

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.33968 of 2018

and

W.M.P.Nos.39445 & 39446 of 2018

SMR Construction,
No.S-3, Green House Apartments,
Phase-II, Mc Donalds Road,
Contonment, Trichy - 620 001. ...Petitioner

Vs.

1.The General Manager,
Souther Railway,
Headquarters office,
Park Town, Chennai - 600 003.

2.The Chief Administrative Officer,
Construction,
Southern Railway,
Periyar E.V.R. High Road,
Egmore, Chennai - 600 008.

3.The Chief Engineer,
Construction,
Southern Railway,
Periyar E.V.R. High Road,
Egmore, Chennai - 600 008.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the discharge of tender without opening the qualified price bids of the tenderers as arbitrary, unauthorized, without jurisdiction, illegal, invalid and null and void and thereby direct the respondents to adhere to the terms of the tender in E-Tender Notice No.17-CE-CN-MS-18-OM-8-II dated 19.09.2018 and open the qualified price bids which were pre-qualified in the price bids, entitled to award of the contract for the work in the event of any price bid among two (2) becoming the lowest and viable to the administration.

For Petitioner : Ms.K.Aparna Devi
For Respondents : Mr.P.T.Ram Kumar,
Standing Counsel

O R D E R

The petitioner seeks for declaration to declare that the discharge of tender without opening the qualified price bids of the tenderers as arbitrary, unauthorized, without jurisdiction, illegal, invalid and null and void and thereby direct the respondents to adhere to the terms of the tender in E-Tender Notice No.17-CE-CN-MS-18-OM-8-II dated 19.09.2018 and open the qualified price bids which were pre-qualified in the price bids, entitled to award of the contract for the work in the event of any price bid among two (2) becoming the lowest and viable to the administration.

2. The case of the petitioner is as follows:

The 3rd respondent called for tender under Tender Notice No.17-CE-CN-MS-18-OM-8-II dated 19.09.2018 and the petitioner is one of the competent bidders for the above work. The tenders were opened on 23.10.2018. After opening the tender, the respondents immediately provided Techno-Commercial Tabulation. The 3rd respondent opened the commercial bid of five competitive bidders and only after qualifying the commercial bid, the price bid shall be opened. The tender committee has disqualified three competent bidders and recommended for the price bids for remaining two qualified bidders. However, the Competent Authority declined to accept the tender committee and approve for discharging the tender without opening the price bids for qualifying bidders. Therefore, the discharging of tender, without opening the remaining two qualified bids is against law. Hence, the present writ petition is filed.

3. The counter affidavit is filed by the respondents, wherein it is stated as follows:

After opening the technical bid and evaluating the documents, one tenderer was disqualified and two tenders were rejected for not fulfilling certain conditions of the tender. The Competent Authority perused the tender committee proceedings and records and had taken a decision to discharge the tender on 14.12.2018, as there was no fair competition and any action taken to process further will not be beneficial to the administration to award contract.

4. The learned counsel for the petitioner, after reiterating the contentions raised in the affidavit as referred to supra,

has submitted that discharging of the tender is bad.

5. On the other hand, the learned Standing Counsel appearing for the respondents submitted that only when the Competent Authority found that there was no fair competition and that any action taken to process further of the tenders of those two persons will not be beneficial to the administration to award the contract, the tender was discharged. He further submitted that new tender notification was issued on 01.02.2019 and therefore, there is no impediment for the petitioner to participate in the tender process. Thus, he submitted that interest of the petitioner is no way prejudiced, as the price bid was never opened.

6. It is seen that even before opening the price bid, the Competent Authority has taken a decision to discharge the tender on the reason that there was no fair competition and that further process of the remaining two tender documents will not be beneficial to the administration to award the contract. Such view taken by the Competent Authority, being the owner/employer, cannot be found fault with or interfered with by this Court, since such authority is having every power to take such decision, so long as such decision is not opposed to public policy. Even otherwise, as the petitioner's interest is not going to be prejudiced in any manner, as they can participate in the fresh tender, I find that the present relief sought for in the present writ petition cannot be entertained.

7. Accordingly, this Writ Petition is dismissed, however, by granting liberty to the petitioner to participate in the fresh tender, if they are otherwise qualified as per the terms and conditions stipulated therein. No costs. Consequently, the connected miscellaneous petitions are closed.

vsi/gsi

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

+2cc to Mrs.K.Aparna Devi, Advocate, S.R.No.13397

+1cc to Mr. P.T.Ramkumar, Advocate, S.R.No.12702

W.P.No.33968 of 2018

Kak(12/03/2019)