

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.3229 of 2018 and
W.M.P.Nos.3962 & 7911 of 2018

The Nellikuppam Agro Engineering Service
Co-operative Centre Ltd.,
E-2739, Kambar Nagar,
Vazhapet, Nellikuppam,
Cuddalore - 607 105
rep by its Secretary Mr.V.Seesapillai ... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep by its Principal Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Municipal Administration,
Ezhilagam Buildings, Chepauk,
Chennai - 600 105.
- 3.The Commissioner (Incharge),
Nellikuppam Municipality,
Cuddalore District - 607 105.
- 4.S.Maharajan
Incharge Commissioner,
Nellikuppam Municipality,
Cuddalore District - 607 105.
- 5.The Director,
Directorate of Vigilance and Anti Corruption,
MKN Road, Alandur,
Chennai - 600 016.
- 6.M/s.Jay & Co.,
rep by its Manager P.Rajaram
No.4/8, Arul Gana Thangavathy Nagar,
Pudupalayam, Cuddalore - 607 001.
rep by its Manager Raju ... Respondents

(R6 impleaded vide order dated 23.03.2018 made in W.M.P.No.6957 of 2018)

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified Mandamus to call for the records of the 3rd respondent made in Na.Ka.No.3705/2017/E1 dated 05.02.2018 which was received on 08.02.2018 rejecting the bid of the petitioner and quash the same and cancel the entire tender selection process or selection of any tenderer pursuant to the notification in the website dated 20.01.2018 as illegal and void and consequently, direct the 2nd respondent to appoint the Special Officer or fill the existing vacancy of Commissioner to conduct tender afresh by inviting the tenders in accordance with Tender Transparency Act, 1998 and Rules 2000 made thereunder.

For Petitioner : Mr.N.Umapathi
For Respondents :Mr.A.Kumar, Additional Advocate General
assisted by
1)Mr.D.Suryanarayanan,
Additional Government Pleader
(R1, R2 & R5)
2)Mr.S.N.Subramani (R3)
No appearance - R4
Mr.G.Mutharasu (R6)

O R D E R

This Writ Petition is directed against the impugned order dated 05.02.2018 issued by the 3rd respondent, rejecting the bid of the petitioner and to quash the same and cancel the entire tender selection process or selection of any tenderer pursuant to the notification in the website dated 20.01.2018 as illegal and void and consequently, direct the 2nd respondent to appoint the Special Officer or fill the existing vacancy of Commissioner to conduct tender afresh by inviting the tenders in accordance with Tender Transparency Act, 1998 and Rules 2000 made thereunder.

2.The learned counsel appearing for the petitioner submitted that the petitioner is a Co-operative Society registered on 14.04.1972 under Sub- Section 1 of Section 9 of the Tamil Nadu Co-operative Societies Act and affiliated to Government of Tamil Nadu Agricultural Department. The petitioner Society undertakes the tender works in Local Bodies, Corporate Bodies, HR & CE Department, Co-operative Societies, etc. The petitioner is also involved in service work of solid work, sweeping, collection and depositing work in Chennai Corporation area through Agrofed (a Government of Tamil Nadu Undertaking) for the period from 1987 to 1992. While so, the 3rd respondent invited tender for engaging workers for Municipal Solid Waste Management Services under Solid Waste Management Rules 2016 comprising of primary collection, secondary collection and

disposal (Door to Door collection of MSW), road and street sweeping, drain cleaning and shifting the collected waste at designated collection points on contract basis for a period of one year under the 3rd respondent Municipality.

3.The learned counsel for the petitioner further submits that without following the provisions contemplated under Tender Transparency Acts and Rules, the 3rd respondent, even without issuing notification in paper, called for e-tender through website on 29.12.2017. The last date for submission of tender was on 09.01.2018 at 03.00 pm and the opening of technical bid was at 03.30 pm on the same day, thereby providing only 11 days time for submission of bid, which is against the provisions of Rule 20(1) of the Tender Transparency Rules, 2000.

4.The position of 3rd respondent - Municipal Commissioner fell vacant and one S.Maharajan, Municipal Engineer is in-charge as the Commissioner of the 3rd respondent - Municipality. The said S.Maharajan is none other than the blood brother of the sitting MLA Mr.S.Pavunraj, representing Poompuhar Assembly Constituency and is amenable to the instructions of the said MLA.

5.The petitioner made an application for the tender notified on 29.12.2017. The pre-qualification documents were not opened on 09.01.2018 at 03.30 pm and was postponed to 12.01.2018 citing administrative reasons. The petitioner and other bidders were orally informed to wait till 18.01.2018. To the shock and surprise, when the petitioner went to the office of the 3rd respondent on 18.01.2018, they were informed that the tender was cancelled on 12.01.2018 and re-tender notification has been issued on 12.01.2018 itself. Again the 3rd respondent had published the tender notification in Tamil Nadu Government Tender Website only on 20.01.2018. Only with a view to select the candidate of his choice, the 3rd respondent had cancelled the previous tender and postponed the present tender.

