



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2017

CORAM

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THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD)Nos.496, 497, 577 and 578 of 2017
and C.M.P.(MD) Nos.4225 and 4711 of 2017 in W.A.(MD) No.496 of
2017

W.A.(MD) Nos.496 & 497 of 2017:

M/s.Senthil Pile Foundation,
Malar Illam,
Rep. by Authorized Signatory,
M.Senthilkumar,
47/21, Hebar Road Main,
Beema Nagar, Trichy - 620 001.

... Appellant/Petitioner
in both appeals

Vs.

- 1.The Chief Engineer,
TWAD Board, Eastern Region,
No.37, 1st Floor, Easwari Nagar,
M.C. Road, Tanjore - 613 004.
- 2.The Executive Engineer,
TWAD Board, Urban Division,
Sub Training Circle Campus,
J.K. Nagar, Khaja Malai Post,
Trichy - 620 023.
- 3.M/s.Madras Switchgear Pvt. Ltd.,
Plot No.154, Ground Floor,
Lakshmi Nagar, 8th Cross Street,
Porur, Chennai - 600 116.

... Respondents/Respondents in
both appeals

W.A.(MD) Nos.577 & 578 of 2017:

- 1.The Chief Engineer,
TWAD Board, Eastern Region,
No.37, 1st Floor, Easwari Nagar,
M.C. Road, Tanjore - 613 004.



2.The Executive Engineer,
TWAD Board, Urban Division,
Sub Training Circle Campus,
J.K. Nagar, Khaja Malai Post,
Trichy - 620 023.

... Appellants/Respondents 1 & 2
in both appeals

Vs.

1.M/s.Senthil Pile Foundation,
Malar Illam,
Represented by Authorized Signatory,
M.Senthilkumar,
47/21, Hebar Road Main,
Beema Nagar,
Trichy - 620 001.

... 1st Respondent/Writ Petitioner

2.The Madras Switchgears (P) Ltd.,
Plot No.154, Ground Floor,
Lakshmi Nagar, 8th Cross Street,
Porur, Chennai - 116.

... 2nd Respondent/2nd
Respondent in both appeals

Writ Appeals filed under Clause 15 of Letter Patent against
the common order passed by this Court in W.P.(MD)Nos.18506 of 2016
and 1749 of 2017 dated 13.04.2017.

Prayer in WP(MD). 18506/ 2016 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Certiorarified Mandamus to call for the records of impugned order
in Letter No.4104/F.Musiri WSIS/2016/1/SDO-2 dated 16.09.2016 and
quash the same and consequently direct the first respondent to
evaluate the technical bid by considering the certificates
submitted by the petitioner.

Prayer in WP(MD). 1749/ 2017 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Certiorari calling for the records of the Respondents, pertaining
to the Order of the 1st Respondent in Letter No.4104/F, Musiri TP
WSIS/SDO-2/2016/Dt. 16.09.2016 and all consequential orders and
quash the same.

For Appellant in W.A.(MD)	: Mr.M.Doraisamy
Nos.496 & 497 of 2017 &	Senior Counsel for
1st Respondent in W.A.(MD)	Mr.Kandhan Duraisamy



For Respondents 1 & 2 in
W.A.(MD) Nos.496 & 497 of
2017 & appellants in W.A.(MD)
Nos.577 & 518 of 2017

: Mrs.Porkodi Karnan

For 3rd Respondent in
W.A.(MD) Nos.496 & 497 of
2017 & 2nd Respondent in
W.A.(MD) Nos.577 & 518 of 2017

: Mr.AR.L.Sundaresan
for Mr.V.Panneer Selvam

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J)

The appellant in W.A.(MD) Nos.496 & 497 of 2017 and 1st Respondent in W.A.(MD) Nos.577 & 518 of 2017 (hereinafter referred to as appellant) is a proprietary concern having 25 years of experience in the water supply projects. The Respondents 1 & 2 in W.A.(MD) Nos.496 & 497 of 2017 and appellants in W.A.(MD) Nos.577 & 518 of 2017, (hereinafter referred to as the TWAD Board) invited tender towards providing water supply improvement scheme to Musiri Town Panchayat with one year maintenance. The project was supposed to be completed within 18 months. The appellant along with the 3rd Respondent in W.A.(MD) Nos.496 & 497 of 2017 and 2nd Respondent in W.A.(MD) Nos.577 & 518 of 2017 (hereinafter referred to as 3rd respondent) submitted their bids. A communication was issued to the appellant on 16.09.2016 rejecting the tender application of the appellant. It was challenged by way of filing Writ Petition in W.P.(MD) No.18506 of 2016. Thereafter, the respondent No.3 was given work order on the same day i.e., on 16.09.2016. It was challenged by a subsequent writ petition in W.P.(MD) No.1749 of 2017.

