

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 23.06.2017

CORAM:

WEB COPY

THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.A. (MD) No.828 of 2017
and
C.M.P. (MD) No.5692 of 2017

The Chief Engineer
TWAD Board, Madurai

... Appellant/Respondent

-vs-

1. K.K.P.Constructions
through its Managing Partner
Kadarkaraiyapillai
S/o.Subbaiah Pillai
29/1, Kasthuribai Nagar 3rd Street
Melur, Madurai District

2. M/s.ECO Protection Engineering Pvt., Ltd.,
rep.by its Managing Director
Plot No.943, 54th Street
T.V.S.Colony, Anna Nagar West Extension
Chennai-600 101

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 26.05.2017 in W.M.P.(MD) No.7723 of 2017 in W.P.(MD) No.10064 of 2017, on the file of this Court.

Prayer in WMP(MD). 7723/ 2017 :

To grant an order of interim injunction restraining the 1st respondent to allot any work to the 2nd respondent on the basis of the impugned order passed by the 1st respondent in his proceedings Lr.No.F.Melur CWSS-Pack II Part IV/SDO II (CW)/ 2017-1 dated 06.04.2017 pending disposal of the above writ petition.

Prayer in WP(MD). 10064/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari and Mandamus to call for the records pertaining to the impugned order passed by the 1st respondent in his proceedings



Lr.No.F.Melur CWSS-Pack II Part IV/SDO II (CW)/ 2017-1 dated 06.04.2017 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the 1st respondent to declare the petitioner as successful bidder for the work referred in the bid invitation dated 03.03.2017 issued by the 1st respondent.

For Appellant : Mrs.Porkodi Karnan

J U D G M E N T

(Judgment of the Court by **The Hon'ble The Chief Justice**)

This writ appeal is directed against the order, dated 26.05.2017, passed by the Single Bench in W.M.P.(MD) No.7723 of 2017 in W.P.(MD) No.10064 of 2017, restraining the appellant / first respondent from allotting any work to the successful tenderer.

2. The facts as pleaded in the writ petition are briefly that the first respondent in the writ petition being the appellant before us had issued tender for out sourcing of operation and maintenance of CWSS to Melur, Avaniapuram and Thirumangalam Municipalities, A.Vellalapatti, Vilangudi, Paravai, Thirunagar, Alanganallur, Palamedu Town Panchayats and 1430 Rural habitation in Kottampatti, Melur, Madurai East, Madurai West, Alanganallur, Vadipatti, Thirumangalam, Thirupparankundram Unions in Madurai District and Singampunari Town Panchayats in Sivagangai District Package II (05.04.2017 to 31.03.2018) - Infrastructures of Madurai West Union, Paravai Town Panchayat and Vilangudi Town Panchayat in Lr.No.F.Melur CWSS-Pack II-Part III/SDO II (CW) / 2017-2, dated 06.04.2017.

3. Pursuant to the tender notification, the first respondent / writ petitioner applied along with others. The technical bid was opened on 23.03.2017 and later on 05.04.2017, the price bid was opened.

4. According to the first respondent / writ petitioner, even though the first respondent / writ petitioner had allegedly quoted Rs.96,00,000/-, which was 19.89% less than Rs.1,19,84,148/- fixed by the appellant and the second respondent had quoted 5.11% i.e., Rs.1,13,71,200/- less than the amount fixed, the tender application of the first respondent was rejected.

5. It appears that the interim order restraining the appellant / first respondent in the writ petition from awarding the work order to the successful tenderer was passed on the first day of the court proceedings. Withstanding the time sought for by the counsel appearing on behalf of the appellant to obtain necessary instructions.



6. It is well settled that price bid alone is not a factor relevant for acceptance or rejection. The technical expertise has also to be considered by a body with requisite expertise.

WEB COPY

7. May be as per the estimation of the writ petitioner, the writ petitioner had the requisite qualification and experience. However, it is not for this Court to embark upon comparative assessment of the merits of the different tenderers. This Court does not sit in appeal over a decision of a duly constituted Tender Committee. Be that as it may, the interim order was apparently for two weeks. The appeal is infructuous since the interim order has not been extended and the interim order itself has expired and the work order has been issued to the 2nd respondent on 06.04.2017. It will be open to the appellant to proceed with the work.

8. The writ appeal is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

+1cc to M/S. POLEX LEGAL SOLUTIONS, Advocate, SR.No.24976.

W.A. (MD) No.828 of 2017
and
C.M.P. (MD) No.5692 of 2017
23.06.2017

krk / sj
SDS/SV:MMS/SAR 1/23.06.2017/3P/2C