



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.02.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)No.188 of 2018
and
C.M.P(MD)No.1041 of 2018

M/s.Lucky Associates, rep. by its
Managing Partner J.Hussain Farid,
No.304, Makilambu Street,
6th Main Road, Gomathipuram,
Madurai. .. Appellant/Fourth Respondent

Vs.

1.Poundass .. Respondent No.1/ Petitioner

2.The General Manager,
Madurai District Co-operative Milk Producers
Union Limited (Aavin),
Sathamangalam, Madurai.

3.The District Collector,
Madurai District, Madurai.

4.Mr.Premachandran,
Special Sub-Inspector of Police,
Anna Nagar Police Station,
Madurai. .. Respondents 2 to 4/Respondents 1 to 3

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent
against the order, dated 30.01.2018, passed in W.P(MD)No.17939 of
2017, by the learned Single Judge.

Prayer in WP(MD).No. 17939/ 2017 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a writ of
Mandamus, directing the 1st respondent to accept and process the
Technical Bid and Commercial Bid of the Petitioner towards the
tender process invited in respect of Civil Contract Works under the
name of PROVIDING ROAD ARRANGEMENTS AROUND, DAIRY BUILDING, INNER
DRAIN, RAIN WATER HARVESTING, OUTER MAIN DRAINAGE & LAYING OF DIS
PIPES AT MAIN DAIRY MADURAI, conducted on 19.09.2017.

For Appellant

: Mr.T.Lajapathi Roy

For Respondent No.1

: Mr.R.Murali



For Respondents 2 to 4

: Mr.M.Murugan,
Government Advocate.

J U D G M E N T

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, this writ appeal is taken up for final disposal.

2.Mr.R.Murali, learned counsel, appears on behalf of the first respondent and Mr.M.Murugan, learned Government Advocate, appears on behalf of the respondents 2 to 4.

3.The fourth respondent in W.P(MD)No.17939 of 2017 is the appellant.

4.The first respondent/writ petitioner, in the affidavit filed in support of the writ petition, has averred that he is a Class I Contractor in the Civil Work Field in Public Works Department and undertook various works successfully in Madurai District as well as in other areas for value more than five crores and he is having a rich experience in the field of Civil Contract Work for the past twenty years and he is in possession of machineries and equipments to execute the Civil Contract Works in a qualitative manner. The first respondent/writ petitioner would further aver that the second respondent herein had invited tenders for Civil Contract Works by way of tender process for doing the following works, namely, "PROVIDING ROAD ARRANGEMENTS AROUND DAIRY BUILDING, INNER DRAIN, RAIN WATER HARVESTING, OUTER MAIN DRAINAGE AND LAYING OF DIS PIPES AT MAIN DAIRY MADURAI". The value of the work was fixed at Rs.2,62,000/- and according to the petitioner, he being a Class I Contractor, is eligible to participate in the tender process and the tender process consists of two cover systems, namely, Technical Bid and Commercial Bid and the concerned bidder/participant is to give the tender under two cover system and the last date for sale of tender document was fixed on 18.09.2017 and the last date for receiving the tender was fixed on 19.09.2017 at 02.30 p.m. and the Earnest Money Deposit was fixed at Rs.2,62,000/-. The petitioner would state that, in normal course, a tender box will be provided and the intending bidders/tenderers had to put their offer in the form of tender in the box and thereby, all of them are freely allowed to participate in the tender process and insofar as the tender form is concerned, it can be downloaded from the Website and however, no online submission was permitted. According to the petitioner, he had downloaded the Online Application Form and properly filled with relevant attachments and also took a demand draft for Rs.2,62,000/- in the name of the second respondent herein and also prepared the Technical Bid and Commercial Bid in proper format in separate covers. The petitioner had entered the premises of the second respondent on 19.09.2017 at about 12.45 p.m. for putting his tender offer in the tender box and while he went there, two other persons were also came to submit

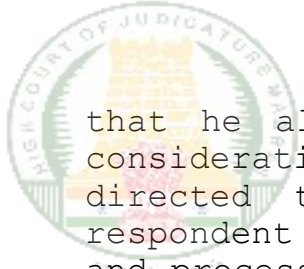
their tenders.