2.The appellant's tender was rejected apparently on the ground that the experience certificate produced was not found acceptance. It was issued by the Joint Chief Engineer (Tsunami), Chennai. Expressing certain doubt over it, a clarification was sought for. A reply was sought for by the Engineering Director in Letter No.F.ETRP / DO / PDC / 201 dated 13.06.2016, which is extracted below:

"Anent the reference cited, it is informed the following:

> The certificate issued by the then Joint Chief Engineer (Tsunami) doesn't contain subject or File No. references etc., and also not available in Head office records in Project Development Cell (PDC).

> The Joint Chief Engineer (Tsunami) had issued the said certificate in his personal capacity, whereas it has to be issued only by the executing authority.

Hence, this certificate need not be considered as a valid document."

The appellant was made known about this. Thereafter, another certificate was obtained from some other competent authority. It was given on 22.08.2016. Notwithstanding the same, the tender of the respondent No.3 was confirmed and work order was issued.



3. Before the learned Single Judge, several grounds have been raised including non-compliance of Sections 6 and 10 of the Tamil Nadu Transparency in Tenders Act, 1998. These Sections speak about the Transparency, mandating the official respondents to inform the Tender Bulletin Officers name and address of the tenderer whose tender has been accepted and the reasons for accepting the tender. A time schedule has also been given there.

4. The learned Single Judge gave a strong finding in favour of the appellant with reference to procedural non-compliance, which includes non publication in bulletin, the tender details at every stage and not providing reasons for acceptance of the tender in favour of respondent No.3. The contention of the respondents by placing reliance on sub-clause (1) of Rule 26 of the Tamil Nadu Transparency in Tenders Rules, 2000 was not accepted by the learned Single Judge. However, the learned Single Judge declined to exercise his discretion on the premise that the Public Interest warrants continuation of the project, being a time bound one and much water has flown under the bridge as substantial work has already been done by the respondent No.3. Challenging the same, the present appeals have been filed.

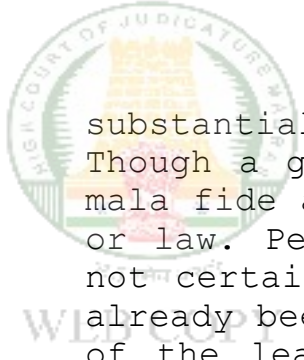
5. In sum and substance, the learned Senior Counsel would submit that the finding rendered by the learned Single Judge will have to be culminated into a positive decision in favour of the appellant. The reasoning for rejection of the tender of the appellant is not correct. It is not correct to hold that substantial work has been completed. Even as per programme schedule at best only two quarters of the work must have been completed.

6. The learned Senior Counsel appearing for the 3rd respondent submitted that nearly 90% of the work was completed. The programme schedule is only a guideline. The mile stone has been crossed by completing substantial work. The order has been placed for completion of work along with other persons by taking into consideration the time schedule. It is further submitted that the appellant was duly informed about the decision, though orally, that is the reason why it has given certificate for the second time. Thus, no interference is required.

7. By way of reply, the learned Senior Counsel appearing for the appellant submitted that the learned Single Judge is wrong in stating that no mala fide has been raised as such plea has been raised in the affidavit filed in support of the writ petition.

<https://hcservices.ecourts.gov.in/hcservices/>

8. A challenge to a tender process stands on a limited ground. Thus, Judicial review is also limited one. We find a



substantial non-compliance of the procedure by the authorities. Though a ground of mala fide has been raised, we do not find any mala fide as such. An issue of mala fide is with respect to a fact or law. Perhaps, this case at best be a case of legal malice but not certainly a factual one. We find that a substantial work has already been done. Even assuming that we agree with the submission of the learned Senior counsel for the appellant, the only other way open to us is to ask the Twad Board to re-do the exercise once again. This will affect the public interest on two grounds. Firstly, it will delay the fate of on going project. Secondly, the work done would be put at naught. Suffice it to state that the private respondent cannot be vested at fault. Therefore, looking from any perspective we do not find any error in the final conclusion arrived by the learned Single Judge.

9. Accordingly, we concur with the ultimate conclusion arrived at by the learned Single Judge. Thus, while dismissing the Writ Appeals, we make it clear that the observations of the learned Single Judge with respect of the entitlement of the appellant to seek remedy before the Civil Court is kept intact. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub-Assistant Registrar

+One cc to M/s.Muthumani DuraiSami, Advocate, SR.No.70484

+2ccs to Mr.V.Panneerselvam, Advocate, SR.No.70817

+2ccs to M/s.Porkodi Karnan, Advocate, RS.Nos.71166 and 71167

sj

RL/6C/5P/SKN/RSK/SAR1/31/8/2017

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