



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2019

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P. (MD) No. 5089 of 2019

and

W.M.P (MD) .Nos. 6785 and 4060 of 2019

M.Murugan

... Petitioner

/Vs./

1.The Superintending Engineer,
National Highways,
Tirunelveli.

2.The Divisional Engineer,
National Highways,
Tirunelveli.

3.Tmt.M.S.Selvi
Superintending Engineer,
National Highways,
Salem.

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned minutes of first respondent dated 21.02.2019 which uploaded in the official website along with corrigendum details on 25.02.2019 for the cancellation of petitioner's lowest tender and consequential fresh tender notice No.27/2018-19-/HBD dated 21.02.2019 issued by the first respondent and quash the same as illegal and unconstitutional, consequently direct the first respondent to award work order in respect of widening and strengthening works on the stretch of Vaithiyalingapuram, Tirunelveli District as the petitioner quoted lowest tender in respect of tender notice No.16/2018-2019/DO dated 21.02.2019.

For Petitioner	: Mr.T.Arul for Mr.M.Maharaja
For Respondents	: Mr.Aayiram K.Selvakumar (for R1 & R2) Additional Government Pleader Ms.M.D.Devisaravanapriya for Mr.P.T.S.Narendravasan (for R3)



ORDER

Mr.T.Arul, representing the counsel on record for writ petitioner, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader on behalf of respondents 1 and 2 (official respondents) and Ms.M.D.Devisaravanapriya representing the counsel on record for third respondent (private respondent) are before this Court.

2.With the consent of learned counsel on both sides i.e., all the aforesaid three counsel, main writ petition is taken up, heard out and is being disposed of.

3.Though there are detailed pleadings before this Court by way of affidavit filed in support of instant writ petition, counter affidavit filed by the State on behalf of respondents 1 and 2 and rejoinder affidavit filed by the writ petitioner, the entire matter now turns on a very narrow compass owing to trajectory of the hearing today.

4.This order disposing of this writ petition will therefore give short facts shorn of elaboration, sans facts which may not be necessary for disposal of the writ petition or in other words, factual matrix in a nutshell containing facts, which are imperative for appreciating this order alone will be set out infra in the paragraphs that follow.

5.Entire writ petition pertains to Invitation of Bids, Competitive Bidding which this Court is informed is a two cover tender system for work, which is described as 'Widening SL to IL and Strengthening of Vaithiyalingapuram Road in Km 0/0-7/8 valued at Rs.600 Lakhs or in other words Rs.6 Crores' (hereinafter referred to as 'said work' for the sake of brevity, clarity and convenience).

6.State floated a tender for said work or in other words State made invitation for bids on online mode in two cover system. To be noted, this Court is informed without any disputation that two cover system is the usual technical bid in one cover and financial bid in another cover. Writ petitioner responded to this notice inviting bids and submitted his bid. It is not in dispute that the writ petitioner's bid is 2.21% less than estimated rate for 2018-2019 and therefore, the writ petitioner's bid was the lowest. There is no dispute about this aspect of the matter also. To be noted, technical bids or technical covers were opened on 25.01.2019 and financial bids or financial covers were opened on 06.02.2019. Thereafter, on 21.02.2019, the writ petitioner was informed that the tender has been cancelled. Though the E-Mail communication placed before this Court forming part of the case file reads that the tender has been cancelled, this Court is informed that it is not happily worded and it only means that the writ petitioner's bid has been rejected. This is recorded. Thereafter, the reasons were
<https://hscpcsa.cemiln.chcscs> official website i.e., reason for rejection. The



most critical and important part of the reason for rejection reads as follows:

'The value of work on hand of Thiru.M.Murugan was obtained from the Superintending Engineer (H) C&M, Tirunelveli vide letter No.725/2019/D01/dated : 20.02.2019.

Name of Work: Tirunelveli (H) C&M Circle-Tirunelveli (H) C&M Division-CRIDP 2018-19 package No.43-Work of Improvements, Improvements to riding quality including CD works to State Highways road, Other District Roads in Radhapuram (H) C&M, Sub-Division for Amount Rs.6,50,70,983/-.

Work order issued vide Superintending Engineer (H) C&M Tirunelveli TRP 289/2018-19/D1/dated 28.12.2018.

Taking the above value of work on hand of Thiru.M.Murugan for arriving the bid capacity as on 08.01.2019, the Contractor Thiru.M.Murugan is not qualified.

Hence, the Evaluation Committee decided to cancel the tender.'

7.This takes us to the other work i.e., road work in Radhapuram as part of CRIDP. This Court is informed that 'CRIDP' is an abbreviation which stands for 'Comprehensive Road Infrastructure and Development Programme'. This work shall hereinafter be referred to as 'Radhapuram work' for the sake of brevity, clarity, convenience and for the purpose of readily contradistinguishing the same from said work.

8.There is no disputation or disagreement before this Court that writ petitioner is the Contractor qua Radhapuram work also. There is also no dispute that the value of Radhapuram work is Rs.6,50,70,983/- (Rupees Six Crores Fifty Lakhs Seventy Thousand Nine Hundred and Eight Three only). This takes us to the formula which has been adopted for disqualifying the writ petition.

