



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:12.12.2018

CORAM:

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.19740 of 2018
and
W.M.P(MD)Nos.17527, 18336, 20592 and 19943 of 2018
and
W.P(MD)No.20199 of 2018
and
W.M.P(MD)Nos.17953, 17954 and 20592 19942 of 2018
and
Cont.P(MD)No.1683 of 2018
in
W.M.P(MD)No.17954 of 2018
in
W.P(MD)No.20199 of 2018

1.W.P(MD)No.19740 of 2018:-

M.Murugan ... Petitioner

Vs.

1.The Superintending Engineer,
National Highways,
Tirunelveli.

2.The Divisional Engineer,
National Highways,
Tirunelveli.

3.Murugan,
The Divisional Engineer,
National Highways,
Tirunelveli.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the first respondent or any other independent agency under the State Government to enquire into the tender process in connection with Tender Notice No.2/2018-19/HDO, dated 25.06.2018 and Tender Notice 8/2018-19/HDO, dated 08.09.2018 allegation of illegal gratification and take appropriate action against the third respondent and other erred officials consequently direct the respondents to call for fresh tenders for the works mentioned in Tender Notice No.2/2018-19/HDO, dated 25.06.2018 in a fair and transparent manner following due procedures.



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For Petitioner : Mr.M.Maharaja
For RR 1 & 2 : Mr.S.R.Rajagopal,
Additional Advocate General
Assisted by
Mr.VR.Shanmuganathan,
Special Government Pleader.
For R - 3 : Mr.V.Muthusamundeeswaran

2.W.P(MD)No.20199 of 2018:-

M.Murugan ... Petitioner

Vs.

1.The Superintending Engineer,
National Highways,
Tirunelveli.

2.The Divisional Engineer,
National Highways,
Tirunelveli.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the entire records pertaining to the proceedings of the first respondent in Tender Notice No.08/2018-19/HDO, dated 08.09.2018 and quash the same as illegal and unconstitutional, consequently direct the first respondent to forthwith award work order in view of acceptance message sent by tender accepting authority, dated 20.08.2018.

For Petitioner : Mr.M.Maharaja
For Respondents: Mr.S.R.Rajagopal,
Additional Advocate General
Assisted by
Mr.VR.Shanmuganathan,
Special Government Pleader.

3.Cont.P(MD)No.1683 of 2018:-

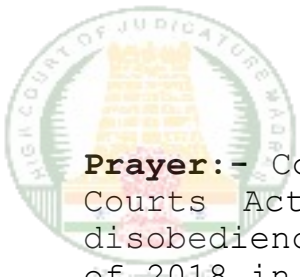
M.Murugan ... Petitioner/Petitioner

Vs.

1.K.Selvi,
The Superintending Engineer,
National Highways,
Tirunelveli.

2.Murugan,
The Divisional Engineer,
National Highways,
Tirunelveli.

... Contemnors/Respondents



Prayer:- Contempt Petition filed under Section 11 of the Contempt of Courts Act, praying to punish the respondents for their wilful disobedience to the order of this Court passed in W.M.P(MD)No.17954 of 2018 in W.P(MD)No.20199 of 2018, dated 20.09.2018.

Prayer in W.P(MD)No.20199 of 2018:-

Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the entire records pertaining to the proceedings of the first respondent in Tender Notice No.08/2018-19/HDO, dated 08.09.2018 and quash the same as illegal and unconstitutional, consequently direct the first respondent to forthwith award work order in view of acceptance message sent by tender accepting authority, dated 20.08.2018.

COMMON ORDER

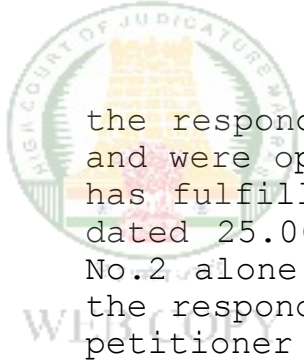
W.P(MD)No.19740 of 2018 is filed for a Mandamus, to direct the first respondent or any other independent agency under the State Government to enquire into the tender process in connection with Tender Notice No.2/2018-19/HDO, dated 25.06.2018 and Tender No.8/2018-19/HDO, dated 08.09.2018 with an allegation of illegal gratification and to take appropriate action against the third respondent and consequently, direct the respondents to call for fresh tenders for the works mentioned in Tender Notice No.2/2018-19/HDO, dated 25.06.2018 in a fair and transparent manner.