5. It is the specific case of the first respondent/writ petitioner that at the instigation of the Union Leader of the second respondent herein, some outsiders/rowdy elements were present in the corridor and they used physical force and prevented him to put his tender offer in the tender box and there was a wordy altercation and further, none of the officials of the second respondent came to the spot to prevent such act actually occurred and apart from the petitioner, the persons, who accompanied him, were also subjected to physical assault. Therefore, the petitioner is constrained from moving the tender application by the illegal contravention of the rowdy elements and if he would have submitted his tender form, the bid should have been knocked down in his favour, by virtue of his experience and further that he has fulfilled all necessary eligible criteria and hence, he came forward to file a writ petition in W.P (MD) No.17939 of 2017, praying for the issuance of a writ of mandamus, directing the second respondent herein to accept and process the Technical Bid and Commercial Bid of the petitioner, in respect of the tender process, conducted on 19.09.2017.

6. It is brought to the knowledge of this Court that a request for moving the writ petition by way of lunch motion, was made on 20.09.2017 and since it was not numbered, it was moved for lunch motion on 21.09.2017 and on that day, it was entertained and the learned Single Judge, vide order, dated 21.09.2017, directed the respondents in the writ petition, to maintain *status quo*.

7. The first respondent in the writ petition, who is arrayed as second respondent herein, has filed the counter affidavit stating among other things that on 20.09.2017, the Tender Committee had opened the tender applications in the presence of tenderers and five persons had submitted tender applications, namely, (i) M/s. Lucky Associates, (ii) P.M. Ahamad, (iii) Mahudam Constructions, (iv) T. Saravanan and (iv) Sachin Construction and out of five, Sachin Construction had withdrawn their application and Mr. T. Saravanan has not enclosed Earnest Money Deposit amount along with the tender application and therefore, both tender applications were not considered and three persons had participated in the tender process held on 20.09.2017, namely, (i) M/s. Lucky Associates, (ii) P.M. Ahamad and (iii) Mahudam Constructions, and after due process the Tender Committee has selected the lowest bidder, namely, M/s. Lucky Associates and declared them successful bidder on 20.09.2017 and they also took a stand that in the light of the interim order of *status quo* granted on 21.09.2017, the work order could not be awarded to the successful bidder, namely, M/s. Lucky Associates.

8. The learned Judge after considering the rival submissions, recorded the finding that the writ petitioner/first respondent herein is the Class I Contractor and he is also eligible to participate in the said tender process for execution of the work and



that he also took a demand draft on 18.09.2017 and taking into consideration the facts and circumstances, the learned Judge has directed the first respondent in the writ petition - second respondent herein, to accept the tender submitted by the petitioner and process the same along with the other tenders and recording the said reasons, the learned Judge had allowed the writ petition, vide impugned order, dated 30.01.2018. The successful bidder, namely, M/s.Lucky Associates, after obtaining leave from this Court, came forward to file this writ appeal.

9.Mr.T.Lajapathi Roy, learned counsel appearing for the appellant/ fourth respondent has drawn the attention of this Court to the counter affidavit filed by the first respondent in the writ petition - second respondent herein and would submit that admittedly, the appellant herein was declared as a successful bidder and though the said fact has been disclosed in paragraph No.5 of the counter affidavit filed by the first respondent in the writ petition, it has not been taken cognizance by the learned Judge, while allowing the writ petition and since a civil right has been accrued to him, in all fairness, he should have been noticed before allowing the writ petition and since it has not been done so, he prays for interference.

10.Mr.R.Murali, learned counsel appearing for the first respondent, would submit that to prevent such kind of abuse or misuse only, Closed Circuit Television Cameras were ordered to be installed in the Aavin premises and unfortunately, those cameras for the reasons best known, became dysfunctional and despite physical assault and verbal abuse inflicted on the petitioner and his men, no action has been taken by the officials of the Aavin as well as the fourth respondent in the writ petition, before whom, a complaint was lodged and the learned Judge, taking into consideration, all the relevant facts and circumstances, has rightly allowed the writ petition and would further add that since the work order has not been granted in favour of the appellant herein, no prejudice would be caused to him and among the appellant, first respondent, Mr.P.M.Ahamad and Mahudam Constructions, the tender process, once again, may be ordered to be conducted and in the event of the lowest bid, it is the second respondent herein, who is going to be benefitted and prays for appropriate orders.

