

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/02/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.Nos.7929 & 7930 of 2017 &
W.M.P.Nos.8678 & 8679 of 2017

W.P.No.7929 of 2017

S.Sundararaj

.. Petitioner

Vs.

1.The Director of Town Panchayats,
Kuralagam, Chennai - 108.

2.The Tender Evaluation Committee,
Rep. by its Committee,
Chairperson-cum-Assistant Executive Engineer,
Town Panchayats, Salem.

3.The Executive Officer,
Thedavur First Grade Town Panchayat,
Thedavur, Salem District.

4.M/s.VMI Constructions,
Kalpaganur, Attur Taluk,
Salem District.

.. Respondents

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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 3 to reject the tender of the fourth respondent for the road work mentioned in tender notification in Na.Ka.No.84/2016, dated 09.02.2017 on the file of the third respondent and accept the tender of the petitioner.

W.P.No.7930 of 2017

S.Sundararaj

.. Petitioner

Vs.

1.The Director of Town Panchayats,
Kuralagam, Chennai - 108.

2.The Tender Evaluation Committee,
Rep. by its Committee,
Chairperson-cum-Assistant Executive Engineer,
Town Panchayats, Salem.

3.The Executive Officer,
Sentharpatti First Grade Town Panchayat,
Sentharpatti, Salem District.

4.M/s.ASR Constructions,
No.317/1, EVN Road, Deepam Towers,
Erode-9.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 3 to reject the tender of the fourth respondent for the road work mentioned in tender notification in Na.Ka.No.413/2016, dated 09.02.2017 on the file of the third respondent and accept the tender of the petitioner.

For Petitioner in
both W.Ps'

: Mr.R.Muthukumarasamy
Senior Counsel

For Mr.P.Rajavel

For Respondents in
both W.Ps'

: Mr.S.R.Rajagopal
Additional Advocate General
Assisted by Mr.S.Diwakar,
Special Government Pleader for R1 to R3

Mr.T.Nixon for R-4 in W.P.No.7929 of 2017

Mr.S.Sivakumar for R-4 in W.P.No.7930 of 2017

COMMON ORDER

The prayer in the Writ Petitions is to issue Writ of Mandamus, directing the respondents to reject the tenders of the fourth respondent respectively, for the Road work mentioned in tender notification in Na.Ka.No.84/2016 and Na.Ka.No.413/2016, respectively, dated 09.02.2017 and accept the tenders of the petitioner.

2. The petitioner would state that he is a Class I Contractor and the third respondent issued a tender notification dated 09.02.2017 calling for the tenders for laying of tar road from Ward No.2, Government Higher Secondary School to Town Panchayat limit and from Ward No.3, Uthirakumar Thottam to Kondaiyampalli Road Bridge, respectively. The petitioner submitted the tender documents through online on 07.03.2017 and by manually on 08.03.2017.

3. The petitioner would state that the technical bid was opened on 09.03.2017 and out of three bidders, the bid of the petitioner alone was found qualified and the other two bids were rejected, which was also intimated to the petitioner on 14.03.2017. The price bid was opened on 17.03.2017 in the office of the third respondent and in the presence of the petitioner's representatives and the bid of the petitioner was entered in the concerned records.

4. The grievance of the petitioner is that the second respondent instead of declaring the petitioner as a successful bidder has awarded the contract to the fourth respondent, respectively. Hence, these present Writ Petitions.

5. In the counter in filed by the third respondent in W.P.No.7929 of 2017, it is stated that pursuant to the tender notification dated 09.02.2017, the petitioner viz., Sundararaj and the fourth respondent M/s.VMI Constructions and one Mani submitted their applications. In W.P.No.7930 of 2017, it is stated that pursuant to the tender notification dated 09.02.2017, the petitioner viz., Sundararaj and the fourth respondent M/s.A.S.R. Constructions and one M/s.Solaiappan Constructions submitted their applications. The petitioner has submitted two tenders one through online and

another by Register Post, while the other two contractors submitted their applications in person. As per the notification, the tenders were opened on 09.03.2017 at 3.30 p.m. in the presence of the contractor and the Technical Team found that the tender submitted by the petitioner herein and the fourth respondent respectively, were in order, and the tender documents submitted by Mani and M/s.Solaiappan Constructions had been rejected.

6. It is further stated on 17.03.2017, the price bid was opened and the fourth respondents were found lowest bidders. Thereafter, the Special Officer, Town Panchayat, Thedavur, Salem District, in Resolution No.44/(4), dated 21.03.2017 and the Special Officer, Town Panchayat, Sentharapatti, Salem District, in Resolution No.54/(3), dated 20.03.2017, respectively, approved their bids and on 22.03.2017 work orders were issued.

7. The third respondent has further stated that in the summary, it was informed with regard to acceptance of technical bid submitted by the petitioner, but the acceptance of the technical bid of the fourth respondent respectively was not informed, which was misunderstood by the petitioner as if the petitioners' tender alone was approved.

