



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.08.2018
CORAM
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD)Nos.17365, 17410 and 17413 of 2018
and
W.M.P(MD)Nos.15273, 15274, 15306,
15307, 15311 and 15312 of 2018

M.Ilayaraja

... Petitioner in all Wps.

Vs.

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Additional Collector / Project Director,
District Rural Development Agency,
Madurai.
- 3.The Executive Engineer (RD)
District Rural Development Agency,
Madurai.

...Respondents in all Wps.

Prayer in W.P(MD)No.17365 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned orders of cancellation of tender by the 2nd and 3rd respondents in No.Nil dated 26.07.2018 and re-inviting tender schedule to be held on 10.08.2018 for the work of Package No.TN-MDU/Nabard-XXIII/02/MLR/2017-18 under NABARD RIDF-XXIII (2017-18) and quash the same as illegal and consequently, direct the 2nd respondent to allot the tender in favour of the petitioner within the time stipulated by this Court.

Prayer in W.P(MD)No.17410 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned orders of cancellation of tender by the 2nd and 3rd respondents in No.Nil dated 23.07.2018 and re-inviting tender schedule to be held on 10.08.2018 for the work of Madurai District Improvements to Black Topping of 2 Nos. of Road works in Kottampatti Block in Madurai District under SCPAR 2017-2018 and quash the same as illegal and consequently, direct the 2nd respondent to allot the tender in favor of the petitioner within the time stipulated by this Court.

Prayer in W.P(MD)No.17413 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned orders of



cancellation of tender by the 2nd and 3rd respondents in No.Nil dated 23.07.2018 and re-inviting tender schedule to be held on 10.08.2018 for the work of Madurai District Improvements to Black Topping of 2 Nos. of Road works in Melur Block in Madurai District under SCPAR 2017-2018 and quash the same as illegal and consequently, direct the 2nd respondent to allot the tender in favour of the petitioner within the time stipulated by this Court.

In all petitions;

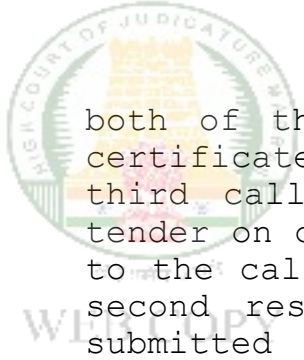
For Petitioner : Mr.M.Jegadeesh Pandian
For Respondents : Mr.C.Mari Chelliah Prabhu
Addl. Govt. Pleader

COMMON ORDER

In all the three writ petitions, the petitioner raised common issues and grounds and therefore, they are taken up together for disposal as under.

2.The petitioner is one and the same person in all the writ petitions. Therefore, the facts as narrated in W.P(MD)No.17365 of 2018 would hold good in respect of settlement of issue by this Court in respect of all the writ petitions.

3.According to the petitioner, he is a Class-I registered Contractor and has been executing the contractual work of the Government and in the past year, he executed several contractual work and has earned high reputation and goodwill in execution of the project. According to him, recently, he has completed three projects of road work and on completion of the work, the amount has also been settled by the authorities concerned. While so, the second respondent called the tenders on 01.11.2017, and 28.08.2017 for laying road from Kottagudi to Vannambaraipatti Road KM 0/0-5/86 in Melur Block at Madurai District in Package No.TN-MDU/Nabard-XXIII/02/MLR/2017-18 under NABARD RIDF-XXIII (2017-18); for laying road under scheme called SCPAR 2017-2018, Madurai District Improvements to Black Topping of 2 Nos. of Road works in Kattampatti Block in Madurai District and for laying road under scheme called SCPAR 2017-2018, Madurai District Improvements to Black Topping of 2 Nos. of Road works in Melur Block in Madurai District and value of the project was Rs.117.48 lakhs, Rs.65,05,000/- and Rs.40,89,000/- respectively. The last date for submitting the tender documents was on 24.11.2017 and 12.09.2017 at about 03.00 p.m respectively. In response to the tender notification, the petitioner had applied by fulfilling all the conditions imposed by the second and third respondents. In the first call, four persons participated including the petitioner. However, for the reasons best known to the respondents 2 and 3, the tender process was discontinued and the second tender notification was issued directing the tenderers to file their application for tender on or before 22.02.2018 and 21.03.2018 respectively. In the second call, the petitioner as well one V.Anguraj participated and during the opening of technical bid,



both of their bids were summarily rejected for non-production of certificates for availability of tools and plants. Thereafter, the third call was issued and directed the tenderer to present the tender on or before 03.04.2018. The petitioner once again responded to the call and he along with one K.Elamparithi participated. The second respondent while evaluating the tender, rejected the bid submitted by the other person, namely, K.Elamparithi for non-production of original Earnest Money Deposit (EMD) and also non-production of original affidavit. While disqualifying the other person, the second and third respondents have also cancelled the tender on the ground that it was a single bid, though the petitioner satisfying and fulfilling all the conditions for grant of tender. Thereafter, the respondents 2 and 3 by proceedings, dated 26.07.2018, called for tender once again for the fourth time and the last date for submitting the tender was fixed at 10.08.2018 at about 03.00 p.m. The said proceedings dated 26.07.2018 is challenged in these present writ petitions.

