

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2019

DELIVERED ON : 16.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

WP.No.28970 of 2019 and
W.M.P.No.28724 of 2019

S.Abdul Rahman .. Petitioner

Versus

- 1.The Executive Officer,
Velur Town Panchayat,
Velur, Namakkal District.
 - 2.The Assistant Director,
Assistant Director of Town Panchayat Office,
District Collector Office,
Salem District.
Tamil Nadu 636 001.
 - 3.The Assistant Director of Town Panchayat,
Directorate of Town Panchayat
7th and 8th Floor,
75, Commissionerate of Municipal Administration,
Raja Annamalaipuram,
Chennai 600 028.
 - 4.The District Collector,
District Collector Office,
Namakkal District,
Tamil Nadu.
 - 5.M/s.Ecovision Waste management Pvt., Ltd.,
rep.by its Managing Directors,
No.209/2, Gandhi Road,
Alapakkam,
New perungalathur,
Chennai 600 063.
- Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus against the respondents pertaining to the Tender dated 22.10.2018 announced by the 1st respondent vide letter Na.Ka.No.300/2018 under Solid Waste management Scheme 2018-2019 at Serial No.3. to removal of Historical Garbage Waste dumped in the Velur Compost Yard through Bio-Mining Process and direct the respondents to consider the representation letters dated 25.07.2019 and 28.08.2019 sent by the petitioner to the 1st to 4th respondent to stop and withdraw the work order dated 22.02.2019 issued in favour of 5th respondent M/s.Ecovision Waste Management Pvt. Ltd and direct the 1st to 4th respondents to announce new tender for the same work and select the 5th respondent who fulfills the terms and conditions of the said Tender Announcement.

For Petitioner : Mr.Sumathi Lokesh

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The petitioner is a resident of Paramathi Velur, Namakkal District and came forward to file this writ petition as a Public Interest Litigation alleging that the acceptance of the Tender submitted by the 5th respondent in respect of the Tender floated by the 1st respondent for removal of historical garbage waste dumped in the Velur Compost Yard through Bio-Mining Process is unsustainable, especially for the reason that the 5th respondent did not fulfill the required criteria and that apart, the said Company is not financially sound.

2. The learned counsel appearing for the petitioner has invited the attention of this Court to the materials placed and would submit that the 5th respondent is not registered as a second class contractor and he is not having any single experience to comply with the terms of the Tender awarded to them for removal of the garbage waste. It is the further submission of the learned counsel appearing for the petitioner that the petitioner repeatedly approached the 1st respondent seeking information relevant to Tender announced under the Right to Information Act, 2005 [in short "RTI Act"] and all attempts made by him to get the relevant information became futile for the reason that the said requests were rejected and therefore, he filed an appeal under the provisions of the Right to Information Act, 2005 to the 3rd respondent and despite a direction from the 3rd

respondent, still the 1st respondent is refusing to furnish the relevant information as to the capability of the 5th respondent in successfully removing the garbage without nuisance and therefore, the petitioner is constrained to approach this Court by filing this Writ Petition as a Public Interest Litigation.

3. This Court has carefully considered the arguments advanced by the learned counsel appearing for the petitioner and also perused the materials placed before it.

4. The Public Information Officer attached to the office of the 1st respondent furnished an information under the RTI Act, vide communication dated 05.09.2019 in Na.Ka.No.463/2019. A perusal of the information furnished by the Public Information Officer attached to the office of the 1st respondent would disclose that the Tender was floated in the year 2018-19 and two cover procedure was followed and seeking information as to the capability of the 5th respondent in carrying out the tender process, came to be rejected by invoking Section 8(1)(d) of the RTI Act. The petitioner in the typed set of documents had also enclosed the Income Tax return of the 5th respondent pertains to the financial year 2017-18 and 2018-19 and it would prima facie disclose that the 5th respondent has declared a very meager income. It is also the specific stand of the petitioner that the 5th respondent was incorporated as a Private Limited Company in the year 2016 with a Capital of Rs.1,00,000/- only and that it did not have minimum Annual Turnover or Asset Value of Rs.0.80 Crores and that apart, the 5th respondent for the Assessment years 2017-18 and 2018-19 had declared loss of Rs.3,913/- and Rs.4,281/- respectively and as such, the 5th respondent neither having the financial capability nor expertise in segregating the compost waste, decompose waste, hazardous waste from the historical waste.

5. The petitioner despite alarming with such a document has failed to submit a representations to the concerned authority for the purpose of addressing / redressal of his grievance and straight away approached this Court, challenging the award of Tender in favour of the 5th respondent. It is also a well settled position of law that non-participants in the tender process under normal circumstances have not made challenge to the award of the Tender.

6. This Court in the light of the above facts and circumstances permits the petitioner to submit a detailed representation with relevant and authenticated documents to the respondents 1 to 3 as well as the Director, Town Panchayat within a period of three weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondents 1 and 2 shall put the 5th respondent on notice and thereafter consider the said representation on merits and in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioner as well as to the 5th respondent. It is also made clear that this Court have not gone into the merits or otherwise of the materials placed by the petitioner in support of the present writ petition and the representation to be submitted by the petitioner shall be disposed of by the respondents 1 and 2 as per the directions issued in this writ petition on it's own merits.

7. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

sk

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Executive Officer,
Velur Town Panchayat, Velur, Namakkal District.
 - 2.The Assistant Director,
Assistant Director of Town Panchayat Office,
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 - 4.The District Collector,
District Collector Office,
Namakkal District, Tamil Nadu.
- +1cc to Mr.Sumathi Lokesh , Advocate SR.No. 85020

WP.No.28970 of 2019

A.SK(19/11/2019)