2. W.P(MD)No.20199 of 2018 is filed for a Certiorarified Mandamus, to call for the records pertaining to the proceedings of the first respondent in Tender Notice No.08/2018-19/HDO, dated 08.09.2018 and to quash the same and forthwith direct the first respondent to award work order in view of acceptance message sent by tender accepting authority, dated 20.08.2018.

3. Contempt Petition(MD)No.1683 of 2018 is filed against the respondents therein for wilful disobedience of the order passed in W.M.P(MD)No.17954 of 2018 in W.P(MD)No.20199 of 2018, dated 20.09.2018.

4. The brief facts leading to the filing of the present case in W.P(MD)No.19740 of 2018 are as follows:-

4.1. The case of the petitioner is that he is a registered class-I contractor in the Highways Department and carried out the contractual works of the Government. While so, the Government had floated the tender notification inviting bids through online for certain construction works vide Tender Notification No.02/2018-19/HDO, dated 25.06.2018 and the petitioner had participated in the tender through online in respect of work in serial Nos.1 and 5 on 31.07.2018 and he had submitted an another tender on 01.08.2018 in respect of serial No.2 along with the tender documents required by



the respondents 1 and 2, which were received by them through online and were opened on 02.08.2018. The petitioner further claims that he has fulfilled all the tender conditions in the tender notification, dated 25.06.2018 and his tender bid insofar as the work in serial No.2 alone was accepted by the second respondent on 20.08.2018 and the respondents 1 and 2 rejected his bid in serial Nos.1 and 5. The petitioner further claims that while he was awaiting the work order to be issued, the third respondent/Murugan, the Divisional Manager, on 09.08.2018 came to his office and demanded illegal ratification of 10% commission on the value for confirmation and issue work order. When the petitioner denied the same, the third respondent has warned him that his tender will be cancelled subject to the illegal ratification, as he demanded.

4.2. The petitioner further submits that having his bid accepted for serial No.2, he did not receive any confirmation which made him to file W.P(MD)No.19476 of 2018 for a Mandamus to direct the respondents to issue work order in respect of serial No.2. When the writ petition came up for admission, the respondents had produced notification calling for fresh tender against the tender already accepted for serial No.2.

4.3. It is the further case of the petitioner that the respondents did not offer any explanation as to why his bid was cancelled. The petitioner claims that nowhere in the terms and conditions of the bid that it was cancelled and re-tender will be invited. The petitioner would further contend that once the tender is accepted, the respondents have no authority to cancel it without assigning valid reason other than single bid. The cancellation of the petitioner's bid after accepting the petitioner's bid and inviting re-tender is illegal. Hence, the petitioner has come forward with the present Writ Petition.

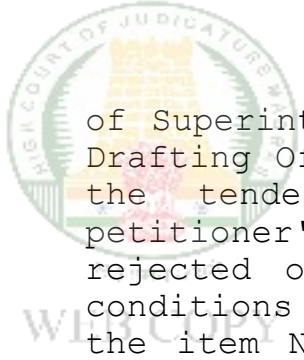
5. Pending the writ petition, this Court in W.M.P(MD)No.17527 of 2018 in W.P(MD)No.19740 of 2018 has granted an order of interim stay on 12.09.2018.

6. At the same time in W.P(MD)No.20199 of 2018 with the same facts, the petitioner has sought for quashing of the fresh tender notification, dated 08.09.2018. In W.M.P(MD)No.17944 of 2018 in W.P(MD)No.20199 of 2018, this Court has granted an order of interim stay on 20.09.2018.

7. The respondents 1 and 2 have filed their counter-affidavit and filed vacate stay petitions in W.M.P(MD)No.18336 of 2018 in W.P(MD)No.19740 of 2018 and in W.M.P(MD)No.17954 of 2018 in W.P(MD)No.20199 of 2018.

8. In the counter-affidavit, the third respondent-the Divisional Engineer had denied the allegations of illegal gratification levelled against him by the petitioner and further states that there is a Technical Bid Valuation Committee consisting

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of Superintending Engineer, Deputy Superintending Engineer and Head Drafting Officer involved in calling for the tenders and finalising the tender process. The third respondent submits that the petitioner's tender was opened on 20.08.2018 and the same was rejected on 31.08.2018, as the petitioner has not fulfilled the conditions as required under the tender condition. With regard to the item No.1, the petitioner did not participate in the bid and with regard to item No.5, his bid was rejected.

9. The first respondent has also filed a counter-affidavit with regard to non-acceptance of the petitioner's bid as it was only admitted and not accepted.

