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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.08.2018

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Contempt Petition No.1529 of 2018

S.Manivel

.. Petitioner

Versus

1. Mr.S.Natarajan
The Superintending Engineer
PWD, WRO
Pennaiyar Basin Circle
Thiruvannamalai.

2. K.Srinivasa Raghavan
National Informatics Center
A.Block, C.G.O.Complex
Pragathi Vihar
New Delhi - 110 003.

.. Respondents

This Contempt Petition has been filed under Section 11 of the Contempt of Courts Act praying to punish the respondents for their wilful disobedience of orders passed in W.P.12903 of 2018 and WMP Nos.15156 and 15157 of 2018 dated 24.05.2018.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.S.R.Rajagopal
Additional Advocate General
Assisted by
Mr.M.Elumalai
Government Advocate



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ORDER

This Contempt Petition is filed by the petitioner praying to punish the respondents for their wilful disobedience of orders passed in W.P.12903 of 2018 and WMP Nos.15156 and 15157 of 2018 dated 24.05.2018.

2. The learned counsel for the petitioner would contend that the petitioner is a contractor in the field of Mechanical, Electrical and Civil Engineering for the past 23 years and he has registered himself with the rolls of the Public Works Department and have successfully completed various projects for statutory bodies. The first respondent has floated a tender on 10.05.2018 for replacement of Spillway Shutter No.1 of Krishnagiri Dam in Krishnagiri District.

3. The learned counsel for the petitioner would further state that while the tender was published on 10.05.2018, the schedule of the tender was not uploaded in the website till 14.05.2018 and the last date for submission of bids was 18.05.2018. Thus, there is gross violation of Rule 20(a) of the Tamil Nadu Tender Transparency Rules, 2000 and as per the said rule,



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the last date of submission. However, on account of limited time schedule, the petitioner managed to submit his offer on 18.05.2018. Grievance expressed by the petitioner is that certain conditions/clauses in the tender notification seem to be framed/intended in favour of certain class of applicants and therefore, challenging the said clauses in the tender notification, the petitioner has filed the Writ Petition in W.P.No.12903 of 2018 along with stay petitions to stay the operation of clauses 2(iv), 2(vi) and clause 'K' of the Tender Notification dated 07.05.2018 and also to stay tender notification dated 07.05.2018.

4. This Court vide order dated 24.05.2018 made in W.P.12903 of 2018 and WMP Nos.15156 and 15157 of 2018, while granting permission to the respondents to proceed further in processing the tender forms including the petitioner's application, has granted interim stay of confirmation of tender till 06.06.2018.

5. The learned counsel for the petitioner would further contend that the said order of this Hon'ble Court was communicated to the respondents by RPAD on 08.06.2018 and the contemnor was avoiding the receipt of the same.

Hence, he personally met the first respondent and communicated the order to the respondent with a request to



consider his application, but the first respondent had refused to receive the same stating that he was not bound by paper direction and he has already allotted the work order to somebody. Hence, the petitioner issued contempt notice and the said notice was also refused by the first respondent.

6. The petitioner would also contend that the contract was awarded to the choice of the first respondent. When he demanded the copy of the work order, the first respondent has declined to issue the same. The first respondent ignored the directions in the order copy and heckled the petitioner for approaching the Court and he had openly proclaimed that the order of the Court would not prevent him from acting in the manner he proposed. The petitioner was shocked to hear the same and also told him that he will initiate contempt since the order of the Court is breached, but for which, the first respondent has casually replied that an apology would condone his lapse. If the Government Officials are not obliging the Court Orders, then the citizen has lost all hopes of fairness in the administration and when he had approached the High Court to protect his interest and had secured, the Government Officials still exhibit the temerity and decline to abide by the orders of this Court. If the work order was allocated to some other party on the choice



of the first respondent or his political bosses, the need to float the tender itself becomes obsolete. The person who has taken the tender was ready to commence the work. Since the respondent has not obliged the Court order, the petitioner has filed this Contempt Petition.

7. When the matter came up for hearing on 25.06.2018, the learned Government Advocate was directed to get instructions from the respondents and the matter was directed to be listed on 02.07.2018. On 02.07.2018, Mr.S.R.Rajagopal, learned Additional Advocate General appeared for the contemnors and submitted that the tenderers were appointed much earlier to the filing of the petition and therefore, there is no wilful disobedience of the order passed by this Court. Hence, in order to file vakalat and to place certain vital facts on record, the matter was directed to be listed on 09.07.2018.

8. On 09.07.2018, the first respondent / Superintending Engineer, PWD, WRO, Pannaiyar Basin Circle Tiruvannamalai, who is the contemnor herein, has filed an affidavit before this Court. At this juncture, he tenders his unconditional apology, it is an Article of faith that orders passed by the Hon'ble High Court be abided and complied with and he did not have any iota of



intention at any point of time to commit any act that would amount to an act in violation of the orders passed by this Court.