6.Although the petitioner had enclosed all the documents as per the 2nd tender notification, the respondents have rejected their tender in the impugned order citing unacceptable reasons. One of the reasons cited is that the petitioner has not enclosed Annexure - I, II & V properly.

7.The learned counsel appearing for the petitioner submitted that Annexure - I requires Experience Certificate. The same has been obtained and submitted. Therefore, they cannot reject the tender submitted by the petitioner citing the reason that the petitioner has not furnished Annexure - I. It has not been mentioned that Annexures - II & V have to be submitted along with the tender document.

8.Drawing the notice of this Court to the tender conditions, the learned counsel for the petitioner further submitted that paragraph-9 (a) clearly shows that the certificates mentioned in Annexure - I, III & IV should be enclosed, but they did not mentioned Annexure - II & V. When no stage had come to the petitioner to submit the Annexures - II & V, rejecting the tender submitted by the petitioner citing irrelevant reason is wholly bad in law and therefore, the impugned order is liable to be set aside.

9.Re-iterating his arguments, the learned counsel for the petitioner submitted that as per Tender Condition No.13, the person who has been selected, should provide the performance security deposit for a period of two years in Annexure - V. Insisting the production of Annexure - V will arise only after the person has been declared as a successful bidder. Moreover, as per Tender Condition No.4 (b)(ii), the Tender Inviting Authority can accept any certificate other than in the format prescribed if the details required to be furnished are found furnished therein. In case, if the Tender Inviting Authority requires any clarification, such clarification can be furnished by the tenderers concerned. But whereas, the petitioner has not been given an opportunity to putforth their case by the Tender Inviting Authority. Therefore, the impugned order, which is arbitrary, is liable to be quashed.

10.A detailed counter has been filed.

11.Mr.A.Kumar, the learned Additional Advocate General submitted that the impugned order clearly mentions that the petitioner has not produced Annexure - I, which refers to the Experience Certificate dated 08.01.2018 submitted by the petitioner. It is also submitted that the said Certificate has not been issued by any Competent Authority and it was not even signed by the President of the Society. Moreover, every bidder has to submit the Experience Certificate, which should contain the Work Order and also Completion Certificate. Whereas, in the case on hand, the so called Experience Certificate dated 08.01.2018 has been issued by a private Co-operative Society, which has not been issued by any Co-operative Society run by the Government or controlled and administered by Government. When it lacks authenticity, besides, there is no proof that the petitioner has acquired experience in the relevant field, the rejection order cannot be found fault with.

12.Meeting the second contention made by the learned counsel for the petitioner that the time for submission of Annexures - II & V has not reached, it is contended that the petitioner has to submit the Annexures - II & V only after the

bid is accepted by the Authority. But the petitioner had submitted the Annexures - II & V, even without furnishing proper information. In such a case, the petitioner's bid was found ineligible and rejected.

13. Moreover, when the previous tender was floated fixing the time to open the bid on 09.01.2018, it was the petitioner, who came along with group of 15 persons and threatened the 3rd respondent and insisted him to evaluate the technical bid and announce them as the qualified tenderer. As they have attempted to influence the 3rd respondent as against the tender condition, the 3rd respondent has rightly passed the impugned order, disqualifying the petitioner.

14. Although counter affidavit has been filed making serious allegations against the petitioner that they along with a group of 15 persons visited the office of the 3rd respondent and insisted the 3rd respondent to evaluate the technical bid and that was a ground to disqualify the petitioner to take part in the auction, the petitioner has not filed any reply or rejoinder denying the same.

15. A perusal of Annexure - I dealing with Experience Certificate dated 08.01.2018 furnished by the petitioner, shows that the Experience Certificate has not been signed by the President of the Society. The said Society is also formed by a group of persons and relevant particulars with regard to Work Order and Completion Certificate have not been mentioned. Therefore, in my view, the rejection of the case of the petitioner cannot be found fault with.

16. In view of the above facts, the Writ Petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Municipal Administration,
Ezhilagam Buildings, Chepauk,
Chennai - 600 105.

3.The Commissioner (Incharge),
Nellikuppam Municipality,
Cuddalore District - 607 105.

4.S.Maharajan
Incharge Commissioner,
Nellikuppam Municipality,
Cuddalore District - 607 105.

5.The Director,
Directorate of Vigilance and Anti Corruption,
MKN Road, Alandur,
Chennai - 600 016.

+1cc to Mr.D.SURIYA NARAYANAN, Advocate, S.R.No.37641
+1cc to Mr.G.MUTHARASU, Advocate, S.R.No.27299
+1cc to Mr.S.N.SUBRAMANI, Advocate, S.R.No.37242
+1cc to the Government Pleader, S.R.No.37534

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TR(02/07/2018)

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