

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.6306 of 2016
and
W.M.P.No.5622 of 2016

K.Manikandan

... Petitioner

Vs.

1. The Chief Engineer,
National Highways,
Chepauk, Chennai-600 005.

2. The Regional Officer,
Ministry of Road Transport & Highways,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

3. The Superintending Engineer,
National Highways,
Tirunelveli-627 011.

4. The Divisional Engineer,
National Highways,
Nagercoil-629 001.

5. J.Senthilkumar

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 to 4 to forbear from finalising the tender process pursuant to the Tender Notice No.25/2015-2016/DO dated 25.01.2016 of the 3rd respondent.

For Petitioner : Mr.A.Thiagarajan, Senior Counsel
for M/S.S.Chandrasekar

For respondents : Mr.P.H.Arvind Pandian, AAG-III
assisted by Mr.P.Sanjay Gandhi,
Additional Government Pleader

ORDER

The present writ petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, to forbear the respondents from finalising the tender process pursuant to the Tender Notice No.25/2015-2016/DO dated 25.01.2016 of the 3rd respondent.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The 3rd respondent herein, Superintending Engineer, National Highways, Tirunelveli, vide Tender Notice No.20/2015-2016/DO, dated 19.10.2015, invited bids through online for construction work for improvements to be made in Parasei-Monday Market - Pudukadai Road in KM 0/0-15/8 and Km 17/2-25/7 (SH-91), Kanyakumari District, Tamil Nadu. The value of the work is Rs.2143.10 lakhs. The bid security amount was fixed as Rs.32.15 lakhs. The period given for completion of works is 10 months. The bid was under Two Cover System. It was stated in the tender notice that bids must be submitted online on or before 15.00 hours on 24.11.2015. Further, the bids received online shall be opened at 15.15 hours on 02.12.2015 in the office of the 1st respondent, Chief Engineer, in the presence of the bidders who wish to participate in the tender. But, the said tender notice was cancelled on the ground that there was only one bidder namely M/s.MJD Construction and Engineering Contracts (P) Ltd. According to the petitioner, the said bid was cancelled at the instance of the 5th respondent herein.

2-2.Later, another Tender Notice No.21/2015-2016/DO dated 03.12.2015 was issued by the 3rd respondent, Superintending Engineer, to do the same construction in the area mentioned in the earlier tender notice. The value of the work, the bid security amount and the period of completion were also the same. The bid was under Two Cover System. The last date for submission of bid was fixed as 21.12.2015 at 15.00 hours. It was stated that the bids received shall be opened at 15.15 hours on 29.12.2015 in the office of the 1st respondent, Chief Engineer at Chennai in the presence of the bidders who wish to participate in the tender. The petitioner herein submitted his bid along with four other bidders. Therefore, there were five bidders including the petitioner. The names of the bidders are given below_

- i)J.Senthilkumar
- ii)M/s.Immaneal & Co,
- iii)M/s.Suganya Constructions
- iv)MJD Construction and Engineering Contracts (P) Ltd.,
- v)K.Manikandan (petitioner herein)

Out of the above five bidders, only two namely M/s.Immaneal & Co, and K.Manikandan (petitioner herein) were qualified. At the time of opening the tender, the petitioner raised

objections in relation to the 5th respondent's bid especially in regard to the 'turnover' and 'on-going balance work' details submitted by him, as the same were incorrect. The Evaluation Committee of the Technical Bid consisting of the respondents herein found that the 5th respondent does not meet the requirement of bid capacity criteria and rejected his bid.

However, again the tender notification was cancelled by the official respondents without assigning any reason.

