

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.6850 of 2018
and
W.M.P.No.8477 of 2018

M/s.Valar & Co.
Represented by its Managing Partner,
3/33, Pandarankadu
Konasamudram Village and Post,
Konganapuram (via)
Edappady Taluk,
Salem District 637 102. ... Petitioner

-vs-

- 1.The Superintending Engineer (Highways)
NABARD and Rural Circle Office
Salem.
- 2.The Divisional Engineer (Highways)
Quality Control Division
Omalur Main Road
Salem - 7. ... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the 1st respondent to receive and process the petitioner's tenders for the works covered in Tender Notice No.14/2017-2018/SDO/Dated 12.02.2018 in respect of works viz., (i) construction of High level Bridge at km8/4 of Tholasampatty Road; (ii) Construction of Bridge at km0/8 of Vadakarai Vaaikkal-Narimedu Road; and (iii) Reconstruction of Bridge at km ¼ of Jalagandapuram-Chinnappampatti Road to Vellalapuram and Akkaraipatti Road, under NABARD RIDF XXIII - Bridge Works - 2017-2018 in Salem (H) NABARD and Rural Roads Division without insisting for Working Condition Certificate to be issued by the 2nd respondent.

For Petitioner :: Mr.R.Neelakandan

For Respondents :: Mr.V.Jayaprakash Narayanan
Spl. Govt. Pleader

ORDER

This writ petition has been filed by M/s.Valar & Co directing the first respondent to receive and process the petitioner's tender for the works covered in respect of works viz., (i) construction of High level Bridge at km 8/4 of Tholasampatty Road; (ii) Construction of Bridge at km 0/8 of Vadakarai Vaaikkal-Narimedu Road; (iii) Reconstruction of Bridge at km ¼ of Jalagandapuram-Chinnappampatti Road to Vellalapuram and Akkaraipatti Road, under NABARD RIDF XXIII - Bridge Works - 2017-2018 in Salem (H) NABARD and Rural Roads Division without insisting for Working Condition Certificate to be issued by the 2nd respondent.

2. The petitioner claims to be a first class registered contractor with the Highways Department of Government of Tamil Nadu. On 12.02.2018, a tender notification was issued by the Superintending Engineer (H) NABARD Salem bearing Tender Notice No.14/2017-2018/SDO/dated 12.02.2018 in respect of the aforementioned works. The said notification dated 12.02.2018 has imposed a condition that Working Condition Certificate should be obtained from the Divisional Engineer (Highways), Quality Control Division, Salem, second respondent herein and the same should be enclosed along with the application. In order to comply with the said condition, the petitioner made a representation on 14.03.2018, requesting the second respondent to inspect the petitioner's plant and also to issue a running condition certificate to the machineries for the purpose of making application to take part in the said tender. Whereas, the second respondent although received the said application on 14.03.2018, i.e., seven days before the date of expiry of the last date, till date has not come forward to issue the running condition certificate to the machineries. As a result, the petitioner has been deliberately kept out of the race, therefore, prays for appropriate direction.

3. After filing the counter affidavit, the learned counsel appearing for the petitioner taking support from paragraph 5 therein, has submitted that first respondent has clearly admitted the case of the petitioner and only due to his busy schedule, he was unable to carry the inspection of various works, therefore, he was unable to issue the running condition certificate. The second respondent is duty bound to issue the running condition certificate to the machineries. In spite of having the benefit of seven clear days from the date of submitting the application on 14.03.2018, he has deliberately acted against the petitioner. Therefore, a direction can be issued to accept his application without the running condition certificate, as he has got all the machineries in running condition.

4. The learned Special Government Pleader appearing for the respondents reiterating the stand taken by the first respondent in the counter affidavit submitted that when the notification was issued by the first respondent on 12.02.2018, inviting application for the work covered in the tender floated by the Superintending Engineer, the petitioner, on his own whims and fancies and on his own convenience, chosen to file his application only after 32 days from the date of issuance of the notification viz., on 14.03.2018. The learned Special Government Pleader has further submitted that if the petitioner had submitted his application immediately before the second respondent, who was all the time busy with preoccupied work, would have considered the application and also issued the certificate. He further submits that the petitioner cannot come to this Court and ask for a direction to accept his application without production of running condition certificate for the machineries.

