

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.14863 of 2017
and
W.M.P.No.16106 of 2017

Mr.A.Senthil Kumar

.. Petitioner

Vs.

1. The Secretary,
Rural Development & Panchayat Raj Department,
Government of Tamil Nadu, Chennai.
2. District Collector,
Chairman-District Rural Development Agency
Collectorate, Salem.
3. Project Director, District Rural Development Agency
Collectorate, Salem
4. M/s.Valampuri Industries
Rep. by its Proprietor Mr.M.Ramamoorthy
No.2B, Thiyagi Kumaran Street,
P.N.Puodur, Coimbatore-641 041.
(Impleaded as per order dated 05.10.2017
in W.M.P.No.17208 of 2017 in W.P.No.14863 of 2017)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to forbear respondents 2 and 3 herein from proceeding with the e-Tender process with regard to Tender Ref: Roc.No.389/2017/A6 without including the petitioner's bid submitted by M/s.SURYA Industries and further direct the respondents to consider the petitioner's bid afresh before making a final decision with regard to Technical Bid.

For Petitioner : Mr.S.Manuraj

For Respondents: Mr.K.Venkatramani,

Addl. Advocate General,

assisted by Mr.P.V.Selva Kumar,

Addl.G.P.for RR-1 to 3

Mr.S.Dhassaiya for R-4

ORDER

The petitioner has come forward with above Writ Petition praying for issuance of a Writ of Mandamus to forbear the respondents 2 and 3 herein from proceeding with the e-Tender process with regard to Tender Ref: Roc.No.389/2017/A6 without including the petitioner's bid submitted by M/s.Surya Industries and further direct the respondents 1 to 3 to consider the petitioner's bid afresh before making a final decision with regard to the Technical Bid.

2. The case of the petitioner is that the petitioner is the proprietor of M/s.Surya Industries, which is a registered Unit under the Small Scale Industries and National Small Industries Corporation Limited. The third respondent issued 'invitation for pre-qualification application and price bid' with Tender Reference in Roc.No.389/2017/A6 for the e-Tender to be held on 06.04.2017. The above e-Tender issued after the approval of the respondents 1 and 2, was for 'rate contract for the supply of pushcart for garbage handling' for Village Panchayats in Salem District for one year period. The petitioner submitted the electronic bid through e-Tendering system within the stipulated time and satisfied all eligibility criteria as mentioned under Clause 3 of the Technical Bid (pre-qualification). It is the further case of the petitioner that he received an e-mail on 07.06.2017, whereby the third respondent rejected the petitioner's bid submitted by M/s.Surya Industries (on behalf of the petitioner) due to non-submission of inspection report from the Executive Engineer, DRDA. There are two parts of bid and when there was time to apply and obtain the inspection report till the price bid was pending, the petitioner's bid was rejected at the stage of technical bid. The petitioner submitted that two other firms have been qualified for the price bid and even according to the petitioner, even the request of those firms have got to be rejected. But unfortunately, one of the two persons have been held to be a successful bidder. According to the petitioner, for the earlier period, the petitioner has participated and was successful bidder and there was no complaint against the petitioner. It is the further averment of the petitioner that on coming to know of the request being rejected on 07.06.2017, the petitioner made a representation on 08.06.2017, which was received by the respondents on 09.06.2017, but there has been no communication with regard to the rejection.

3. Learned counsel for the petitioner contended that in terms of Clause 20.6 of the Technical Bid (Pre-qualification) Two Cover System, which states that "the result of evaluation of Part I of the Bids shall be made public on e-procurement

following which there will be a period of 5 working days during which any Bidder may submit complaint which shall be considered for resolution before opening of Part II of the bid. Any complaint shall be dealt with in accordance with complaint handling protocol as available on the e-procurement portal, www.tntenders.gov.in", the complaint shall be dealt with in accordance with the complaint handling protocol as available on the e-procurement portal. It is further submitted by the learned counsel for the petitioner that without waiting for the cooling period of five days, the respondents, in order to help the henchmen, has declared the successful bidder and by stroke of a pen, rejected the request of the petitioner.

4. Though no counter affidavit has been filed by the respondents, Mr.K.Venkataramani, learned Additional Advocate General assisted by Mr.P.V.Selvakumar, learned Additional Government Pleader, appearing for the respondents 1 to 3 contended that the petitioner has participated in the e-tender process, but the contention that the request of the petitioner was not considered and that there is contravention of Clause 20.6 stated supra, may not be correct. It is his further contention that after perusing that necessary documents have not been produced, the request of the petitioner had been rejected, for which, an objection/complaint was given by the petitioner on 08.06.2017 and the same was received on 09.06.2017, but due to the fact that the contract is only for a period of one year, the complaint received by the respondents would be immediately disposed of and in that process, the request of the petitioner, dated 08.06.2017 received, was rejected on the very next day, i.e. on 09.06.2017. Learned Additional Advocate General also produced the files to show that a detailed order had been passed and the reasons for rejection of the request of the petitioner, had been duly given. Hence, since due process of the procedures contemplated under law, had been followed and that the petitioner being unsuccessful bidder and that the successful bidder had been declared successful, the petitioner may not be entitled to any relief.