9. The first respondent / contemnor would further submit that he joined Public Works Department in the year 1983 and has held various positions with unblemished record and would further state that he had never been held guilty of any act.

10. The first respondent would further contend that the Spillway Gate-1 of Krishnagiri Dam, owing to wear and tear had tilted. A decision was taken to refix a new gate before the ensuing monsoon season. The Tender Award Committee had taken a decision based on the urgency, necessity and obtained sanction/approval from the authorities concerned to float a short term tender. The Chief Engineer, WRO, Chennai Region, vide letter in No.Va.Pi/Tho.5(4)/File-Krishnagiri Dam, dated 07.05.2018 had communicated the approval for floating the short term tender. Based on the approval, Tender Notification was published in the Thinaboomi Tamil Daily and Financial Express English Daily on 10.05.2018 and also in Government of Tamil Nadu State Tender Bulletin Dated 10.05.2018.



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11. The first respondent would also submit that in terms of the Tender Notification, the intending bidders were to submit their bid on or before 18th May 2018 by 3.00 p.m. The tender condition clearly contemplated that the tenders be opened at 3.30 p.m. The letter of the Chief Engineer as aforementioned and the publications in the Tamil and English Daily and State Tender Bulletin were produced before this Court.

12. The first respondent would also contend that in furtherance of the tender notification, five bids were received from the following bidders:-

- (i) Thiru.P.Natesan, Bhavani, Erode.
- (i) M/s.Samy Constructions, Proprietor
Thiru.S.Manivel, Mettur Dam, Salem.
- (i) M/s.Kwality Shutters, Pudukkottai Main Road,
Sembattu, Trichy.
- (iv) M/s.Contech Engineers Private Limited, SIPCOT
Industrial Complex, Pudukkottai.
- (v) M/s.Super Fabricators, Poosaripatti, Melur
Taluk, Madurai.

13. The first respondent would further submit that the tender process is a two cover system ie., (1) pre-qualification Technical bid and (2) Financial Bid. The



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bidders, who qualified in the pre-qualification bid would be selected for the Financial bid and only then the financial bid will be opened. As submitted above, the pre-qualification bids of five bidders were opened at 3.30 p.m in the presence of the bidders and /or their representatives. Only two of the bidders viz., M/s. Super Fabricators, Poosaripatti, Melur Taluk, Madurai and M/w.Kwality Shutters, Pudukkottai Main Road, Sembattu, Trichy were qualified as bidders for award of the tender and other three bidders were rejected. The bidders, those who had qualified and of those, whose bids were disqualified were enlisted and the report was submitted to Tender Award Committee. The decision of the Tender Award Committee was communicated vide Minutes of the 286th Tender Award Committee Meeting held on 21.05.2018 and the copy of the same was produced before this Court.

14. The first respondent would also contend that on 24.05.2018, the Financial Bids were opened in respect of the two bidders and the report was prepared and forwarded to the Tender Award Committee enlisting the details. The Tender Award Committee in its 287th meeting held on 31.05.2018 accepted the report and had confirmed the bid in favour of M/s.Super Fabricators, Poosaripatti, Melur Taluk, Madurai and the same was communicated by the Minutes of the 287th Tender Award Committee held on



31.05.2018, the copy of which has been produced before this Court. Pursuant to the same, an agreement was entered into on 04.06.2018 with the successful bidder and the site was handed over on 05.06.2018.

15. The first respondent would further contend that at this juncture, on 08.06.2018, a mail from the Chief Engineer, Water Resource Department, Chennai Region was received by the contemnor herein and from the mail, he came to know that this Hon'ble High Court by order dated 24.05.2018 was pleased to pass the following order:-

"Since the matter in issue has to be looked into in details, there shall be an order of interim stay regarding confirmation of the tender alone till 06.06.2018. The respondents can proceed further in processing the tender forms including the petitioner's application. Post on 06.06.2018."

Hence, Stop Work Notice was given and status as on that day was directed to be maintained, which is being maintained till the date hearing.

16. The learned Additional Advocate General appearing for the first respondent would further contend that on 22.06.2018, a petition to vacate the stay was filed before this Court stating urgency. When the said Petition was listed before this Court on 13.07.2018



morning, the said Writ Petition, in which this Court passed an interim order, was dismissed.

17. The first respondent would further submit that subsequent to the acceptance of the tender bid of the successful bidders and award of contract, by letter dated 23.05.2018 the information regarding the return of unopened Financial Bid cover was sent to all unsuccessful bidders, including the Contempt Petitioner. Till 10.06.2018, no communication was received from the contempt petitioner regarding the orders passed by this Court.

