



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2018

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P(MD)No.7999 of 2018

and

W.M.P.(MD)No.7595 of 2018

M/s.R.S.Wind Tech Engineers Private Limited,  
Represented by its  
General Manager, namely,  
B.Harikumar

... Petitioner

vs

1. The Director of Handlooms and Textiles,  
Kuralagam, 2<sup>nd</sup> Floor,  
Chennai - 600 108.

2. The Co-Operative Spinning Mill Federation Ltd. (TANSPIN),  
2<sup>nd</sup> Floor, Kuralagam,  
Chennai - 600 108.

3. Kanyakumari District Co-Operative Spinning Mills Ltd., Y-238,  
Represented by its Managing Director,  
Aralvoimozhi - 629 301,  
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the third respondent to initiate fresh tender proceedings for award of maintenance contract for Four Numbers 250/60KW NEPC-MICON M 600 Model WEG with electrical equipment for the period from March'2018 to February'2019 by following the Tamil Nadu Transparency in Tenders Act, 1998.

For Petitioner : Mr.M.Saravanan,  
for Mr.R.Pon Karthikeyan

For Respondents : Mr.J.Gunaseelan Muthiah  
Additional Government Pleader

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**ORDER**

This Writ Petition is filed for issuance of Writ of Mandamus to direct the third respondent to initiate fresh tender proceedings for award of Maintenance Contract of the Four Numbers of 250/60KW NEPC-MICON M 600 Model Weg with electrical equipment for the period from March'2018 to February'2019 by following the Tamil Nadu Transparency in Tenders Act, 1998.

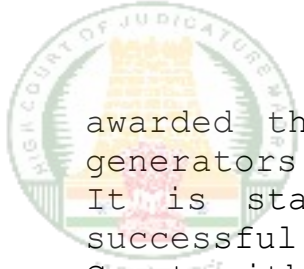


2.The brief facts that are necessary for the purpose of disposing this Writ Petition are as follows:

2.1.The petitioner is a private limited company, engaging itself in the annual maintenance of wind mill in and around Kanyakumari and other parts of Tamil Nadu. It appears that the petitioner company has been carrying out annual maintenance of four wind mills of each 250/60 KW capacity belonging to the third respondent, which are located at Muppandanl on annual contract basis. The petitioner was awarded contract from the year 1998 till February'2018. Vide Communication dated, 08.02.2018, the third respondent called upon the petitioner to submit its lowest sealed quotation for the annual maintenance of four wind mills on or before 19.02.2018. The petitioner has submitted a tender document in a sealed envelope on 19.02.2018, before 02.00 pm. Since there was no intimation, the petitioner sent a mail on 21.02.2018 to the third respondent requesting the third respondent to inform the date of opening of sealed tender document. However, by communication dated 21.02.2018, the third respondent informed the petitioner that the petitioner's tender was opened before the Purchase Committee on 20.02.2018 and the finalisation process was going on. Thereafter, the petitioner came to know that the third respondent has decided to award the contract to another person. Stating that the third respondent has not followed the procedure as contemplated under the Tamil Nadu Transparency in Tenders Act, 1998, the above Writ Petition has been filed.

3.The learned Counsel for the petitioner submitted that the method adopted by the third respondent is *ex-facie* illegal and unsustainable, as the third respondent has not opened the tender document in the presence of all the tenderers, who have participated in the tender. It was further submitted that as per Tamil Nadu Transparency in Tenders Act, 1998, the respondents ought to have followed the procedure under the Act. It is further stated that under the mandatory provision of Section 8 of the Act, the respondent is duty bound to open the tender document in the presence of all tenderers. It was further alleged that the third respondent has opened the tender in a secret manner and finalised the same behind the back of the tenderers, which is illegal. Further the violation of the provisions of Tamil Nadu Transparency in Tenders Act, 1998, was also stated in the affidavit filed in support of this petition.

4.The third respondent filed a counter refuting the allegations made in the Writ Petition. It is stated that the amount for undertaking maintenance work is a small sum, which would never exceed more than Rs.2,00,000/- (Rupees Two lakhs) and the third respondent is not required to follow the procedure prescribed under the Tamil Nadu Transparency in Tenders Act, 1998. Further, it is stated that the petitioner itself was



awarded the contract for maintenance of four wind mills energy generators only in the same manner, as it has been finalised now. It is stated that merely because, the petitioner is not the successful bidder in this time, the petitioner has approached this Court with the above Writ Petition. It is also stated that the third respondent constituted a five member committee and that it was the said Committee, which received the quotation from the companies and selected one among the participants, who has given the lower price in the quotation. The learned Counsel for the third respondent further submitted that the maintenance of the wind mills for the period from 01.03.2018 to 28.02.2019, was awarded to a third party, who has also started the job, but the third party was not impleaded in this Writ Petition. It is also stated that the last date for submitting the quotation was fixed on 08.02.2018 and after verifying the offer, the Tender Committee has found that the petitioner's offer, ie., Rs.23,207/- is higher when compared to the successful bidder, whose offer is Rs.22,813/- including all the tax. Since the successful bidder, namely, M/s.Bairavi Associates has quoted the least amount, the contract has been given to the said establishment. Though it is admitted that the third respondent has not given any paper publication and that the tender documents were not opened in the presence of all the participants, it is submitted by the learned Counsel for the third respondent that there is no illegality or irregularity committed by the third respondent, as the third respondent has followed the very same method, by which the contract was given in all these previous years.

5.Considering the fact that the third party, the successful bidder is doing maintenance till now and the maintenance of wind mills during peak session, ie., between April to December is very important, any interference is likely to affect the successful operation of the wind mills owned by the third respondent and therefore, this Court is of the view that, in the interest of public at large, this Writ Petition need not be entertained at this stage. However, this Court is able to see that the procedure adopted by the third respondent in the matter of award of the contract is not proper. The learned Counsel for the petitioner and the third respondent during argument admitted that the provisions of the Tamil Nadu Transparency in Tenders Act, 1998, is not applicable to a contract of low value.

6.Section 16 of the Act specifically states that the provisions, namely, Sections 9 and 10 are not applicable to certain categories including a contract of low value, ie., for the contract of procurement of low value, as per Rule 33 of the Act. Even though specific provisions of Tamil Nadu Transparency in Tenders Act, 1998 are not applicable, they cannot follow a service procedure, which is not fair. In this case, it is admitted that the tender was finalised by a five member Committee without any paper publication and that the tender documents were not opened in

the presence of the tenderers. In this process, the third respondent may be in a position to choose any one of their choice by possible manipulation. Hence, such practice cannot be approved by this Court, as it is always questionable.

7. To avoid any complications or possible mischief in future, the third respondent is directed to give notice to all the contractors, who are doing similar job in the locality. However, the third respondent shall open the tenders by fixing specific date after due intimation to all participants and open the tender in the presence of all the tenderers. This Writ Petition is accordingly disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Handlooms and Textiles,  
Kuralagam, 2<sup>nd</sup> Floor,  
Chennai - 600 108.
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Represented by its Managing Director,  
Aralvoimozhi - 629 301,  
Kanyakumari District.

+1cc to Spl.Government Pleader Sr.No.70914

cmr

VB/PN/SAR4/18.07.2018/4P/5C

W.P (MD) No.7999 of 2018  
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