2-3. Thereafter, once again the 3rd respondent, Superintending Engineer, issued another Tender Notice No.25/2015-2016/DO dated 25.01.2016, inviting bids through online for construction work for the same stretch of area given in the first tender notice. The value of the work is Rs.2143.10 lakhs as given earlier. The bid security amount was fixed as Rs.32.15 lakhs and the period given for completion of works is 10 months again as given earlier. The bid was under Two Cover System. It was stated in the tender notice that bids must be submitted online on or before 15.00 hours and 15.02.2016. Further, the bids received online shall be opened at 15.15 hours on 16.02.2016 in the office of the 1st respondent, in the presence of the bidders who wish to participate in the tender. As per the notification, the date of the opening of technical bids is 16.02.2016 at 15.15 hours. The petitioner participated in the technical bids along with three others viz., J.Senthilkumar, Ms.Immanueal & Co, M/s.MJD Construction and Engineering Contracts (P) Ltd.

2-4. It is stated by the petitioner that at the time of opening the technical bid, it was pointed out by the petitioner that the 5th respondent was disqualified in view of the fact that the Evaluation Committee which evaluated the earlier tender (vide Tender No.21/2015-2016/DO dated 03.12.2015), found him not satisfied the required criteria and if he has shown some credentials in the present bid that surely cannot be true and his bid should be rejected. This is primarily because that in such a short time, it is not possible to meet the said criteria by the 5th respondent. But, the official respondents are inclined to favour the 5th respondent in one way or the other to get the tender. Hence, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner submitted that earlier the Tender Notice No.21/2015-2016/DO, dated 03.12.2015, was issued by the 3rd respondent, inviting bids through online for construction work for improvements to be made in Parasei-Monday Market - Pudukadai Road in KM 0/0-15/8 and Km 17/2-25/7 (SH-91), Kanyakumari District, Tamil Nadu. The value of the work is Rs.2143.10 lakhs. The bid security amount was fixed as 32.15 lakhs. The period given for completion of works is 10 months. The bid was under Two Cover System. In the said tender, the 5th respondent's bid was rejected by the official respondents, stating that the bid capacity of the 5th respondent works out to Rs.1880.79 lakhs as

against required Rs.2143.10 lakh and he does not meet the requirement of bid capacity criteria. However, the said tender notice itself was cancelled by the official respondent without assigning any reason. Again the 3rd respondent issued another tender notice dated 25.1.2016 for the same work, within a period of four days from the date of cancellation of the earlier tender notice. It is not possible for the 5th respondent to qualify himself for the tender within a period of four days. Though the petitioner raised his objection for the 5th respondent participating in the tender, as his earlier tender was rejected on the ground that he does not meet the requirement, and within four days it is not possible for him to qualify for the tender. However, the 5th respondent was allowed to participate in the tender by the official respondents. Now, according to the learned counsel for the petitioner, it is the intention of the 3rd respondent to help the 5th respondent to get the tender, one way or the other.

4.However, by filing a detailed counter, the learned Additional Advocate General submitted that further action for opening the Technical Bids will be taken only after the receipt of the communication from the Ministry and it is incorrect to state that already technical bid was opened on 16.02.2016 in order to accept the 5th respondent's bid. Further, the date of opening the technical bid will be intimated to the tenders. Since the technical bid itself is not opened, the present writ petition is not maintainable. Thus, the learned Additional Advocate General sought for dismissal of the writ petition.

5.Heard both sides and perused the materials available on record.

6.In view of the statement made in the counter as well as the submission made by the learned Additional Advocate General that the technical bid has not been opened so far, I am of the opinion that the present writ petition is premature in nature and the same is liable to be dismissed.

7.Accordingly, the writ petition is dismissed. However, the petitioner is at liberty to raise his objections at the time of opening the tender, before the concerned authorities. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Engineer,
National Highways,
Chepauk, Chennai-600 005.
2. The Regional Officer,
Ministry of Road Transport & Highways,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.
3. The Superintending Engineer,
National Highways,
Tirunelveli-627 011.
4. The Divisional Engineer,
National Highways,
Nagercoil-629 001.

+1cc to Mr.S.Chandrasekar, Advocate, S.R.No.12328
+1cc to Mr.P.Puhazh Gandhi, Advocate, S.R.No.12329
+1cc to the Government Pleader, S.R.No.12574

W.P.No.6306 of 2016
and
W.M.P.No.5622 of 2016

KSJ(CO)
CA(03/03/2016)



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