18. The first respondent would further submit that subsequent to the floating of tender, he had been receiving calls from the persons enquiring about the project and the status of the bid. Few of the persons had also contended that they are Advocates of the respective bidders. After the hearing of this Hon'ble Court on 02.07.2018, he (the contemnor) had met the Special Government Pleader Mr.V.Jayaprakash Narayanan, who had informed that on 24.05.2018 at 1.18 p.m and 5.59 p.m, he had attempted to contact him (the contemnor) on his hand phone. Since the first respondent was not aware of the phone number received by him and he has requested that anything official, he don't wish to speak on phone and



they are at liberty to meet him at his office and the said act was only to safeguard himself from prank calls and he would not have forwarded any letter to the Tender Award Committee. He would also reiterate his unconditional apology for the ignorance while discharging his duty.

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

20. From the perusal of the records, it could be seen that the petitioner had filed W.P.No.12903 of 2018 challenging some of the clauses in the tender notification, viz., 2(iv), 2(vi) and k. He also filed stay petitions to stay the operation of the aforesaid clauses and also to stay tender notification dated 07.05.2018. When the said Writ Petition came up before this Court on 24.05.2018, this Court passed the following interim order:-

"4. Since the matter in issue has to be looked into in detail, there shall be an order of interim stay regarding confirmation of the tender alone till 06.06.2018. The respondents can proceed further in processing the tender forms including the petitioner's application. Post on 06.06.2018."



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21. From the perusal of the records, it could be also seen that the learned Special Government Pleader has also sent a letter dated 24.05.2018 to the first respondent regarding the interim stay of confirmation of tender till 06.06.2018. The grievance of the petitioner herein is that the first respondent herein, even after having knowledge of the interim order passed, without obeying the interim order and without considering the petitioner's application, has chosen to award tender on his choice.

22. From the documents produced by the learned Additional Advocate General, it could be seen that the tender was called for on 07.05.2018 and the same was published in the newspapers and also in the Government of Tamil Nadu State Tender Bulletin on 10.05.2018 stating that the intending bids to be submitted on or before 18.05.2018 at 3.00 p.m and on the same day at 3.30 p.m the bids will be opened. As per the said procedure, the bids were opened on 18.05.2018 at 3.30p.m. Five bidders have participated and out of which, two bidders were qualified for award of the tender and three bidders were not qualified and their bids were rejected, which are as follows:-



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S.No .	Name of the Tenderers	Evaluation
1	Thiru.P.Natesan, Bhavani, Erode	This tenderer has not satisfied the following qualification criteria:- 1) Registered contractor as a small scale industries unit in Government of Tamil Nadu or Ministry of Micro, Small and Medium Enterprises, Government of India; 2) Registered under Factories Act, Employees State Insurance Corporation & Provident Fund Organisation; 3) Details of Authorised applicator of the Paint Coating; 4) The return filling for GST related Documents after 01.07.2017 onwards; 5) Details of the Major Hydro Mechanical works completed during the past five years; 6) Completion of one similar nature of work; 7) Annual turnover of Rs.1,729.00 lakh. 8) Liquid Assets and or Credit facilities of not less than Rs.288.15 lakh; 9) Details of the contract terminated/ rescinded due to breach of contract; 10) Requirement of Technical personnel; 11) Required quantities of work executed; 12) Requirement of Tools and Plants;



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S.No	Name of the Tenderers	Evaluation
		13) Bid capacity.
2	M/s.Samy Constructions, Mettur Dam, Salem.	This tenderer has not satisfied the following qualification criteria:- 1) Registered contractor as a small scale industries unit in Government of Tamil Nadu or Ministry of Micro, Small and Medium Enterprises, Government of India; 2) Details of Authorised applicator of the Paint Coating; 3) The return filling for GST related Documents after 01.07.2017 onwards; 4) Annual turnover of Rs.1,729.00 lakh. 5) Liquid Assets and or Credit facilities of not less than Rs.288.15 lakh; 6) Requirement of Technical personnel; 7) Required quantities of work executed; 8) Bid capacity.
3	M/s.Kwality Shutters, Pudukkottai Main Road, Sembattu, Trichy.	This tenderer has satisfied all the qualification criteria fixed.
4	M/s.Contech Engineers Private Limited, SIPCOT Industrial Complex, Pudukottai.	The tenderer M/s.Contech Engineers Private Limited has not satisfied the following qualification criteria:- 1) The return filling for GST related Documents after 01.07.2017 onwards; 2) Details of the Major Hydro Mechanical works completed during the past five years;



S.No	Name of the Tenderers	Evaluation
		3) Completion of one similar nature of work; 4) Annual turnover of Rs.1,729.00 lakh. 5) Liquid Assets and or Credit facilities of not less than Rs.288.15 lakh; 6) Details of the contract terminated/ rescinded due to breach of contract; 7) Required quantities of work executed;
5	M/s.Super Fabricators, Poosaripatti, Melur Taluk, Madurai.	This tenderer has satisfied all the qualification criteria fixed.