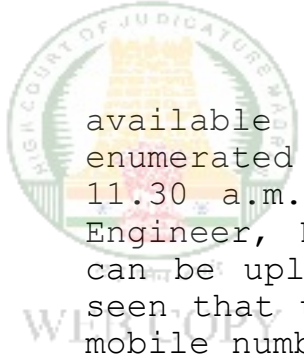
10. Heard the learned counsels appearing on either side in length and perused the materials available on record.

11. The learned counsel appearing for the petitioner submitted a catena of Judgments to support his case but no reason was given by the respondents 1 and 2 when rejecting the petitioner's bid for item No.2. The learned counsel further contended that as far as item No.2 is concerned, the bid was accepted by the respondents 1 and 2 and the same was duly communicated to the petitioner by way of sending SMS to his mobile number and thereafter, it is not fair on the part of the respondents 1 and 2 in calling for free tender, that too, without following due process in cancelling his accepted tender.

12. The learned counsel appearing for the respondents 1 and 2 had vehemently argued and placed reliance on the procedure, in which, the petitioner's tender was not at all considered and the petitioner had come before this Court considering that his bid was the only bid and the respondents 1 and 2 cannot reject his bid, whereas the petitioner's bid was only taken for scrutiny along with the bid of Tmt.M.Sindhu. However, the learned counsel stated before this Court that the Technical Bid Evaluation Committee evaluated the technical bid submitted through Online by the bidders and the same was opened on 20.08.2018. The Technical Bid Evaluation Committee scrutinised the technical bids and the same was opened on 31.08.2018 and found that the petitioner was not qualified on certain criteria and the said Tmt.M.Sindhu left over as a single bidder and due to which, the tender was cancelled and the Department decided to go for re-tender.

13. It would be appropriate to decide the maintainability of the present writ petitions filed by the petitioner.

14. The petitioner himself has filed a comprehensive typed set of papers in both W.P(MD)Nos.19740 and 20199 of 2018 and it is apparently clear from the comprehensive typedset of papers filed by the petitioner that initially tender notification was issued by the first respondent on 25.06.2018, calling for tenders through Online for five works, wherein the submission of tender on Online can be



available upto 01.08.2018 at 15.00 hours. The tender commission enumerated that the pre-bid meeting will be held on 18.07.2018 at 11.30 a.m., at the office of the first respondent/Superintending Engineer, National Highways, Tirunelveli and the tender submission can be uploaded Online upto 01.08.2018 at 15.00 hours. It is also seen that the petitioner has uploaded a confirmation message to the mobile number has been sent to the effect that the tender was opened and the petitioner's bid has been admitted by the duly constituted committee.

15. Since the bid was not confirmed in his favour, the petitioner filed W.P(MD)No.19476 of 2018 on 07.09.2018, which came up for admission on 10.09.2018. In the meanwhile, on 08.09.2018, a fresh tender has been called for item No.2, in which, the petitioner participated for the tender notification, dated 25.06.2018. However, when the writ petition was listed on 10.09.2018, this Court has passed the following order:-

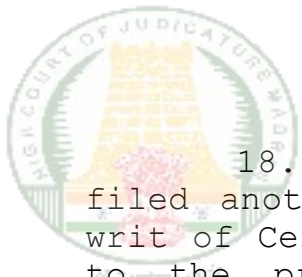
"2.When the matter is taken up for hearing the learned Additional Advocate General would submit that the petitioner happens to be the sole bidder in the tender selection process and therefore, the first respondent has decided to go for a fresh tender. Therefore, the learned Additional Advocate General would submit that it is open to the petitioner to participate in the fresh tender which would be duly informed.

3.Considering the submission made by the learned Additional Advocate General appearing for the respondents, this Court is of the considered view that no decision could be taken in this matter and no notice could also be ordered.

4.In view of the submissions made on behalf of the respondents, as rightly contended by the learned Additional Advocate General, it is open to the petitioner to participate in the fresh tender to be conducted by the respondents, if it is so advised.

5.With these direction, this writ petition stands closed. No costs. Consequently, connected Miscellaneous Petition is closed."

16. Thereafter, on 12.09.2018, the petitioner has filed the writ petition in W.P(MD)No.19740 of 2018 seeking a writ of Mandamus, to direct the first respondent or any other independent agency under the State Government to enquire into the tender process in connection with Tender Notice No.2/2018-19/HDO, dated 25.06.2018 and Tender No.8/2018-19/HDO, dated 08.09.2018 on the allegation of illegal gratification and to take appropriate action against the third respondent and consequently, direct the respondents to call for fresh tenders for the works mentioned in Tender Notice No.2/2018-19/HDO, dated 25.06.2018 in a fair and transparent manner.