5. On the facts of the case, this Court also heard the submissions of the learned counsel for the fourth respondent, i.e. M/s.Valampuri Industries, which is the successful bidder.

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

7. It is not in dispute that the petitioner participated in the price bid and made application within the deadline. It is also not in dispute that the petitioner's bid was rejected on 07.06.2017, for which the objection was given by the petitioner on the very next day, and on 09.06.2017, the objection was considered and rejected. Though in terms of Clause 20.6 of the

Technical Bid (Pre-qualification) Two Cover System, there should be a waiting period of five days, as the petitioner's request had been rejected on the very next day, the petitioner cannot have any grievance and contend that they have to wait for a period of five days, even though there is possibility of other unsuccessful bidders to make a complaint. The petitioner can confine the relief only to himself and not plead for others who are not before this Court, even though the successful bidder had been impleaded as fourth respondent on his own application before this Court.

8. Of course, even on the very next day of the date of rejection of the request of the petitioner by the respondent, i.e. on 09.06.2017 itself, the petitioner has filed this Writ Petition. But the petitioner was not aware of the facts about the successful bidder, who was only subsequently impleaded on his own application in this Writ Petition. Similarly, the petitioner has not brought to the notice of this Court about the rejection order dated 08.06.2017 and here also, the benefit of doubt will have to go in favour of the petitioner, as the order could not reach him, as there is no endorsement that the communication had been sent by e-mail to the petitioner.

9. As there is no violation of any of the procedures adopted by the respondents with regard to the result for evaluating Parts I and II bids, I find that there is no merit in the Writ Petition, which is accordingly dismissed. No costs. W.M.P. is closed.

10. Before parting with the case, this Court appreciates Mr.S.Manuraj, learned counsel for the petitioner who has just put in 18 months in the Bar, who has presented this case before this Court very neatly and calmly.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

CS

To

1. The Secretary,
Rural Development & Panchayat Raj Department,
Government of Tamil Nadu,
Chennai.

WEB COPY

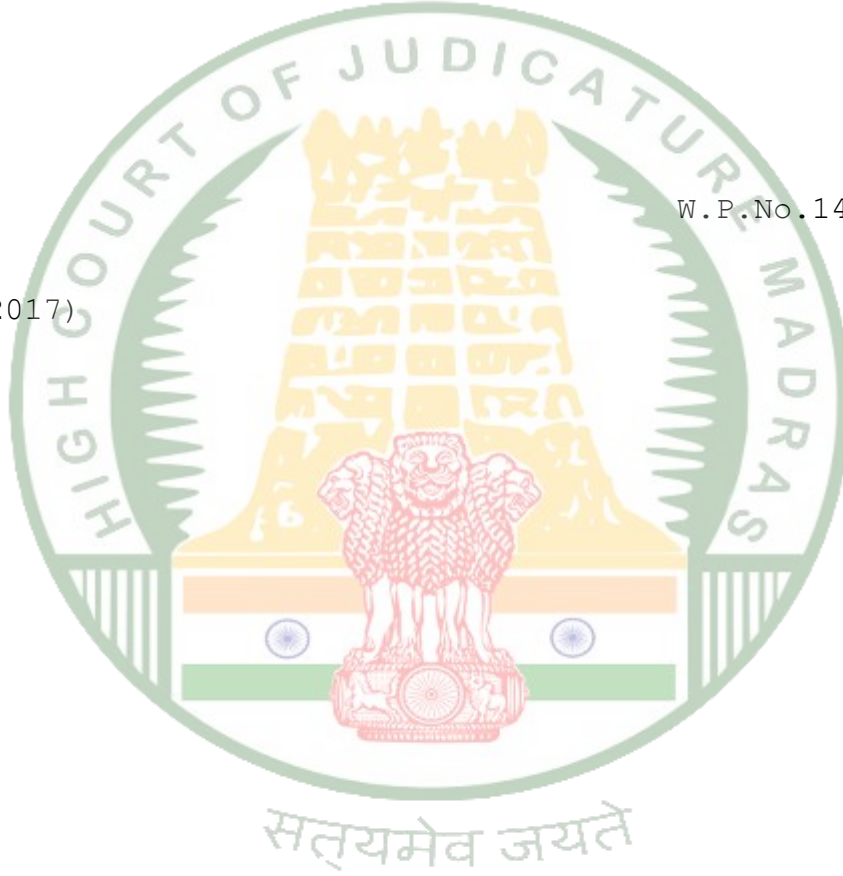
2. District Collector,
Chairman-District Rural Development Agency
Collectorate, Salem.

3. Project Director,
District Rural Development Agency
Collectorate, Salem

+1 cC to Mr.S. Manuraj, Advocate sr 73433.
+1 Cc to Ms. Dhassaiya, Advocate sr 73438.
+1 Cc to The Govt. Pleader sr 73380.

NMI (CO)
SP(10/11/2017)

W.P.No.14863 of 2017



WEB COPY