8. Heard Mr.R.Muthukumarasamy, learned Senior Counsel, representing Mr.P.Rajavel, learned counsel for the petitioner;

Mr.S.R.Rajagopal, learned Additional Advocate General, assisted by Mr.S.Diwakar, learned Special Government Pleader for the respondents 1 to 3 and Mr.T.Nixon, learned counsel for the fourth respondent in W.P.No.7929 of 2017 and Mr.S.Sivakumar, learned counsel for the fourth respondent in W.P.No.7930 of 2017 and perused the records.

9. In the instant case, admittedly, along with the petitioner, the fourth respondents in the Writ Petitions respectively, and one Mani and M/s.Solaiyappan Constructions have participated in the tender floated by the third respondent on 09.02.2017. It is not in dispute on 09.03.2017, the technical bids were opened in the presence of the representatives of the tenderers / tenderers. The third respondent, by a Communication, dated 14.03.2017, issued a summary stating that *"the Technical Bid was opens by the Technical Officer's. Three persons entered the tenders. In which only a person's tender accepted. Thiru.S.Sundarraaj tender is accepted."* Mainly relying on the above said communication, the petitioner has come forward before this Court seeking direction to reject the tender of the fourth respondent.

10. A perusal of the documents produced by the respondent, it is seen that on 10.03.2017, the Tender Scrutiny Committee found the bids of the petitioners and the fourth respondents in the above Writ Petitions were

eligible and rejected the tender of R.Mani and M/s.Solaiappan Constructions. Subsequently on 17.03.2017, the fourth respondents, was declared as a successful bidder as they were the lowest bidders. The Executive Officers of Thedavur and Sentharapatti, Town Panchayats, Salem District had approved the tender of the fourth respondent respectively and the Special Officers of Thedavur and Sentharapatti, passed Resolutions on 21.03.2017 and 22.03.2017, respectively. Thereafter, work orders were issued on 22.03.2017.

11. It is settled law that in respect of tender matters, the scope of Judicial Review is very limited and the Court has to see whether the procedures have been followed by the respondents. In the case on hand, the respondents have floated tender and followed the procedure. If the petitioner is aggrieved by the decision of the third respondent could have preferred an Appeal under Section 11 of Tamil Nadu Tender Transparency Act or in special circumstances challenge the rejection by invoking Article 226 of the Constitution of India.

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12. These Writ Petitions have been filed only on the basis of the summary issued by the third respondent stating that the technical bid of the petitioner only was adopted. As observed supra, the Tender Scrutiny Committee accepted the technical bid of the fourth respondents, no other material has been produced to establish the technical bid of the fourth respondents were rejected, and the Official Respondents had acted in an arbitrary manner warranting interference of this Court. In the considered opinion of this Court, the petitioner cannot succeed merely on the basis of the summary issued by the third respondent

13. In that view, 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.

19/02/2018

Speaking Order / Non Speaking Order

Index : Yes / No.

Internet : Yes / No.

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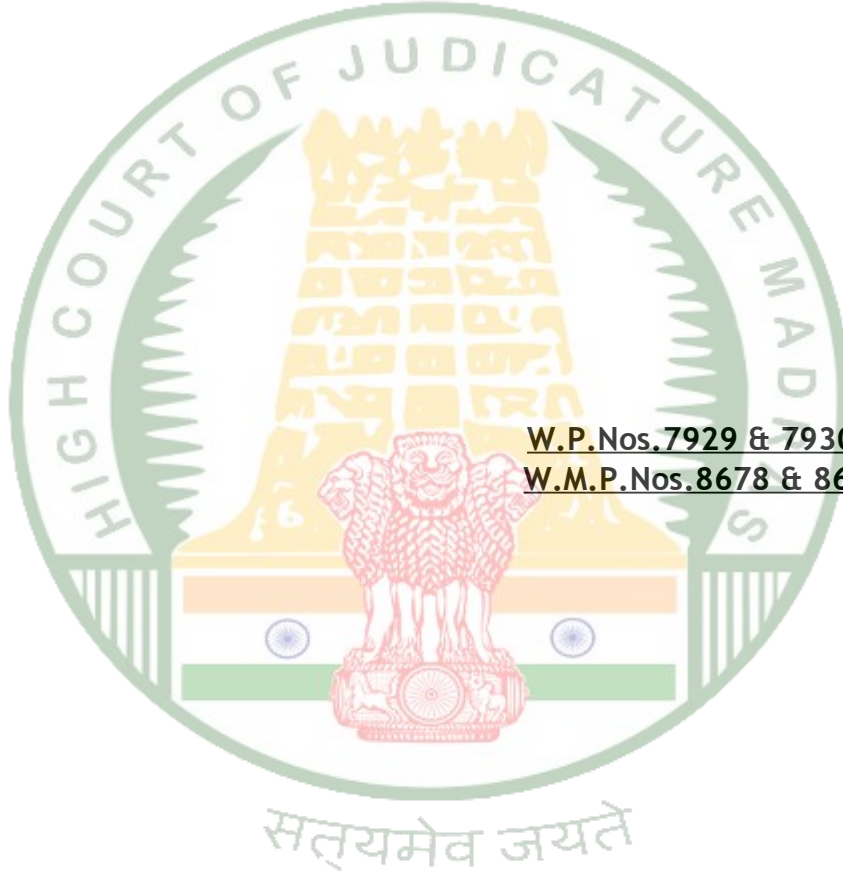
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K.KALYANASUNDARAM, J.

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