

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07/03/2018
Delivered on	21/03/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.Nos.3764 & 3765 of 2018 &

W.M.P.Nos.4588 to 4591 of 2018

Dharani Hi-Tech Projects Pvt Ltd.,
No.28, Annavasal Street,
Mannargudi - 614 001.

Represented by its Authorized Signatory,
V.Sridharan

... Petitioner in both
Writ Petitions

Vs.

1.The District Collector,
Cuddalore.

2.The Project Director, R.D.,
District Rural Development Agency,
Cuddalore.

... 1st and 2nd Respondents in both
Writ Petitions

3.N.V.M.Constructions,
25-A/3, Nadu Street,
C.N.Palayam,
Cuddalore District.

... 3rd Respondent in WP.3764/18
and 4th Respondent in WP.3765/18

4.M.Murugan

... 4th Respondents in WP.3764/18

5. Sathanakrishnan

... 3rd Respondent in WP.3765/18

PRAYER in both Writ Petitions: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records with respect of impugned order dated 12.02.2018 in Na.Ka.No.A7/113/2017 issued by the second respondent and quash the same abd consequently direct the respondents 1 and 2 to declare the technical bid as submitted by the petitioner for package Nos.TN-03-06, TN-03-30, TN-03-32, TN-03-33, TN-03-34 and TN-03-35 as valid one.

For Petitioner in
both Writ Petitions: Mr.R.Nalliyappan

For Respondents in
both Writ Petitions: Mr.S.T.S.Murthi
Additional Advocate General
Assisted by Mr.V.Shanmuga Sundar
Special Government Pleader for R1 & R2

Dr.Fr.Xavier Arulraj, Senior Counsel
For Mr.G.Mutharasu for R3 & R4

C O M M O N O R D E R

The technical bid of the petitioner for the package Nos.TN-03-06, TN-03-30, TN-03-32, TN-03-33, TN-03-34 and TN-03-35 were rejected on the ground of non-furnishing the relevant documents. Challenging the orders, the petitioner has come up with these Writ Petitions.

2. According to the petitioner, pursuant to the tender notification issued by the first respondent, calling for certain tender work in Cuddalore District, the petitioner had applied for 6 packages. The technical bid was opened on 02.02.2018. According to the petitioner, he submitted all the relevant documents through online and the hard copy by a registered post on 02.02.2018.

3. The petitioner would further state that as per Clause 9.3 of the tender condition, the original documents shall be submitted for verification, not later than two working days of opening the technical bid. However, the technical bid of the petitioner was rejected on the very next day, i.e., on 03.02.2018 on the ground that he did not produce the original E.M.D. Hence, the petitioner filed a Writ Petition in W.P.No.3250 of 2010. The petitioner would further state that all the original documents sent by him on 02.02.2018 were received by the respondents on 05.02.2018 and thereafter, the petitioner sent a detailed representation dated 07.02.2018 to accept the tender in terms of Clause 9(3). The technical bid of the petitioner was rejected on 12.02.2018 for the reason that the petitioner has not furnished turnover certificates for three years, the work order or letter of acceptance and the tools and plants certificate. The petitioner has further alleged that the third respondent in both the Writ Petitions have not furnished the original documents through online and offline, however, only to award the contract in favour of the third respondent, the technical bid of the petitioner was rejected.

4. The second respondent has filed a detailed counter stating that the petitioner submitted his tender form through online, but even though, he quoted the certificates through online, but failed to submit hard copies, whereas, the other tenderers have submitted all the relevant certificates through hard copies within the prescribed time. It is further stated in the counter that the Scrutiny Committee consisting of the Project Director, Executive Engineer (RD), Cuddalore Division and Virudhachalam Division, Assistant Executive Engineer (Roads & Bridges), Cuddalore and Chidambaram Sub Divisions and Assistant Engineer (RD), DRDA Cuddalore have verified all the technical bids submitted by the contractors and found that the petitioner has failed to submit the relevant documents stated in the impugned order.

5. The third respondent has stated in his counter that he has furnished all the relevant documents to the second respondent in time. It is further stated that the technical bid of the petitioner was rejected due to political pressure is false and also not supported by materials.

6. Heard Mr.R.Nalliyappan, learned counsel for the petitioner; Mr.S.T.S.Murthi, learned Additional Advocate General, assisted by Mr.V.Shanmuga Sundar, learned Special Government Pleader for the respondents 1 and 2 and Dr.Fr.Xavier Arulraj, learned Senior Counsel, representing Mr.G.Mutharasu, learned counsel for the respondents 3 and 4 and perused the records.

7. The learned counsel for the petitioner contended that the petitioner had furnished all the requisite documents through online as well as offline, but the technical bids were rejected only due to favour the third respondent. In support of his contentions, the learned counsel has relied on the judgment of the Hon'ble Supreme Court in AIR 1980 SC 1992.

8. The learned Additional Advocate General submitted that though the petitioner furnished documents through online, but hard copies were not furnished and the Evaluation Committee had considered the entire documents furnished by the contractors and found that the petitioner has not produced the hard copy of the relevant documents, whereas the other contractors have furnished the hard copy.

9. The learned Senior Counsel for the respondents 3 and 4 submitted that a notification calling for tenders was floated on 09.01.2018 and as per the conditions in the notification, the private respondents have applied and the bid was opened in the presence of contractor on 02.02.2018. The Scrutiny Committee having found that the third respondent was a successful bidder

and he had furnished all the documents have declared the third respondent as a successful bidder and also issued work order on 12.02.2018. It is further submitted that the contractors have already completed 40% to 50% of the work and hence, these Writ Petitions cannot be entertained at this stage. It is further submitted that the Court shall apply principle of restraint while exercising the power of Judicial Review by placing reliance on the decision of the Hon'ble Supreme Court in (2017) 4 SCC 318.

10. The Hon'ble Supreme Court in AIR 1980 SC 1992 has held that unlike a private individual, the State cannot act as it pleases in the matter of giving largesse. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner, it has to be exercised for the public good. There is no quarrel with the principles laid down in the above judgment. But in the case on hand, this Court has to see the respondents have exercised their power in an arbitrary manner. In the counter filed by the official respondents, it has been specially stated that the petitioner has not produced some of the documents required to be furnished as per the tender notification. The petitioner has filed these Writ Petitions contending that only in order to favour the third respondent, the technical bid of the petitioner was rejected and he has furnished all the documents through online and offline. It is settled law in the matter of tender process, the Court has to see whether the respondents have followed the procedure and the disputed question of fact could not be decided in the Writ Petition, while exercising powers under Article 226 of the Constitution of India. The petitioner except alleging some irregularities against the official respondents has not produced any material in support of his contentions.

11. It is also stated by the third respondent that they have already completed 50% of the work. The Hon'ble Apex Court in (2017) 4 SCC 318 (T.N. Generation and Distribution Corpn. Ltd. v. CSEPDIT-Trishe Consortium) 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 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.

12. In the light of the above facts, I do not find any merit in these Writ Petitions. The Writ Petitions fail and the same are dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

r n s

To

- 1.The District Collector,
Cuddalore.
- 2.The Project Director, R.D.,
District Rural Development Agency,
Cuddalore.

+2cc to Mr.G.MUTHARASU, Advocate, S.R.No.21730 & 21731
+1cc to Mr.R.NALLIYAPPAN, Advocate, S.R.No.21363
+1cc to the Government Pleader, S.R.No.22373

Pre-Delivery Order made in
W.P.Nos.3764 & 3765 of 2018 &
W.M.P.Nos.4588 to 4591 of 2018

VG II (CO)
TR(28/06/2018)