4.Mr.M.Jegadeeshpandian, learned counsel for the petitioner would submit that the cancellation of the tender by the second and third respondents is illegal, which cannot be countenanced both in law and on facts. He would further submit that nowhere in the conditions prescribed that in case of single bid, the Government has the authority to cancel the bid and re-invite the tender. Even otherwise, the learned counsel would submit that in respect of similar tender granted for the present year where one M/s Bavatharani Builder was a successful bidder and two others participants were disqualified. The said M/s Bavatharani builders was granted contract. In support of such contention, he would draw the attention of this Court to the minutes of the scrutinizing committee meeting held on 29.01.2018 in Municipal Office. He would further submit that only in respect of the case of the petitioner alone, the authority concerned has invoked the issue of single bid and cancelled the tender and re-invited the tender for the fourth time respectively. Such selective approach by the respondents is per se arbitrary and violative of Article 14 of the Constitution of India. Even otherwise, the ground on which the petitioner's tender has been cancelled is without any authority of law and no such condition has been imposed in the conditions attached to the tender form.

5.The learned counsel further contended that since three times the tender notification had been called and in the all the process, the petitioner participated and come out as successful bidder in the third time. Once there is a successful bidder in the tender process, it is not open to the authority to cancel the tender and re-invite the tender. Such endless exercise would be against the public interest. In any event admittedly the petitioner is a successful bidder, he ought to have been awarded the contract.

6.Open notice, the learned Additional Government Pleader entered appearance and filed a counter affidavit.



7. In the counter affidavit, the claim of the petitioner was resisted on the ground that the tender has been rejected as single bidder is not feasible to be selected as per the tender norms and conditions. The averments in this regard as found in paragraph 4 of the counter are extracted hereunder:-

"4. I respectfully submit that again as third call, the Tenderers were directed to present their applications on or before 03.04.2018 at about 03.00 p.m. During third call, the petitioner and one Thiru.K.Elamparithi were participated. As Mr.K.Elamparithi did not produced the EMD original certificate and original affidavit, the tender has been rejected, as single bid is not feasible to be selected as per the tender norms and conditions. As per the tender condition and procedures adopted in NABARD tender process only if more than one bidders are selected, then only the competitive person will be awarded the tender. In the third call, there was a situation that a single bid is stood up, the authorities were not able to proceed the tender and hence, it was rejected and retender called on 10.08.2018. The action of the authorities is within the procedures followed to a tender process and it is not an arbitrary exercise. The petitioner cannot be awarded the tender as he is stood up as a single bid."

8. The learned Additional Government Pleader would submit that the authority has rejected the single bid in order to protect the public interest, since the contract has to be given for execution of a public project. Therefore, he would submit that there is nothing wrong in rejecting the single bid though it was called for third time and consequently re-invited the tender.

9. This Court has considered the rival submissions of the counsels, perused the materials and pleadings placed before this Court.

10. There is considerable force in the contention advanced on behalf of the petitioner that nowhere it is mentioned in the conditions that in case of single bid, the same has to be cancelled and tender has to be re-invited. Although on behalf of the respondent, such plea has been taken in the form of averments, the counsel appearing for respondents has not pointed out any such condition being made as part of the tender documents. In the absence of any such condition, this Court does not find any justification for cancellation of the tender which was called for the third time. In this case, admittedly, the petitioner has emerged as successful bidder, therefore, cancellation of tender without any valid reasons cannot be countenanced both in law and on facts.

11. As contended by the learned counsel appearing for the petitioner that in respect of grant of similar tender, the tender committee has allowed single bid and awarded the contract. That



being the case, re-inviting the tender by the second and third respondents in respect of the petitioner is per se discriminatory, arbitrary and unreasonable and cannot stand the test of judicial scrutiny. In the absence of any specific provision indicating any condition in the tender document, it is not open to the respondents to cancel the tender in which the petitioner participated and has emerged as successful bidder. Therefore, the impugned cancellations by the respondents is arbitrary and the same are liable to be quashed.

12. For the said reasons, these writ petitions stand allowed and the impugned orders of cancellation of tender by the 2nd and 3rd respondents in No.Nil dated 26.07.2018 and re-inviting tender schedule to be held on 10.08.2018 and No.Nil dated 23.07.2018 and re-inviting tender schedule to be held on 10.08.2018 respectively are hereby set aside and consequently, the second and third respondents are directed to pass appropriate orders in furtherance of the bid made by the petitioner in the subject tender process by allotting the contract for the project envisaged in the tender and the order shall be passed by the respondents within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The District Collector,
Madurai District, Madurai.
- 2.The Additional Collector / Project Director,
District Rural Development Agency, Madurai.
- 3.The Executive Engineer (RD)
District Rural Development Agency, Madurai.

+1CC to Mr.M.Jegadeesh Pandian, Advocate, SR.No. 77830
+1CC to the Special Government Pleader SR.No. 78172

W.P.(MD)Nos.17365, 17410 and 17413 of 2018
09.08.2018

SKN

ES/SKN/RSK/SAR 4/03.09.2018/5P/6C