



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.1196 of 2019 and

W.M.P. (MD) Nos.1011 & 1012 of 2019

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HAPPY

(Hygiene Awareness Programme for the
Protection of Yours...),

Represented by its Proprietor,

S.Jesudoss Jacob Monraj,

7, Kalpalam Road,

Room No.4, Vaidhaylinga Buildings,

Kalpalam, Gorpalayam,

Madurai - 625 002.

... Petitioner

Vs.

The Commissioner,

Madurai Corporation, Arignar Anna Maligai,

Thallakulam, Madurai - 625 002.

... Respondent

PRAYER : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records passed by the respondent herein issued in e-Tender Notification No.3/2019 in Ma.Po.1/Est302/18-19 dated 01.2019 and quash the same in so far as Sl. No.2, 15, 17, 25 and 28 of the Notification and consequently direct the respondent herein to open the bids submitted under the respondent's e-Tender Notification No.56/2018 in Ma.Po.1/Est302/18-19 dated 14.08.2018 within a specified period as fixed by this Court.

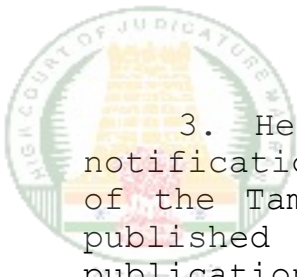
For Petitioner : Mr.M.Padmavathy

For Respondent : Mr.R.Murali,
Standing Counsel.

O R D E R

The petitioner questions the e-tender notification dated 06.01.2019 issued by the respondent Corporation inviting tender applications for supply of unskilled labourers and electricians by outsourcing method. The tender notification pertains to as many as 28 items. The petitioner is concerned only with item Nos.2, 15, 17, 25 and 28 of the said notification.

2. The learned counsel appearing for the petitioner questions the said notification on as many as four grounds. The present notification was preceded by an earlier notification dated 14.08.2018. The petitioner had taken part therein. The respondent without even formally cancelling the said tender process has chosen to go for a fresh notification. This is the first ground.



3. Her second contention is that the value of the present notification is above Rs.25 Lakhs and that therefore as per Rule 9 of the Tamil Nadu Transparency in Tenders Rules 2000, it must be published in the State tender bulletin. In this case, such a publication has not been made.

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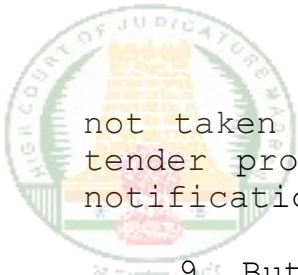
4. Thirdly, there is no time gap of 15 days between the date of publication of the tender notice and the last date for submission of tenders. According to the petitioner's counsel, Rule 20 of the said Rules stands violated. She would also allege that the tender notifications were not uploaded in the web portal in time.

5. Merely because a person has taken part in a tender process that by itself will not confer any vested right. The only right which the petitioner can claim is that he must be treated on par with the other players in the field. No doubt the petitioner has made out a strong ground while challenging the impugned notification. It is true that the impugned notification was not published in a State Tender Bulletin.

6. This Court cannot mechanically set aside the impugned notification on the ground of violation of Rule 9 of Tamil Nadu Transparency in Tenders Rules, 2000. The purpose and object behind the said rule is that there must be wide publicity caused to the tender notification and that in high value tenders, there must be State wide participation.

7. In the present case, the tender notification has been published in the Tamil Nadu Government Tender Information system. Thus, the tender notification has admittedly received good publicity State wide. Of course as rightly pointed out by the learned counsel appearing for the petitioner, the decision on the tenders in question will have to be published in State Tender Bulletin. Therefore, even while declining to set aside the notification on the ground of violation of Rule 9 of the Tamil Nadu Transparency in Tenders Rules, this Court directs the respondent to publish the decision on tenders in the State Tender Bulletin, where the value of procurement exceeds Rs.5 Lakhs.

8. It is true that as per Rule 20 of the said Rules, there must be atleast 15 days time gap for tenders up to Rs.2 Crores in value between the date of tender notification and the last date for submission of tenders. Where the tender notification has to be published in the tender bulletin as well as in the newspapers, the later date will be reckoned for computation. In this case as rightly pointed out by the learned counsel appearing for the petitioner, the date of publication in the tender bulletin was 12.01.2019 and the last date for submission of tenders was 25.01.2019. Thus the period separating these two dates is less than 15 days. The petitioner's counsel is right in her contention that the mandate set out in Rule 20 has been infringed in this case. Even while I sustain the arguments, I am not in a position to grant relief. A person who has



not taken part in the tender process and who is not aware of the tender process can successfully mount the challenge to the tender notification on this ground.

9. But in this case, the learned Standing counsel appearing for Corporation has pointed out that the petitioner has filed his tender application in respect of work bearing against serial No.2. He has uploaded his tender application.

10. The learned Standing counsel submitted that the final decision has been taken in respect of serial No.2. Since the petitioner is aware of the issuance of the tender notification and the petitioner has also submitted his tender application, the petitioner would not be justified in invoking the said rule. The petitioner is admittedly an incumbent contractor. Therefore, the petitioner has to take part in the tender process that is still yet to be finalised. The petitioner is fully aware that today is the last date as far as serial Nos.11 and 15 are concerned. The petitioner still has time to submit his application.

11. Therefore, in matters such as this, this Court cannot take a purely technical approach. The only question is whether the substantive right of the petitioner has been infringed. This Court comes to the conclusion that the petitioner's substantive right has not been infringed in any way. Therefore, even though I find that the petitioner's counsel has substantiated at least two of her contentions, in view of the facts and circumstances of this case, I decline to grant relief.

12. This Writ petition stands dismissed, accordingly. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To
The Commissioner,
Madurai Corporation, Arignar Anna Maligai,
Thallakulam, Madurai - 625 002.

+1 CC to Mr.R.MURALI, Advocate SR-45116.
+1 CC to M/s.M.PADMAVATHY, Advocate SR-45418.

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