

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.3161 of 2019  
and  
W.M.P.No.3424 of 2019

P.Annadurai

...Petitioner

Vs.

1. The Superintendent Engineer,  
National Highways,  
Omalur Main Road,  
Narasothipatty,  
Alangapuram Post,  
Salem - 636 004.

2. The Divisional Engineer,  
Quality Control Division,  
National Highways,  
Omalur Main Road,  
Kurunguchavadi,  
Salem - 4.

3. The Chief Engineer,  
National Highways,  
Integrated Chief Engineers Office Complex,  
HRS Campus,  
No.76, Sardar Patel Road,  
Chennai - 600 025.

4. M.Vediappan,  
Contractor,  
Kuduthuraipatti,  
Konganapatti Post,  
Harur Taluk,  
Dharmapuri District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the award of work of widening and improvements from the 2 lane to 4 lane at KM 48/4-55-4 of Hogenakkal - Pennagaram - Dharmapuri - Thirupathur road including CD works, Minor bridges construction of drains and retaining wall 48/8-49/4 (SH 60) in pursuant to the tender notification dated 07.12.2018 issued by the 1<sup>st</sup> respondent to the 4<sup>th</sup> respondent as illegal, arbitrary and against the provisions of Tamil Nadu transparency in Tender Act 1998 as well as Rules 2000, consequently, direct the 1<sup>st</sup> respondent to award the said work to the petitioner based on his price bid.

For Petitioner : Mr.Mr.M.R.Jothimanian  
for Mr.K.Balu

For Respondents : Mr.S.T.S.Murthi,  
Additional Advocate General  
assisted by Mr.R.Govindasamy  
Special Government Pleader  
for R1 to R3  
Mr.V.Elangovan for R4

**O R D E R**

This Writ Petition is filed seeking for declaration declaring the award of work of widening and improvements from the 2 lane to 4 lane at KM 48/4-55-4 of Hogenakkal - Pennagaram - Dharmapuri - Thirupathur Road including CD works, Minor bridges, construction of drains and retaining wall 48/8-49/4 (SH 60) in pursuant to the tender notification dated 07.12.2018 issued by the 1<sup>st</sup> respondent to the 4<sup>th</sup> respondent as illegal, arbitrary and against the provisions of Tamil Nadu Transparency in Tender Act, 1998 as well as Rules 2000, and consequently, direct the 1<sup>st</sup> respondent to award the said work to the petitioner based on his price bid.

2. Heard Mr.M.R.Jothimanian, learned counsel appearing for the petitioner and Mr.S.T.S.Murthi, learned Additional Advocate General appearing for the 1<sup>st</sup> to 3<sup>rd</sup> respondents and Mr.V.Elangovan, learned counsel appearing for the 4<sup>th</sup> respondent.

3. The petitioner is aggrieved against the award of the subject matter contract to the 4<sup>th</sup> respondent. The main contention raised by

the petitioner before this Court is that the first respondent having accepted the technical bid of the petitioner, ought to have allowed the petitioner to participate in the price bid as well. Therefore, it is contended by the petitioner that without permitting the petitioner to participate in the price bid, selecting the 4<sup>th</sup> respondent alone to award the contract is arbitrary and illegal.

4. On the other hand, it is contended by the respondents 1 to 3 that the technical bid of the petitioner was rejected and therefore, he is not entitled to be considered in the price bid. As it is specifically ascertained by the petitioner that his technical bid was accepted, this Court called upon the official respondents to produce the file before this Court to verify the said statement. Accordingly, the original file is produced before this Court today. Perusal of the file would show that the technical bid of the petitioner was rejected by the Expert Committee. The documents available in the file also supports such contention raised by the respondents 1 to 3. However, learned counsel for the petitioner submitted that the reasons assigned for rejecting the technical bid cannot be sustained as the documents produced by

the petitioner would support his case that his technical bid is entitled to be accepted.

