

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.30474 of 2017

M/s. Maruthi Construction,
rep. By its Managing Partner, Sivakumar
No.6/243-A, Lakshmi Nagar,
Green Park School Road,
Bodhupatty Post,
Namakkal,
Tamil Nadu - 637 003. Petitioner

vs.

1. The Secretary,
Public Works Department,
Chepauk,
Chennai - 600 005.
2. The Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai - 600 005.
3. The Chief Engineers (Buildings),
Public Works Department,
Trichy Region, Condonment,
Trichy-1.
4. The Superintending Engineer,
Public Works Department,
Buildings (C&M) Circle,
Post Box No.724, Kumarasamipatti,
Salem - 636 007. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned order of the 4th respondent in letter No. /D.B/D.O/F.CTO/2017 dated 03.11.2017 to quash the same and thereby directed the 4th respondent to include the name of the petitioner in qualification tender.

For Petitioner : Mr.C.Veeraraghavan

For Respondents : Mrs.Narmadha sampath,
Additional Advocate General-VIII,
assisted by Mr.R.Govindasamy,
Special Government Pleader
for R1 to R4.

O R D E R

The petitioner is aggrieved against the proceedings of the 4th respondent dated 03.11.2017, wherein and whereby, the petitioner was informed that their tender was not qualified and they are not eligible to participate in the price tender. Consequently, the petitioner seeks for a direction to the 4th respondent to include their name in the qualification tender.

2. The case of the petitioner in short is as follows:

The 4th respondent invited tenders under two cover system for the work of Constructing of Combined Commercial Tax Department Building at Namakkal. Accordingly, the willing bidder has to submit two covers, one containing the details of qualification and other containing the price. In other words, the first cover is called as qualification bid, while the second cover is called as price bid. The petitioner submitted their tender. The qualification tender was opened on 04.10.2017 by the 4th respondent. However, the petitioner was not called while opening the qualification tender. On the other hand, their qualification was rejected by issuing a communication dated 03.11.2017, impugned in this writ petition.

3. The 4th respondent filed a counter affidavit wherein it is stated as follows:

Under the two cover system, the first cover deals with the qualification of the bidder, while the second cover deals with the value of the bid. The petitioner submitted their application for qualification and the price tender on 27.09.2017. The first cover was opened on 04.10.2017. It was found that the petitioner Company had turn over only to the maximum of Rs.366.83 lakhs for the year 2013-14, while the minimum qualification fixed by the Department is Rs.372 lakhs in any one of the preceding 5 years. Therefore, the petitioner was disqualified in the pre-qualification bid itself and a communication to that effect was sent to the petitioner on 10.11.2017.

4. Learned counsel for the petitioner submitted that the impugned communication in this writ petition does not contain any reason and therefore, the petitioner was not in a position to know as to why they were disqualified. Insofar as the other

communication dated 10.11.2017 said to have been issued by the 4th respondent, the learned counsel sought to contend that the same was not received by the petitioner.

5. Learned Additional Advocate General appearing for the respondents submitted that the petitioner has not satisfied the qualification requirement, more particularly, in respect of the annual turn over as stipulated in the tender condition itself and therefore, the petitioner's tender was rightly rejected by intimating the same to the petitioner on 10.11.2017. She has also produced the file before this Court containing the tender Form submitted by the petitioner to show that the annual turn over of the petitioner was only Rs.366.83 lakhs for the year 2013-14. She also submitted that the communication dated 10.11.2017 was despatched to the petitioner and by suppressing the said fact, the petitioner has filed the present writ petition by questioning the earlier order/ communication issued to the petitioner on 03.11.2017. Thus, she submitted that the communication dated 10.11.2017 clearly indicates the reason for rejection.

6. Heard both sides and perused the materials placed before this Court.

7. There is no dispute to the fact that the petitioner has participated in the present tender process. It is also not in dispute that one of the conditions referred to in the qualification and price tender notice stipulates that the annual turn over of the applicant should not be lesser than Rs.372 lakhs per year in any one of the preceding 5 years. Therefore, the petitioner is well aware of the said condition as the one of the required qualification criteria to take part in the tender process. However, the tender document filed by the petitioner would show that the petitioner has not either touched or crossed the said amount of Rs.372 lakhs in any one of the five preceding years, as his annual turn over. The following is the annual turn over of the petitioner as could be seen from the tender documents submitted by him.

