

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 03.10.2018  
CORAM  
THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN  
W.P. 11652 of 2018  
and  
W.M.P. 13641 of 2018

M/s.Subaya Constructions Co. Ltd.,  
rep. by its Director  
Mr.S.Meenakshi

... Petitioner

Vs.

1. The Superintending Engineer  
(Contracts & Monitoring),  
Chennai Metropolitan Water  
Supply and Sewerage Board,  
No.1, Pumping Station Road,  
Chindadripet, Chennai-600 002.
2. M/s.VVV Constructions Pvt. Ltd.,  
represented by its Managing Director  
Mr.Venkatavijayan,  
No.1074, Munusamy Salai,  
K.K.Nagar, Chennai-600 078.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the 1<sup>st</sup> respondent from considering any discounts offered by the bidders that are not mentioned in the relevant forms furnished in Sec.4 (d) of the Letter of Price Bid as per Clause 12.1 of Instructions to bidders and consequently reject the "Modification cover" submitted by the 2<sup>nd</sup> respondent in the Tender proceeding in NCB No.81/2017-18.

For Petitioner : Mr.B.Natarajan

For Respondents : Mr.Girishankar

O R D E R

This Writ Petition has been filed forbearing the 1<sup>st</sup> respondent from considering any discount offered by the bidders and to reject the "modification cover" submitted by the 2<sup>nd</sup> respondent.

2. The case of the petitioner is that, the 1<sup>st</sup> respondent has called for tender for providing a comprehensive sewerage scheme to Manali, Chinnasekkadu, Karambakkam and Manapakkam in Chennai City. The last date for filing tender is on 27.02.2018 at about 03.00 p.m. and the petitioner has also filed his tender

before deadline. The 2<sup>nd</sup> respondent herein also filed his tender on the very same day. Thereafter, the 2<sup>nd</sup> respondent filed a separate envelope with a heading printed as "modification cover" with mala fide intention to alter their bid value by offering discounts illegally. In the said circumstances, the petitioner has sent various representations to the 1<sup>st</sup> respondent not to consider modification cover submitted by the 2<sup>nd</sup> respondent, but, so far, his representation was not considered. It is further stated that as per clause 12, of the tender notification, all the discounts offered by the bidder should be specified in the relevant forms furnished as per Clause 4(d) of the Letter of price Bid, and the forms must be completed without any alteration, but the 2<sup>nd</sup> respondent is trying to offer discount and to alter the bid value by submitting in a separate cover printed as "modification cover". Since the modification form did not file in the prescribed format, it should be rejected. In the said circumstances, the present Writ Petition has been filed restraining the 1<sup>st</sup> respondent from considering any discount offer submitted by the petitioner, which is not filed in the prescribed form as specified in Clause 4(d) of the bid document and as per clause 12 and 24 of Instructions to bidders.

3. The 1<sup>st</sup> respondent has filed a counter affidavit stating that the 2<sup>nd</sup> respondent after submission of the tender at 01.45 p.m. submitted a modification cover at 2.50 p.m. and the tenders received along with the modification cover and the same was recorded in the opening form, which has been authorised by the Tender Scrutiny Committee. As per clause 24.1 of the tender notification, the tender cover and the modification cover were submitted by the 2<sup>nd</sup> respondent before the deadline, and the 1<sup>st</sup> respondent received them as both the covers were submitted before the due time. Whether the 2<sup>nd</sup> respondent filed the modification cover in the prescribed format or not can be ascertained only after opening of the price bids. At present, only the technical evaluation is being done. While opening the price bid only, it could be ascertained whether it is in the prescribed format or not. In any case, mere receipt of modified bid cover will not amount to its acceptance. The 1<sup>st</sup> respondent will consider the modification cover if it is in the acceptable form, after opening the same.

4. The 2<sup>nd</sup> respondent filed counter affidavit stating that the petitioner has submitted the tender document on 27.02.2018 before the deadline at 03.00 p.m. within the cut off time and since there is no sufficient space in the relevant form to fill it up, the offer was made in a separate envelope and it is not illegal. It is further submitted that the petitioner has not offered any discount and they are trying to eliminate the 2<sup>nd</sup> respondent from the tender.

5. I have considered the rival submissions and perused the materials available on record.

6. The grievance of the petitioner is that the 2<sup>nd</sup> respondent did not file his modification or discount offer in the forms prescribed under the tender notification. Now, the 1<sup>st</sup> respondent has filed a counter affidavit stating that now, they are in the process of evaluating the technical bid and at the time of considering the price bid only, it can be decided whether the 2<sup>nd</sup> respondent has filed the forms in the prescribed format or not. Now, it is in the premature stage as the price bid is yet to be opened by the 1<sup>st</sup> respondent and at the time of opening the price bid, if any of the documents filed by the parties not filed in the prescribed form, it is always open to the 1<sup>st</sup> respondent to take a decision on the same and the relief sought by the petitioner cannot be granted at this stage.

7. In the result, with the above observation, the Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is also closed.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

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Mr.Venkatavijayan,  
No.1074, Munusamy Salai,  
K.K.Nagar, Chennai-600 078.

+1cc to Mr.B.Natarajan, Advocate, S.R.No.68084  
+1cc to Mr.N.Ramesh, Advocate, S.R.No.68496

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and  
W.M.P. 13641 of 2018

MR(CO)  
rrs 19/11/2018