

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.31576 OF 2017
and
WMP Nos.34700 to 34702 of 2017

A.Nazeem

.. Petitioner

Vs.

1.The Commissioner of Municipalities Administration,
Ezhilagam, Annex Building,
6th Floor, Chepauk, Chennai 600 005.

2.The Commissioner,
Villupuram Municipality,
Villupuram.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records relating to the tender notification of the first respondent made in Na.Ka.No.571/2017/E1 dated 16.11.2017, to quash the same in so far as clause 4.1 A(3) and (4) are concerned and to consequently direct the respondents to consider the bid of the petitioner on merits and in accordance with law.

For Petitioner : Mr.L.Chandrakumar for
M/s.R.Babu

For Respondents : Mr.STS.Murthy
Additional Advocate General
Assisted by
Mr.R.Govindasamy
Special Government Pleader

O R D E R

The petitioner is aggrieved against the tender notification dated 16.11.2017, more particularly, in so far as clause 4.1 A (3) and (4) are concerned. Consequently, the petitioner seeks for a direction to the respondents to consider the bid of the petitioner on merits and in accordance with law.

2.The grievance of the petitioner in this writ petition is against clause 4.1A(3) and (4) of the tender conditions, which deal with qualification of the bidders. Clause 4.1 A (3) stipulates that the bidder should have an annual minimum financial turnover of not less than 50% of the value put to tender in the preceding "three" financial years (2014-15, 2015-16 and 2016-17). Clause 4.1A(4) stipulates that the bidder should have satisfactorily completed BT or BT or CC road work(s) of not less than 50 % of the value put to tender under a single agreement in any one of the preceding "three" years (2014-15, 2015-16 and 2016-17) for the Government Department/Board/Government Undertaking.

3.Pointing out the above conditions stipulated in the impugned tender notification, the petitioner contended that such conditions are onerous and stipulated only to facilitate some interested person, who alone could participate in the tender process with such qualification, as no other persons, like the petitioner, can participate in the process, since they are not having such qualifications, which according to the petitioner, is not at all required for the purpose of considering the nature of work to be performed under the contract.

4.When the matter was taken up earlier for admission, the learned counsel Mr.L.Chandrakumar appearing for the petitioner submitted that the petitioner is not even in a position to download the tender forms in view of the above said impugned conditions and therefore, he is unreasonably prevented from participating in the tender process. However, the learned Special Government Pleader, who took notice for the respondents, submitted that there will not be any difficulty for the petitioner to download the tender forms, as it can be done from the website. Learned Special Government Pleader on that occasion also submitted that the time for downloading the tender forms and submitting the same was extended upto 13th and 14th of December 2017 respectively and therefore, the petitioner cannot feel any impediment for downloading the application. After recording the said statement, the matter was adjourned and thereafter, when the matter was taken up on 18.12.2017, the learned counsel for the petitioner Mr.L.Chandrakumar submitted that subsequent to the earlier hearing, the petitioner has downloaded the application and submitted the same. The respondents have also filed counter affidavit opposing the writ petition. Accordingly the matter was posted for further hearing after Christmas holidays.

5.When the matter was again taken up for hearing on 02.01.2018, Mr.L.Chandrakumar, learned counsel for the petitioner submitted that the petitioner has participated in the tender and however, the results are not declared. He further

submitted that once the results are declared, the petitioner will be in a position to know whether he is within the zone of consideration or outside the same so as to maintain the writ petition further. Therefore, the learned Special Government Pleader sought time to verify the present state of affairs. Accordingly the matter was adjourned for further hearing and thus, it is taken up today for disposal.

6.Today the learned Special Government Pleader, based on written instruction submitted that the petitioner has not submitted the two covers with specific indication on the top of each cover as to which one is the Technical Bid and which other is the Price Bid and thus carelessly and wantonly submitted two covers without mentioning the above details. He further submitted that since the technical bid cover has to be opened first and price bid cover has to be opened later, the respondents were not in a position to consider the bid submitted by the petitioner, in view of the above said mistake committed by him, by not indicating as to which cover contained which bid (Technical Bid /Price Bid).

7.Upon hearing the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and considering the above stated facts and circumstances, it is evident that though the petitioner was given a chance to participate in the tender, without prejudice to the contention of either parties, he failed to succeed in his attempt not because of the impugned tender conditions, but because of his own fault in not making the tender forms in two covers by specifically indicating on the top of each cover as to which cover contained Technical Bid and which cover contained Price Bid. Therefore, as rightly pointed out by the learned counsel for the respondents, the petitioner bid cannot be opened as the very submission itself is not in accordance with the terms of the other tender conditions with which, the petitioner has no quarrel. Therefore, it is evident that the petitioner is out of picture. Consequently, the writ petition is to fail, though not on considering the merits of the matter as raised in the writ petition but on the very fault of the writ petitioner in conducting himself during the pendency of this proceedings, even though he has been given a chance to do so. Thus, the writ petition is dismissed. No costs. The connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Municipalities Administration,
Ezhilagam, Annex Building,
6th Floor, Chepauk, Chennai 600 005.

2.The Commissioner,
Villupuram Municipality,
Villupuram.

+lcc to Government Pleader Sr.No.1170/18

+lcc to Mr.R.Govindasamy, Spl.G.P.Sr.No.1316/18

AK(CO)

sm:19.1.2018

W.P.No.31576 of 2017



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