9.This formula has been setout with clarity and specificity in the counter affidavit of the State in paragraph No.5. Relevant portion reads as follows:

'5.I respectfully submit that para 6 of the affidavit is not fully correct. A petition has been received in the office of the first respondent from one Thiru.E.Natarajan on 06.02.2019. In this petition it is stated that one work (CRIDP) has been allotted in



Radhapuram (H) C&M, Subdivision to Thiru.M.Murugan to a contract value of Rs.6.35 Crores. The writ petition with malafied intension purposefully suppressed the said work on hand. The following formula is used by out department to work out the financial capacity of every successful bidder after succeeding the technical bid.

According to Tender rules, Bid Capacity is to be arrived as follows:

$$\begin{aligned} \text{Bid Capacity} &= A \times N \times 2 - B \\ A &= \text{Maximum value of work executed in any one year during the last five years (updated to the current price level) (rate of inflation may be taken as 10\% per year for the competed as well as in progress)} \\ B &= \text{Value at current price level of the existing commitments and ongoing works to be competed during the next 6 months.} \\ N &= \text{No of years prescribed for the completion of the present work} \\ &= 1144.65 \times 6 / 12 \times 2 - 0 \\ &= 1144.65 \text{ lakhs} \end{aligned}$$

10. How the aforesaid formula was applied in the case of writ petitioner has been very clearly articulated with specificity in Sub paragraph (b) of paragraph 5 and the same reads as follows:

'5(b). Taking the above value of work on hand of Thiru.M.Murugan bid capacity is arrived as follows:

$$\begin{aligned} \text{Bid Capacity} &= A \times N \times 2 - B \\ &= 1144.65 \times 6 / 12 \times 2 - 635.00 \\ &= 1144.65 \text{ lakhs} - 635.00 \text{ Lakhs} \\ &= 509.65 \text{ Lakhs} \end{aligned}$$

But the bid capacity required for this work as per tender condition is Rs.600.00 Lakhs. The writ petitioner's bid capacity as on 08.01.2019, is only 509.65 Lakhs hence the Contractor Thiru.M.Murugan is not qualified in the above said bid. Hence, the Evaluation Committee decided to cancel the tender on 21.02.2019. The cancellation of the Tender was uploaded in the website on 21.02.2019 and a copy of uploaded document is enclosed in typed set. The message of cancellation was intimated to the petitioner on 21.02.2019 itself by online. '



11.The aforesaid formula and computation is the crux and gravamen of this writ petition.

12.Both sides were heard on the formula and computation.

13.To be noted, State counsel was instructed by the official concerned, who was present in Court.

14.In the formula, with regard to A being 1144.65 there is no disputation or disagreement between the parties. As would be evident from the computation N, has been taken as 6/12 but this ought to have been taken as 9/12 as the period for completion of said work even according to the invitation of bids is 9 months.

15. With regard to B, the same has been taken as 635.00. To be noted B is, for the purpose of this case, value of Radhapuram work and as already alluded to supra, value of Radhapuram work is Rs.6,50,70,983/-. Therefore, it should not have been taken as 635.00, but it should have been taken as 650.71. Therefore, if N is taken as 9/12, B is taken as 650.71 and if the computation is reworked, result is not 509.65, but it is 1066.26.

16.Therefore, it emerges clearly that an error in computation has occurred while applying the formula to test the qualification/disqualification of the writ petitioner and that this error is owing to taking wrong values qua N and B.

17.It is not in dispute that if this error is rectified and if the final figure is 1066.26 and not 509.65 the writ petitioner will not stand disqualified qua said work.

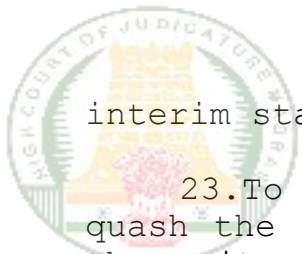
18.As this douses the entire controversy in this matter, this Court deems it appropriate to not to go delve in to the matter any further.

19.This also takes us to the trajectory which this writ petition has taken thus far.

20.When the writ petition was moved, a Hon'ble Single Judge of this Court had granted an order of interim stay on 01.03.2019 in W.M.P(MD).No.4060 of 2019. This interim order is operating until today and State has taken out a petition for vacating this interim order vide W.M.P(MD).No.6785 of 2019.

21.It is submitted that processing of tender for said work was stopped as of 01.03.2019.

22.The sequitur is that the impugned minutes are set aside and the respondents 1 and 2 shall proceed with processing the tender for said work from where it stopped pursuant to 01.03.2019 order of



interim stay.

23.To be noted, the prayer is in two limbs. One limb is to quash the impugned minutes and other limb is to award said work to the writ petitioner. Therefore, this Writ Petition is allowed in part as the impugned minutes are set aside and with regard to second limb, the official respondents are directed to proceed with processing the tender for said work from where it stopped pursuant to 01.03.2019 interim order now by not disqualifying the writ petitioner or in other words by considering the bid of the writ petitioner also. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Superintending Engineer,
National Highways, Tirunelveli.

2.The Divisional Engineer,
National Highways, Tirunelveli.

+4CC TO MR.M.MAHARAJA, Advocate Sr. No.92119, 92380
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 92106

Order made in
W.P.(MD)No.5089 of 2019

Dated:
15.10.2019

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NA (CO)
TR(30.10.2019) 6P 8C