11.Mr.M.Murugan, learned Government Advocate, appearing for the respondents 2 to 4 has produced the written instructions, dated 05.02.2018, submitted by the General Manager of Aavin - second respondent and would submit that as per the provisions of the Tamil Nadu Transparency in Tenders Act, 1998, the first respondent/writ petitioner cannot be called for negotiation, as he has not participated in the tender process and the rate quoted by L1 - appellant is also known and therefore in the event of re-tender process among the appellant, first respondent, Mr.P.M.Ahamad and Mahudam Constructions, it may reach the confidentiality and prays for dismissal of this writ appeal. The said written instructions submitted by the General Manager of Aavin - second respondent,

dated 05.02.2018, are taken on file and recorded.

12.This Court has carefully considered the rival submissions and also perused the materials placed before it.

13.This Court, before venturing into the merits of the contentions putforth by the respective learned counsel appearing for the parties, is of the considered view that Closed Circuit Television Cameras were installed in Aavin premises to prevent recurrence of such a kind of event and it is brought to the knowledge of this Court by the learned Government Advocate appearing for the respondents 2 and 4 that the said cameras are dis-functional, due to some technical defects. It is also surprising to note that all the cameras became dis-functional and in all fairness, steps would have been taken to rectify the same and made it functional, but unfortunately, it has not been done. Insofar as, the allegations made by the first respondent that he has been physically prevented by the Union leader and his henchmen to put his tender form in the Tender Box and also as to the allegations of *mala fide*, this Court is of the considered view that the said issue revolves around adjudication of factual aspects and this Court under Clause 15 of Letters Patent, cannot venture into the same. The fact remains that on 20.09.2017, the appellant/L1 was identified as a successful bidder in the tender process, but on account of interim order of status quo, passed on 21.09.2017, the work order could not be awarded to him.

14.It is also relevant to extract Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998 and the same reads as follows:

"11.Appeal.- (1)Any tenderer aggrieved by the order passed by the Tender Accepting Authority under section 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.

(2)In disposing of an appeal under sub-section (1), the Government may, after giving the party an opportunity of making his representations, pass such order thereon as they may deem fit.

(3)The order of the Government on such appeal shall be final.

(4)The Government may, pending the exercise of their powers under this section, pass such interlocutory orders as they may deem fit".

15.In the considered opinion of this Court, the said remedy is a statutory one and this Court without adjudicating as to the merits or demerits of the contentions putforth by the respective learned counsel appearing for the parties, grants liberty to the first respondent/writ petitioner to file an appeal along with a petition for stay, before the appellate authority.

16.In the result, the writ appeal is partly allowed and the



order, dated 30.01.2018, passed in W.P(MD)No.17939 of 2017, by the learned Single Judge, is set aside and the first respondent/writ petitioner is granted liberty to file an appeal along with a petition for stay before the appellate authority, within a period of one week from the date of receipt of a copy of this order and upon receipt of same, the appellate authority shall entertain the said appeal, if the papers are otherwise in order, without putting the issue of limitation and thereafter put the appellant as well as respondents 2 and 3 herein, on notice and take up the petition for stay and give a disposal within a further period of one week, thereafter, in accordance with law and communicate the decision taken, to the first respondent/writ petitioner. It is always open to the appellate authority to take up the main appeal and give a disposal, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The General Manager,
Madurai District Co-operative Milk Producers
Union Limited (Aavin),
Sathamangalam, Madurai.

2.The District Collector,
Madurai District, Madurai.

+2cc to Mr.T.LAJAPATHI ROY,Advocate,SR.47074,46973

+1cc to Mr.R.MURALI,Advocate,SR.46808

W.A(MD)No.188 of 2018
and

C.M.P(MD)No.1041 of 2018
06.02.2018

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