5. This Court finds no justification on the stand taken by the respondent for the following reason that;

a) the petitioner, having received the notification dated 12.02.2018, fixing the last date for submission of the application on 22.03.2018, no doubt, has submitted his application on 14.03.2018, but, still the second respondent was having eight days time to consider and issue the running condition certificate to the machineries.

b) though the second respondent received the application dated 14.03.2018, has not chosen to visit the place, where the machineries of the petitioner are placed, to find out whether they are all in running condition so as to issue the running conditions certificate, and

c) admittedly, the second respondent has committed dereliction of duty, when he had received the application eight days before the last date for which he can be proceeded departmentally, therefore, this Court finds no justification on the part of the second respondent in not issuing the aforesaid certificate. Accordingly, the first respondent is directed to accept the petitioner's application without insisting for production of the running condition certificate to the machineries and shall process the application.

6. With the above directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

To

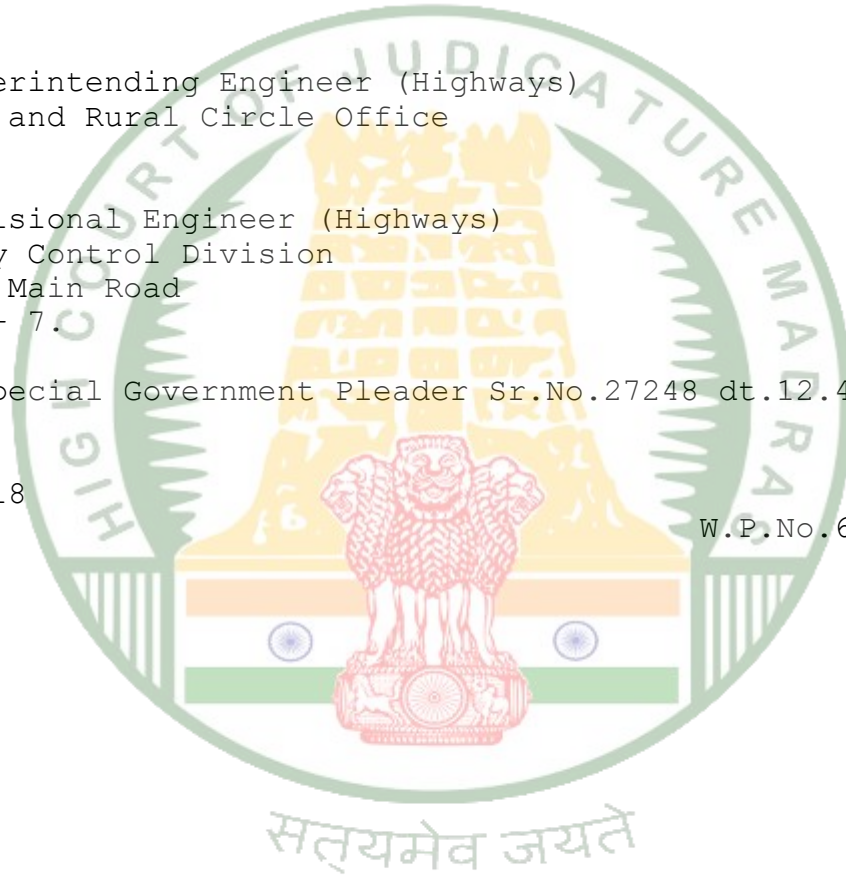
1.The Superintending Engineer (Highways)
NABARD and Rural Circle Office
Salem.

2.The Divisional Engineer (Highways)
Quality Control Division
Omalur Main Road
Salem - 7.

+1cc to Special Government Pleader Sr.No.27248 dt.12.4.2018

MR(CO)
sm:8.5.2018

W.P.No.6850 of 2018



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