



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	25.07.2017
Delivered on	13.10.2017

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DATED: 13.10.2017

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P. (MD) Nos.18059 and 18060 of 2016andWMP (MD) Nos.13016,13017 and 13018 of 2016**WP (MD) No.18059 of 2016:**

K.S.Srinivasan

: Petitioner

-vs-

1.The Director,
Rural Development and Panchayat Raj,
Panagal Building,
Saidapet, Chennai.

2.The Project Director, (DRDA)
District Rural Development Agency,
Trichirapalli District,
Trichy.

3.The Project Director (DRDA),
District Rural Development Agency,
Perambalur District,
Perambalur.

4.R.Rengasamy
[R4 impleaded as per order,
dated 26.10.2016 made in
WMP (MD) No.14499 of 2016]

: Respondents

Prayer in WP (MD) No.18059 of 2016: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Tender Notice No.DIPR/3200/Tender/2016, dated 03.08.2016 pertaining to package No.TN-22-71- Alathudaiyanpatti-B.Mettur Road, on the file of the 2nd respondent and quash the same.

WP (MD) No.18060 of 2016:

K.S.Srinivasan
<https://hcservices.ecourts.gov.in/hcservices/>

: Petitioner

-vs-



1.The Director,
Rural Development and Panchayat Raj,
Panagal Building,
Saidapet, Chennai.

2.The Project Director, (DRDA)
District Rural Development Agency,
Trichirapalli District,
Trichy.

3.The Project Director (DRDA),
District Rural Development Agency,
Perambalur District,
Perambalur.

4.C.Chandran
[R4 impleaded as per order,
dated 26.10.2016 made in
WMP(MD)No.14498 of 2016]]

: Respondents

Prayer in WP(MD)No.18060 of 2016: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Tender Notice No.DIPR/3200/Tender/2016, dated 03.08.2016 pertaining to package No.TN-22-74-Top Senkattupatti, Chithur, Perumparappu Road, on the file of the 2nd respondent and quash the same.

For Petitioner	: Mr.K.S.Srinivasan [Party-in-person]
For R1to R3	: Mr.G.Muthukannan Government Advocate
For 4 th Respondent	: Mr.M.Subash Babu

COMMON ORDER

The petitioner has come up with the present writ petitions to quash the tender notice issued by the 2nd respondent, dated 03.08.2016.

2.Since the issues involved in both the writ petitions are one and the same, these writ petitions are clubbed together and disposed of by a common order.

3.The case of the petitioner is that he is a Class-I contractor and he is doing contract work in various departments without any adverse remarks. The petitioner has already participated in a tender invited by the 3rd respondent under PMGSY Phase-VIII-Bharath Nirman and his bid was accepted by the 3rd respondent for the contract price of Rs.1,40,39,696/- at Perambalur District in the year 2013.

4.The further case of the petitioner is that on 03.08.2016, the 2nd respondent issued notification inviting tender through online for



construction of Road under Pradhan Mantri Gram Sadak Yojana and fixed the last date for submitting the tender document on 02.09.2016. The petitioner uploaded the tender document for the above said works on the last day along with the required documents and also furnished all the details, but without affording any opportunity, his technical bid was rejected and it was communicated through SMS text on 07.09.2017. Since the 2nd respondent has not followed the provisions of Tender Transparency Act, the tender notification itself is to be quashed.

5. In the counter filed by the respondents 1 to 3, it is stated that the petitioner having participated in the tender process and suffered rejection in the technical bid, he has no *locus standi* to challenge the tender notification. It is further stated that the petitioner himself admitted that the rejection of his technical bid was intimated to him on 07.08.2016 and therefore, he has to prefer an appeal under Section 11 of the Tender Transparency Act within a period 15 days, but without doing so, these writ petitions have been filed on 19.09.2016.

6. The 4th respondent, who is the successful bidder in the tender has stated in his counter that he had already completed 80% of the work and also received the bill of amount of Rs.56,04,714/-.

7. I have heard Mr.K.S.Srinivasan, the petitioner as party in person, Mr.G.Muthukannan, learned Government Advocate for the respondents 1 to 3 and Mr.M.Subash Babu, learned counsel for the 4th respondent and perused the materials available on record.

8. The main grievance of the petitioner is that the second respondent has opened the technical bid in his absence in violation of section 8 of the Tender Transparency Act.

9. It is settled law that the scope of judicial review in the writ petitions challenging tender notifications are very limited. The court has to see whether the authority followed the process properly, but the decision taken by the experts cannot be found fault by the courts, unless the decision is arbitrary and against law.

10. In **(2017) 4 SCC 318** [Tamil Nadu Generation and Distribution Corporation Ltd vs. CSEPDI-TRISHE Consortium], wherein the Hon'ble Apex court has held as follows:-

"37. Before parting with the case we are constrained to add something. We do so with immense pain. The respondent, before finalisation of the financial bid submitted series of representations and seeing the silence of the owner it knocked at the doors of the writ court which directed for consideration of the representations. We are disposed to think that the High Court at that stage should have



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exercised caution. If the courts would exercise power of judicial review in such a manner it is most likely to cause confusion and also bring jeopardy in public interest. An aggrieved party can approach the Court at the appropriate stage, not when the bids are being considered. We do not intend to specify. It is appreciable the owner in certain kind of tenders call the bidders for negotiations to show fairness transparently. But the present case is not one of such nature. Once the price bid was opened, a bidder could not have submitted representations on his own and seek a mandamus from the Court to take certain aspects into consideration. We have stressed this aspect only to highlight the role of the Court keeping in mind the established principle of restraint."

11. In **(2007)14 SCC 517** [Jagdish Mandal vs. State of Orissa and others] relied on by the learned counsel for the respondents, it has been held as follows:-

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tender and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for



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years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:-

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached":

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of Stage largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

12. In the case on hand, it is not in dispute that the petitioner has participated in the tender process, accepting the conditions imposed in the tender notification. Even assuming, the technical bid of the petitioner was wrongly rejected by the authorities, the petitioner has to challenge the same, either before the appellate authority under section 11 of the Tender Transparency Act or in exceptional cases, by invoking Article 226 of the Constitution of India before this court, but he cannot turn around and challenge the notification itself.

13. In the light of the above facts and the dictum laid down in the judgments referred supra, this court of the considered view that the petitioner is not entitled for the relief sought for in the writ petitions.

14. In that view, the writ petitions fail and accordingly, they are **dismissed**. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (A.E)

/True Copy/



TO

1.The Director,
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Saidapet, Chennai.

2.The Project Director, (DRDA)
District Rural Development Agency,
Trichirapalli District,
Trichy.

3.The Project Director (DRDA),
District Rural Development Agency,
Perambalur District,
Perambalur.

+1cc to M/s. M.SUBASH BABU Advocate in SR. No. 83075

+1cc to M/s. K.S.SRINIVASAN Advocate in SR. No. 83110

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JS/MR.KKR/SAR.4/31.10.2017/6P-6C

W.P. (MD) Nos.18059 and 18060 of 2016

and

WMP (MD) Nos.13016 and 13018 of 2016

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