

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.25020 of 2018  
and W.M.P.Nos.29057 to 29059 of 2018

M/s.Arunai Constructions  
Rep by its Partner, D.Vengatesan,  
No.136/52, Mathalan Gula Street,  
Tiruvannamalai,  
Tiruvannamalai District ... Petitioner

Vs.

The Executive Engineer,  
Tamil Nadu State Agricultural Marketing Board,  
Guindy,  
Chennai 600 032 ... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the Tender Notice bearing Ref.No.T.08/TO/F.1157/2018 dated 03.08.2018 and the impugned proceedings under Letter No.DO/DB/NABARD-SCM/2017 dated 11.09.2018 of the respondent herein and quash the same and consequently direct the respondent herein to consider the bid of the petitioner in respect of the work "Serial No.2-Construction of Multi Level Godown at Gingee RM in Villupuram District.

For Petitioner : M/s.A.L.Ganthimathi

For Respondent : Mr.S.R.Rajagopal, AAG  
Assisted by  
Mr.V.Jayaprakash Narayanan  
Special Government Pleader

#### ORDER

The petitioner has filed the above Writ Petition seeking for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the Tender Notice bearing Ref.No.T.08/TO/F.1157/2018 dated 03.08.2018 and the impugned proceedings under Letter No.DO/DB/NABARD-SCM/2017 dated 11.09.2018 of the respondent herein, to quash the same and to direct the respondent herein to consider the bid of the petitioner in respect of the work "Serial No.2-Construction of Multi Level Godown at Gingee RM in Villupuram District.

2. The petitioner is a registered Class-I Contractor in having done several road works, Civil works and building works for more than 15 years. In response to the advertisement dated 03.08.2018 under Tender Notice No.T.08/TO/F.1157/2018 inviting sealed tenders from Class-I registered contractors of P.W.D. Department for four works, out of which, Serial No.2, namely, Construction of Multi-level Godown at Gingee RM in Villupuram District. The petitioner had applied for the same. The sealed tender was of two cover system, viz., Pre-bid qualification Schedule and Price Bid Schedule.

3. The conditions in the tender are that firstly, the applicant should be a Class-I Contractor with Tamil Nadu State Public Works Department or equivalent as per the revised qualification with monetary limit of above Rs.75 lakhs, secondly, the applicant shall be a solvent to the tune of Rs.30 lakhs on immovable property in his name and the solvency certificate should be issued by the Tahsildar, thirdly, the encumbrance certificate issued by the Registration Department on the properties listed out in the Solvency Certificate, fourthly, the applicant should produce the Income Tax Clearance Certificate valid for the current period along with TIN No, VAT Verification Certificate and finally, the applicant should have completed atleast one Civil construction work of similar nature with value of not less than Rs.885.00 lakhs under a single agreement in any one of the preceeding 5 years in Government or Quasi Government Organisations.

4. The petitioner claiming to have qualified in the aforesaid aspects submitted its tender, but the tender was rejected. The petitioner has not qualified even at the pre qualification stage. Therefore, the Writ Petition has been filed, challenging the same on the ground that despite closure of the required documents, the petitioner was disqualified.

5. The Writ Petition was contested by the respondent contending that the petitioner though required to submit all the documents along with the tender form, had not furnished the documents as required. It is only for the first time, the

Solvency Certificate is furnished in the typed set of papers. The tender notification specifically had given the minimum criteria for qualification and also the evidence to be produced in respect of the Solvency Experience, financial soundness, working capital etc.

6. So far as the experience is concerned, it is pointed out that the documents produced by the petitioner was from the National Highways Chennai, for which, the petitioner had executed the work of widening of CC pavement. It is pointed out by the learned Government Pleader that the work mentioned in the tender conditions is for a construction of Multi Level Godown whereas the document produced by the petitioner is for his experience in laying of road with Highways Department, which is not a similar work. Therefore, the petitioner is disqualified even in the experience.

7. So far as the working capital is concerned, it is submitted that as per the tender notification, a bidder has to submit the audited balance sheet for the preceeding five years, which should be certified by the chartered accountant indicating paid up share capital, subscribed share capital, partner's capital account and new capital account etc., with respect to the applicant. It is specifically mentioned that the applicant shall have the working capital of 88.50 lakhs available atleast sufficient to finance one month current activity whereas the documents produced by the petitioner was the certificate from Tamilnadu Mercantile Bank dated 20.07.2018 and the said document only indicates that the Bank would provide over draft or credit facilities to the extent of 6 crores to meet their working capital requirements for their contract work during the contract period subject to the terms and conditions of the Bank. There are no income tax returns mentioning the required working capital. Therefore, even on the ground of working capital also, the bid was rejected.

8. The next aspect is with respect to centering material possessed by the bidder. The tender document specifically indicates the minimum construction equipments tools and plants exclusively available for the work either on its own or under lease with the applicant. The petitioner had not produced any evidence as required above. The bid capacity of the petitioner was also rejected by the respondent, as the same did not comply with the required capability of the applicant indicated in the tender notification.

9. In paragraph 11 of the counter affidavit, it is specifically stated that the calculation as understood by the petitioner is not correct and hence, the petitioner was once again found ineligible in criteria for price bid also. It is

useful to extract the paragraph 11 of the counter affidavit, which as follows:

"With regard to the contentions mentioned in Ground d of the affidavit, it is submitted that the bid capacity of the tenderer is calculated based on the formula  $(A \times N \times 1.5 - B)$ , where A is annual turnover and N is Number of years for completion of a project and B is the total value of work which includes the value of work on hand and the value of work under consideration for the particular tender and based on this calculation only the bid capacity was arrived. The calculation provided in the PQ document by the petitioner is totally wrong audit was calculated using a factor of 2.00 instead of 1.50 in such a way to misguide the Hon'ble High Court. Hence, the petitioner was found ineligible in these criteria also for price by the TAC."

10. As the petitioner had failed to fulfill the major conditions required for bagging the contract, the bid was rightly rejected by the respondent.

11. As repeatedly held by the Hon'ble Supreme Court, the decision making process of the employer or owner of the project in accepting or rejecting of bid of a tenderer should not be interfered with excepting on the grounds of malafide or its intended to favour some one. Such decision making process can be interfered with only when the decision is arbitrary or irrational and the decision is taken based on unreasonable grounds. In other words, only the decision is perverse, the same can be interfere with.

12. The recent decision of the Hon'ble Supreme Court in the case of Municipal Corporation, Ujjain and another- vs-BVG India Limited and Others in (2018) 5 SCC 462, which reads as follows:

"64.1 Under the scope of judicial review, the High Court could not ordinarily interfere with the judgment of the expert consultant on the issues of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non performance of the bidder".

13. As regards any interference by the Court unless otherwise for the reasons aforesaid mentioned, this Court can be interfered with.

14. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

srn

To  
The Executive Engineer,  
Tamil Nadu State Agricultural Marketing Board,  
Guindy,  
Chennai 600 032

+1cc to M/s.AL.Ganthimathi, Advocate SR.No.89201

+1cc to Mr.V.Jayaprakash Narayanan, Advocate SR.No.88703

W.P. No.25020 of 2018  
and W.M.P.Nos.29057 to 29059 of 2018

SKV(CO)  
GMY(03/01/2019)



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