Assessment Year	Annual Turnover (Rs.in Lakhs)
2012-13	- 274.17
2013-14	- 366.83
2014-15	- 256.56
2015-16	- 249.83
2016-17	- 271.57

Therefore, it is evident that the petitioner has not qualified themselves to take part in the tender process as they have not reached the required turn over of Rs.372 lakhs per year in any

one of the preceding 5 years, being their annual turn over. When such being the case, the petitioner is not entitled to contend that the reason for rejection of the tender is not known to them even assuming that the communication dated 10.11.2017 was not served on them.

8. Needless to say that when an application is made by the applicant, the presumption is that the applicant knows all the terms and conditions and accepted the same. Therefore, they should satisfy the minimum required qualification criteria for taking part in the tender process. If they are aggrieved against any one of the clauses, they should have challenged such clause in the manner known to law. Without challenging such clause and by filing an application, admittedly with a lesser qualification, the petitioner is not entitled to maintain the present writ petition. The respondents themselves have informed the petitioner the reason through the communication dated 10.11.2017. Even otherwise, this Court is satisfied, based on the perusal of the document filed by the petitioner and the records placed by the respondents before this Court for its perusal, that there is no merit in the writ petition. Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vsi

To

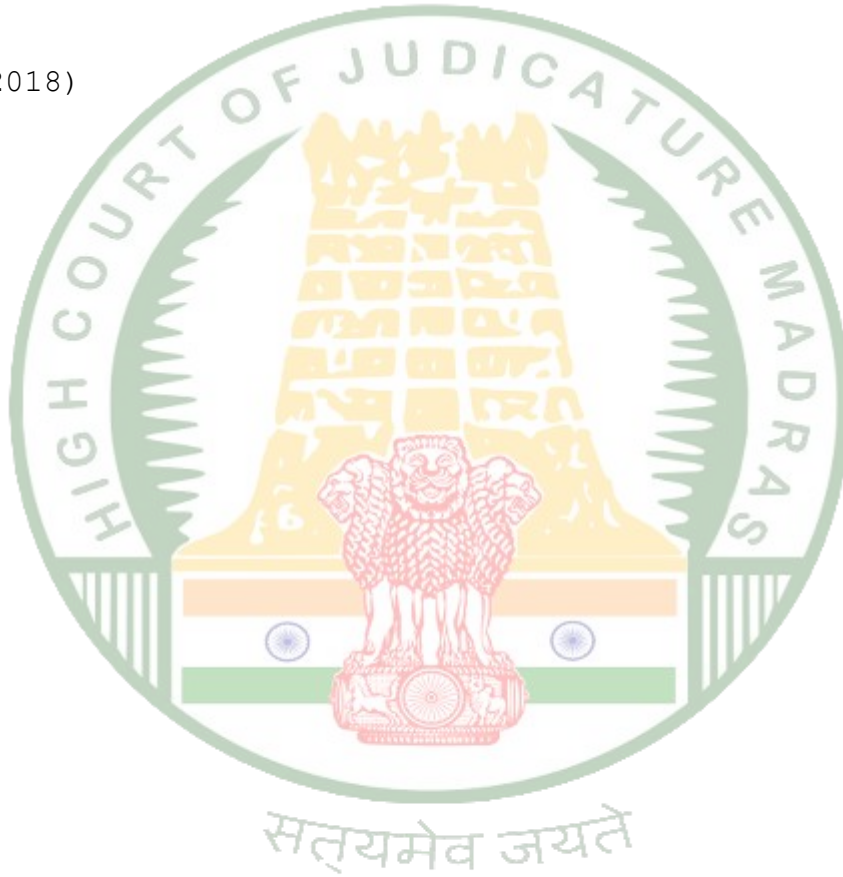
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+1cc to Mr.P.V.SELVAKUMAR Advocate, S.R.No. 8709
+1cc to Mr.C.VEERARAGHAVAN, Advocate, S.R.No. 8882
+1cc to the Government Pleader, S.R.No. 9376

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SR(CO)
TR(19/02/2018)



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