



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)Nos.176 and 232 of 2016

and

C.M.P(MD)Nos.894, 3389 and 1146 of 2016

A.Pandian .. Appellant in both Writ Appeals/Petitioner

Vs.

1.The District Collector,
Madurai District.

2.Executive Engineer,
Buildings (Construction & Maintenance) Division,
Madurai -2.

.. Respondents in both Writ Appeals/Respondents

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letters Patent, to set aside the common order dated 05.01.2016 in M.P(MD) No.2 of 2015 in W.P(MD)No.23107 of 2015 and in M.P(MD)No.1 of 2015 in W.P(MD)No.23587 of 2015, passed by this Court.

Prayer in MP(MD). 2/ 2015 in WP(MD).23107/2015 :

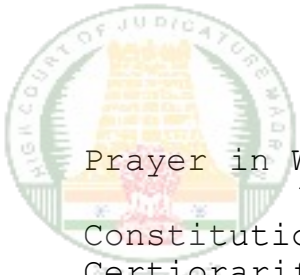
To stay all further proceeding of Impugned tender Notification No.11/2015-2016 dated 03.12.2015 of the 2nd respondent till the disposal of the WP.

Prayer in WP(MD). 23107/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus in particular call for the entire proceedings of 2nd respondent of Tender Notification No.11/2015-2016 dated 03.12.2015 and to quash the entire proceeding of 2nd respondent without issuing notice to the Petitioner as illegal and void and directing the 2nd respondent to make fresh tender in accordance with law by following Rules and Act of the The Tamil Nadu Transparency in Tenders Act 1998 and also the order passed in WP.No.9883 OF 2006 followed by WP.No.9041 of 2014.

Prayer in MP(MD). 1/ 2015 in WP(MD).23587/2015 :

To pass an order of injunction forbearing 2nd respondent from issuing work order in respect of works No.1 to 28 and 31 to 38 on the basis of Impugned Tender Notification No.12/2015-2016 dt.07.12.2015 till the disposal of the WP.



Prayer in WP(MD). 23587/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus in particular call for the entire proceedings of 2nd respondent of Tender Notification No.12/2015-2016 dated 07.12.2015 and quash the entire proceeding of 2nd respondent without issuing Tender schedule to the petitioner and participate in the Tender, as illegal and void and directing the 2nd respondent to make fresh tender in accordance with law by following Rules and Act of T.N.

(In both Writ Appeals)

For Appellant

: Mr.K.Muraleedharan

For Respondents

: Mr.A.Muthukaruppan,
Additional Government Pleader

COMMON JUDGMENT

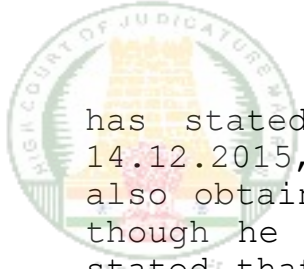
[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, both the Writ Appeals, are taken up for final disposal and disposed of by this common judgment.

2. The Writ Petitioner in each of the Writ Petition is the appellant in both the Writ Appeals and aggrieved by the vacation of interim order of status-quo, vide impugned order dated 05.01.2016 passed in W.P(MD)Nos.23107 and 23587 of 2015 and in M.P(MD)No.2 of 2015 in W.P(MD)No.23107 of 2015 and in M.P(MD)No.1 of 2015 in W.P (MD)No.23587 of 2015, came forward to filed these Writ Appeals.

3. The grievance expressed by the Writ Petitioner is that the second respondent herein has issued tender notifications dated 03.12.2015 and 07.12.2015 respectively and tender schedule has not been issued to the petitioner and therefore, came forward to the above Writ Petitions, to quash the tender notifications and to direct the second respondent to issue fresh tender notifications, in accordance with law by following the Rules and Act of the Tamil Nadu Tranparency in Tenders Act, 1998 and also the orders passed in W.P.No.9883 of 2006 and W.P.No.9041 of 2014.

4. When the Writ Petitions were moved for admission, taking into consideration the submissions made by the learned counsel appearing for the Writ Petitioner/appellant, the learned single Judge of this Court, directed the respondents not to confirm the auction in favour of the successful bidder. Subsequently, the Writ Petitions along with Miscellaneous Petitions were listed on 05.01.2016 for extension of interim order and on that day, the learned Additional Government Pleader appearing for the respondents



has stated that the writ petitioner was issued with notice on 14.12.2015, which is also supported by documents and that he has also obtained the tender schedule and he failed to submit the same though he personally came to the office on 17.12.2015 and further stated that tender was called for requiring an urgent attention as it pertains to the work of building and therefore, the same cannot be postponed indefinitely during the pendency of the writ petitions and therefore, the learned Single Judge vide common order dated 05.01.2016, thought it fit to modify the same by permitting the respondents to confirm the auction in favour of the successful bidder and to proceed with the work and also made it clear that it is subject to the result of the Writ Petitions.

5. The Writ Petitioner/Appellant, aggrieved by the vacation of interim order of status-quo and thereby enabling the respondents to confirm the auction in favour of the successful bidder and to proceed with the work, came forward to file these Writ Appeals.

6. The learned counsel appearing for the appellant/writ petitioner, would vehemently contend that the appellant/writ petitioner has been deliberately prevented from participating in the auction on account of non-issuance of tender schedule and though the orders passed in W.P.Nos.9883 of 2006 and 9041 of 2014, made it clear that the respondents have deliberately disobeyed the said order and would further add that the vacation of interim order of status-quo causes great difficulty and hardship to the appellant/writ petitioner and prays for restoration of the original order of status-quo.

7. Per contra, the learned Additional Government Pleader appearing for the respondents would contend that since the tender has been floated for requiring the building and it is also an urgent work, the Honourable Single Judge by exercising his discretionary power in a proper manner, thought it fit to vacate the interim order of status-quo and also protected the interest of the Writ Petitioner by making it clear that the award of tender in favour of the private party, is subject to the result of the writ petitions and prays for dismissal of these Writ Appeals.

8. This Court heard the rival submissions and perused the materials placed before it.

9. The learned Judge while vacating the interim order of status-quo, did not go into the merits of the grounds put forth by the appellant/writ petitioner in the pending Writ Petitions and taking note of the fact that the tender has been floated for requiring the building, felt that, it cannot be postponed indefinitely during the pendency of the Writ Petitions.

10. It is also pertinent to point out at this juncture that the interest of the appellant/writ petitioner has also been



protected by observing that the award of tender in favour of the private party, is also subject to the result of the Writ Petitions.

11. In the considered opinion of this Court, the learned Single Judge has exercised his discretionary power in a fair and proper manner and in accordance with law and therefore, this Court finds no infirmity in the common impugned order dated 05.01.2016, which is the subject matter of challenge in these Writ Appeals.

12. In the result, the Writ Appeals are dismissed confirming the impugned common order dated 05.01.2016 passed in W.P(MD) Nos.23107 and 23587 of 2015 and in M.P(MD)No.2 of 2015 in W.P(MD) No.23107 of 2015 and in M.P(MD)No.1 of 2015 in W.P(MD)No.23587 of 2015. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The District Collector,
Madurai District.

2.Executive Engineer,
Buildings (Construction & Maintenance) Division, PWD,
Madurai -2.

+One cc to Mr.K.Muralidharan, Advocate, SR.No.48470

+One cc to The Special Government Pleader, SR.No.48826

pm

RL/5C/4P/JC/SAR1/27/2/2018

JUDGMENT MADE IN
W.A(MD)Nos.176 and 232 of 2016