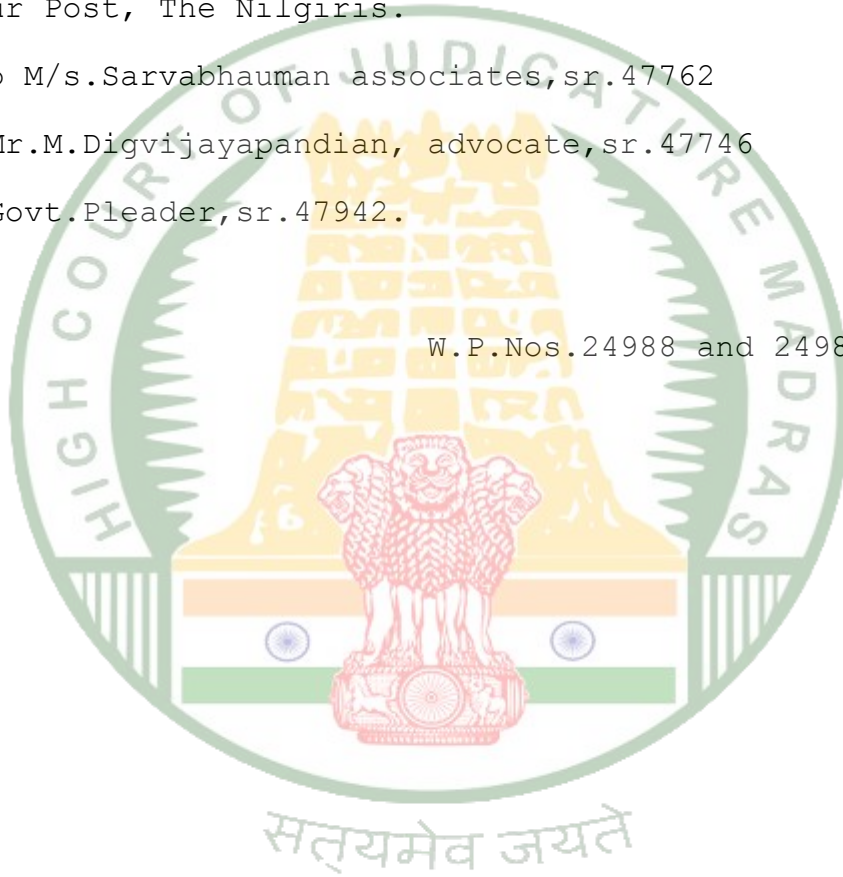
+2 cc's to M/s.Sarvabhauman associates,sr.47762

+1 cc to Mr.M.Digvijayapandian, advocate,sr.47746

+1 cc to Govt.Pleader,sr.47942.

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krd 30/8

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