18. In the meanwhile, on 20.09.2018, the petitioner has also filed another writ petition in W.P(MD)No.20199 of 2018 seeking a writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the first respondent in Tender Notice No.08/2018-19/HDO, dated 08.09.2018 and to quash the same and forthwith direct the first respondent to award work order in view of acceptance message sent by the tender accepting authority, dated 20.08.2018.

19. This Court on 20.09.2018, granted an order of interim stay in W.M.P(MD)No.17954 of 2018 in W.P(MD)No.20199 of 2018.

20. It could be seen from the perusal of the records that the petitioner earlier filed W.P(MD)No.19476 of 2018 seeking for a writ of Mandamus, to direct the respondents to issue work order in respect of contract in serial No.2 in the tender Notification No.02/2018-19/HDO, dated 25.06.2018. It is pertinent to refer the order passed in the above writ petition on 10.09.2018, on which day, the learned Additional Advocate General has brought to the knowledge of this Court by submitting the copy of the fresh tender notice, dated 08.09.2018, which copy was made available to the petitioner. Only thereafter the two writ petitions have been filed by the petitioner.

21. Considering all the sequence of materials available, this Court is of the view that the present writ petitions cannot be maintainable for the reason that the petitioner has not challenged the order passed in W.P(MD)No.19476 of 2018. The petitioner has come out with the very same facts in both the writ petitions in W.P(MD) Nos.19740 and 20199 of 2018 for challenging the tender notification, dated 08.09.2018.

22. This Court while passing order in W.P(MD)No.19476 of 2018, when the petitioner approached this Court to issue work order in respect of contract No.2 pursuant to the tender Notification, dated 25.06.2018 on which day, the petitioner was brought to the knowledge of the new tender notification, dated 08.09.2018 and a copy was issued to him. It was further directed that it is open to the petitioner to participate in the fresh tender to be conducted by the respondents 1 and 2. However, the petitioner did not participate in the tender, but challenged the tender Notification, dated 08.09.2018 in both the present writ petitions.

23. The main grievance of the petitioner in both the writ petitions is that the respondents 1 and 2 have not given any valid reason for rejecting the petitioner's bid for item No.2 and the respondents have called for fresh tender Notification, dated 08.09.2018 without there being a valid reason for rejecting his bid in item No.2 in tender Notification, dated 25.06.2018, despite the respondents 1 and 2 communicating by way of SMS that his bid was



admitted.

24. This Court is not ready to accept the arguments put forth by the learned counsel appearing for the petitioner that the petitioner has got any right to challenge the tender Notification, dated 25.06.2018, when the tender Notification, dated 25.06.2018 was annulled as far as item No.2 is concerned in the tender Notification, to which the petitioner had participated and claimed that his bid was accepted. The petitioner was not able to get any favourable order from this Court in the earlier writ petition in W.P (MD)No.19476 of 2018 and instead he was only directed to participate in the fresh tender Notification, dated 08.09.2018. This could be seen from the categorical admission made by the petitioner at paragraph No.9 in the affidavit filed in support of the contempt petition, which is as follows:-

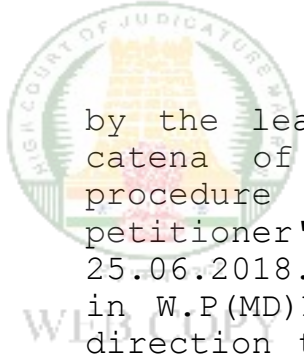
"9.It is my specific contention that once my tender bid is duly accepted by the tender inviting committee/authority and the same is duly communicated to me by way of sending SMS to my mobile number, the respondents are not fair in calling for re-tender that too without following due process in cancelling my accepted tender. Therefore, in the aforesaid reasons, I was constrained to challenge the re-tender notice dated 08.09.2018 in W.P(MD) No.19740 of 2018 and on 12.09.2018, the Honourable High Court was pleased to grant interim stay and thereafter I challenged the tender notification dated 08.09.2018 in W.P (MD)No.20199 of 2018. It is relevant to mention here that the impugned order dated 08.09.2018 was came to my knowledge only at the time of hearing of earlier writ in W.P(MD) No.19476 of 2018. However, after getting copy of impugned order, I filed another writ in W.P(MD)No.20199. The Honourable Court was pleased to stay the impugned order dated 08.09.2018. Thereafter on 12.10.2018, both writ petitions were listed for further hearing and adjourned to 24.10.2018 and against the same was posted for hearing on 29.10.2018 and adjourned to 08.11.2018. But on 31.10.2018, both writ petitions again wrongly listed for hearing."