5. This Court is not inclined to go into such disputed question of fact on the merits of the technical evaluation, since such exercise has to be done only by the next fact finding authority, namely, the Appellate Authority, as has been provided under the Tamil Nadu Transparency in Tender Act, 1998, namely section 11, where the right of appeal is provided before the Government.

6. Therefore, it is for the petitioner to work out his remedy by filing an Appeal before the Government by raising all the contentions. Since this Court is not inclined to entertain this Writ Petition any further by looking into the merits of the matter, as the petitioner has to approach the Appellate Authority as stated supra, this Writ Petition is disposed of by granting liberty to the petitioner to approach the Government and file such Appeal under Section 11 of the said Act, within a period of two weeks from the date of receipt of a copy of this order. Since this Court has already granted an order of *status quo* as

early as on 01.02.2019, the said order of *status quo* will be in force for a period of two weeks from the date of receipt of a copy of this order by the petitioner. Thereafter, it is for the Appellate Authority to consider the Appeal and pass appropriate orders on merits and in accordance with law, as this Court is not expressing any view on the merits of the contentions raised by both parties. When such appeal is filed, the Appellate Authority shall dispose of the appeal within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

23.04.2019

Speaking/Non-speaking order  
Index: Yes/No  
Internet :Yes/No  
vsi

**Note:** Issue order copy on or before 24.04.2019

To

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Omalur Main Road, Narasothipatty,  
Alangapuram Post,  
Salem - 636 004.

2. The Divisional Engineer,  
Quality Control Division,  
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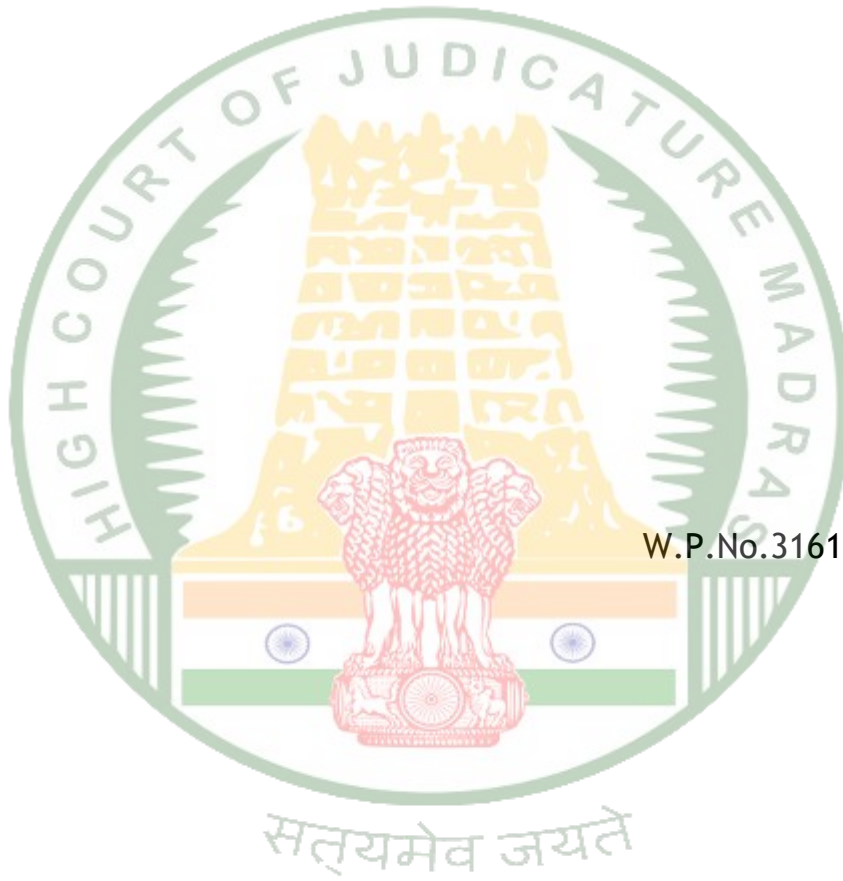
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