The report about the two qualified bidders, namely, (1) M/s.Super Fabricators, Poosaripatti, Melur Taluk, Madurai; and (2) M/s.Kwality Shutters, Pudukkottai Main Road, Sembattu, Trichy; and also the three unqualified bidders, was forwarded to the Tender Award Committee. The the Tender Award Committee, in its 286th meeting held on 21.05.2018, accepted the said report and permitted opening of the Financial Bids in respect of the two qualified bidders. Thereafter, on 24.05.2018, the Financial Bids were opened in respect of the two qualified bidders and the report was forwarded to the Tender Award Committee.

23. It could be also seen that after careful and
<https://hcservices.ecourts.gov.in/hcservices/>
detailed consideration of all the input and non-input



factors and based on the strength of the recommendation of the Chief Engineer, WRD, Chennai Region, Chennai, the Tender Award Committee in its 287th meeting held on 31.05.2018 accepted the lowest tender of M/s.Super Fabricators, Poosaripatti, Mangulam Main Road, Madurai, for the value of Rs.2,87,96,739/-, which is Rs.17,501/- or 0.06% less than the estimated value of Rs.2,88,14,240/- subject to the accuracy, correctness and genuineness of all the informative data, and had awarded the same.

24. The respondent received the letter dated 04.06.2018 sent by the Special Secretary to Government addressed to the Chief Engineer, WRD, Chennai along with e-mail dated 22.06.2018 sent by the Chief Engineer, WRD, Chennai, regarding this issue. In the reference (i.e., Ref:) to the said letter dated 04.06.2018, there was mention about the learned Special Government Pleader's letter dated 24.05.2018 addressed to the first respondent regarding the interim stay of confirmation of tender till 06.06.2018. Accordingly, the interim stay was brought to the knowledge of the first respondent herein.

25. When this Court granted the interim stay and directed the learned Special Government Pleader to get instructions regarding this issue, this Court was not aware of the facts that before this Court could pass an



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interim order, the tender was opened on 18.05.2018 itself and three persons' tenders, including the petitioner's tender, were rejected on the same day and the said fact was also communicated to the persons concerned. The said facts were not brought to the knowledge of this Court by the respondents/contemnors or by the petitioner, at the time of passing interim orders. Hence, after issuing the interim order, the Writ Petition was directed to be listed on 06.06.2018.

26. When the learned Special Government Pleader was directed to get instructions from the respondents, the first respondent has not given proper instructions and had ignored him. The Chief Engineer's contention that he did not speak to the Government Pleader and he ignored the calls due to heavy work pressure and he was receiving calls from many unknown persons, is not acceptable and condemnable. When highly responsible Law Officers called him only to get instructions as per the direction of this Court, it is not correct on the part of the first respondent to say that he did not know the number of the Government Pleader. The contention of the first respondent that he was getting prank calls from various persons and hence, when he received the calls from the Government Pleader, he was trying to ignore the calls, is not appreciated. The first respondent/contemnor, being a



responsible officer of PWD Department, that too, when he has to consult with the Government Pleader's Office regarding various Court cases, ought to have attended the calls or should have verified the same by directing his subordinates to find out the genuineness of the calls received. The Special Government Pleader concerned is a sincere officer. This Court expresses displeasure in accepting the argument of the learned Additional Advocate General appearing for the respondents/contemnors to pardon the contemnors.

27. Considering the ground reality that due to the problem of heavy rain and the intensive flood in the State of Kerala and Kanyakumari District due to South West Monsoon, repair work should be completed within the specified period and since the Writ Petition filed by the petitioner itself was dismissed, this Court passed an interim order in the Contempt Petition. Considering the plea of the Additional Advocate General that the inflow of water to the said Dam is increasing and that the general public should not be penalised and to avoid flooding due to the contemnors' act, it was directed that the highest bidder, whoever has been awarded the tender, can start work immediately and had further directed the PWD officials to issue necessary work order and they are at liberty to proceed further. This Court observes that even though the processes were started and the tender of the



petitioner was rejected before the interim order was passed, the respondents ought to have informed the same to the concerned Special Government Pleader and to this Court. The Government Pleader and the Law Officers are Gazetted Officers and they should be given respect and cannot be treated indifferently.

28. Since the first respondent tendered his unconditional apology before this Court and pleaded that this will not happen again, this Court accepts the apology.

29. This Court, even though not satisfied whole heartedly, condones the act of the contemnors only on the reasons that the tender of the petitioner was rejected on 18.05.2018 itself and also the Writ Petition itself was dismissed.

30. This Contempt Petition is closed.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

mra

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

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