25. The learned counsel appearing for the petitioner also produced some CCTV footages by way of photographs stating that the third respondent had come to his office seeking illegal gratification.

26. This point cannot be proved in this Court and cannot be taken into account also by this Court, as it is to be proved by way of letting in evidence. If at all the petitioner is aggrieved, he has an alternative remedy before the competent forum and this Court cannot look into all these aspects. Hence, the plea of the petitioner cannot be accepted and it is rejected.

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27. This Court is not able to accept the arguments put forth



by the learned counsel appearing for the petitioner relying upon catena of Judgments to substantiate the manner in which the procedure followed by the respondents 1 and 2 in rejecting the petitioner's bid for item No.2 in the tender Notification, dated 25.06.2018. The petitioner ought to have challenged the order passed in W.P(MD)No.19476 of 2018, in which the petitioner sought for a direction to issue the work order in respect of contract in serial No.2 in tender Notification, dated 25.06.2018. This Court rightly did not grant such order, as the respondents 1 and 2 has notified the work order in respect of contract in serial No.2 in tender Notification, dated 25.06.2018 by fresh tender Notification, dated 08.09.2018.

28. The petitioner having not challenged the order of the writ petition in W.P(MD)No.19476 of 2018, when this Court recording the statement of the learned Additional Advocate General, directed the petitioner to participate in the fresh tender Notification, dated 08.09.2018, the petitioner in the present writ petitions cannot once over again challenged the rejection of the petitioner by virtue of tender Notification, dated 25.06.2018 with regard to item No.2 in the said Notification. Even otherwise on perusing the records, it is clear that the petitioner was not qualified and the petitioner's bid was not the only bid which was received for item No.2 in tender Notification, dated 25.06.2018. Merely because the petitioner has received an SMS that his bid has been admitted, does not mean to say that the petitioner's bid has been accepted as only those admitted bids would go for further evaluation before the Technical Evaluation Committee, who has found on 31.08.2018 that the petitioner was not qualified for the following criteria.

Sl. No.	Qualification Criteria	Details furnished by Thiru M.Murugan
	iii.Experience in similar nature of work should also include the following minimum quantities of work atleast in any one year of work during the last five years (the applicant will indicate the details of work executed project wise in a summary sheet separately	
	Item of work 40% est quantity	
1.	WMM/GSB 6239.00 cum	10906.22 cum
2.	BM/DBM 1164.00 cum	3139.23 cum
3.	BC/SDBC 589.00 cum	1457.42 cum
4.	VCC/VRCC 1051.00 cum	4675.65 cum
5.	Steel 14.00 MT	10.70 MT

29. That being so, the petitioner should have only filed an appeal under Section 11 of the Tamil Nadu Transparency of Tenders Act, 1988, when the statute provides an alternative remedy, the



petitioner has not chosen any extra-ordinary circumstances for the intervention of this Court under Article 226 of the Constitution of India. Under these circumstances, this Court is of the view that the present writ petitions deserve no interference and thus fail.

30. Accordingly, W.P(MD)Nos.19740 and 20199 of 2018 are dismissed. In view of the reasons stated above, the writ petitions filed by the petitioner are dismissed, the interim orders granted in the writ petitions also merges with the writ petitions. Consequently, interim orders granted in both the writ petitions are also vacated and closed. The contempt petition is filed based on the interim orders obtained in the Miscellaneous Petition cannot also stand and hence, the Contempt Petition is also closed. Since the writ petitions are not maintainable, the impleading petitions are not considered and the same are dismissed. Consequently, other connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(cs-III)

/True Copy/

Sub Assistant Registrar(cs-II)

To

- 1.The Superintending Engineer,
National Highways,
Tirunelveli.
- 2.The Divisional Engineer,
National Highways,
Tirunelveli.
- 3.K.Selvi,
The Superintending Engineer,
National Highways,
Tirunelveli.
- 4.Murugan,
The Divisional Engineer,
National Highways,
Tirunelveli.

Copy To:

The Section Officer,
E.R. Section
Madurai Bench of Madras High Court,
Madurai.(2 copies)

(To Returnable original records of the Special Government
pleader after submitting the same with xerox copy)



+1cc to Mr.VR.Shanmuganathan,Advocate in SR.No.99904
+2cc to Mr.M.Maharaja Advocate in SR.No.99916,99917

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W.P (MD) No.19740 of 2018
and
W.P (MD) No.20199 of 2018
and
Cont.P (MD) No.1683 of 2018
12.12.2018,

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