

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.4093 of 2019
and
WMP Nos.4578 and 4579 of 2019

S.Panneerselvam

...Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary
in the cadre of Additional Chief Secretary,
Rural Development and Panchayat Raj Department,
Fort St.George,
Chennai 600 009.
2. The District Collector,
Salem District,
Salem.
3. The Special Officer/Block Development Officer (VP),
Pappampaadi Village,
Tharamangalam Post,
Omalar Taluk,
Salem District 636 502.
4. The Village Panchayat Secretary,
Pappampaadi Village,
Tharamangalam Panchayat Union,
Tharamangalam Post,
Omalar Taluk,
Salem District.

5. Palani Kavundan.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus to call for the impugned order passed by the third respondent in proceeding Na.Ka.No.76/2018/Thi-2 dated 28.03.2018 which was served on 12.04.2018 confirmed by the first respondent in letter No.8329/Ma.Aa.Thi-3/2018-3 dated 01.11.2018 and quash the same and consequently call for fresh tender.

For Petitioner :Mr.K.Raja
For Respondents :Mr.R.Govindasamy for R1, R2
Special Government Pleader
Ms.K.Bhuvaneswari for R3, R4
Standing counsel
No Appearance for R5

O R D E R

The petitioner is aggrieved against the order of the third respondent dated 28.03.2018 in awarding the contract to the fifth respondent, confirmed by the first respondent in proceedings dated 01.11.2018 in an appeal filed by the petitioner.

2. Heard Mr.K.Raja, learned counsel for the petitioner, Mr.R.Govindasamy, the learned Special Government Pleader appearing for the respondents 1 and 2 and Ms.K.Bhuvaneswari, learned Standing Counsel for respondents 3 and 4. Though the fifth respondent was served, he has not chosen to appear either in person or through counsel. His name is printed in the cause list.

3. Mr.Raja, learned counsel for the petitioner mainly contended that as against the award of the contract to the fifth respondent, when the petitioner filed an appeal before the first respondent, the same ought to have been disposed of after giving an opportunity of hearing to the petitioner, as contemplated under Section 11 of the Tamilnadu Transparency in Tenders Act, 1998. Thus, he contended that in this case, the first respondent passed an order rejecting the appeal, without giving an opportunity of hearing to the petitioner.

4. On the other hand, the learned Special Government Pleader appearing for the first respondent submitted that the first respondent has considered all the aspects and decided the appeal on merits and therefore, the same need not be interfered with.

5. The petitioner is aggrieved against the award of the contract in favour of the fifth respondent. Challenging such award of contract, the petitioner preferred an appeal before the first respondent. The first respondent rejected the appeal on 01.11.2018. Thus, the present writ petition is filed challenging the award of the contract dated 28.03.2018 and the order passed in appeal dated 01.11.2018. The main grievance of the petitioner is that the Appellate Authority viz., the first respondent failed to adhere to the mandatory requirement of providing an opportunity of hearing to the petitioner, as contemplated under Section 11 of the Tamilnadu Transparency in Tenders Act, 1988 Act.

6. Perusal of Section 11 of the said Act would show that any tenderer, aggrieved by an order passed by the Tender Accepting Authority, may prefer an appeal to the Government within 10 days from the date of receipt of order and the Government shall dispose of the appeal within fifteen days from the date of receipt of the appeal. Sub Section (2) of Section 11 further contemplates that the Appellate Authority, while disposing the appeal, may pass such order, as they may deem fit, after giving the party to make representation. Therefore, it is apparent that providing an opportunity of hearing to the appellant as well as the person in whose name the contract is awarded, is mandatory for the Appellate Authority. For clarity, Section 11 of the Tamil Nadu Transparency in Tenders Act, 1988, is extracted hereunder:

"11.Appeal:- (1) Any tenderer aggrieved by the order passed by the Tender Accepting Authority under Section 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.

(2) In disposing of an appeal under subsection (1), the Government may, after giving the party an opportunity of making his representations, pass such order thereon as they may deem fit.

(3) The order of the Government on such appeal shall be final.

(4) The Government may, pending the exercise of their powers under this Section, pass such interlocutory orders as they may deem fit."

7. In this case, no such opportunity has been given to the petitioner by the first respondent. The impugned order nowhere indicates that such opportunity was given to the petitioner. Therefore, without going into the merits of the matter, this Court is inclined to set aside the order of the first respondent alone only on the ground of the violation of the principles of natural justice, as required under Sub Section (2) of Section 11 of the Tamil Nadu Transparency in Tenders Act, 1988.

8. Accordingly, this writ petition is allowed in part and the impugned order of the first respondent alone dated 01.11.2018 is set aside. Consequently, the matter is remitted back to the first respondent to dispose of the appeal filed by the petitioner, after giving him as well as the fifth respondent an opportunity of hearing and thereafter, to pass orders on

merits and in accordance with law. Such exercise shall be done by the first respondent within a period of four weeks, since the contract is over by 31.03.2019. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1. The Government of Tamil Nadu,
Rep. by its Secretary
in the cadre of Additional Chief Secretary,
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Tharamangalam Post,
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Salem District.

+1 cc to M/s.K.Bhuvaneswari, Advocate, S.R.No.18778

+1 cc to the Government Pleader, S.R.No.19380

W.P.No.4093 of 2019

VSN-II (CO)
SSM(08/03/2019)