



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.5664 of 2019
and W.M.P (MD) No.4477 of 2019

A.Subburam

... Petitioner

Vs.

1.The Superintending Engineer
Tamil Nadu Water Supply and Drainage
(TWAD Board)
Tirunelveli and Nagercoil Circle,
Seevalaperi Road,
Shanthi Nagar, Tirunelveli - 627 002

2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage
(TWAD Board), Maintenance Division,
Seevalaperi Division,
Shanthi Nagar, Tirunelveli - 627 002

3.Parthasarathy

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents 1 and 2 to reconduct fresh tender auction for the work namely, "improvement works to combined water supply scheme to Nanguneri, Thisayanvilai, Pathamadai, Kalakkadu, Melavasal town Panchayat and 297 Rural habitations in Nanguneri, Radhapuram. Valliyoar, Kalakkad, Sathankulam and Palayamkottai unions in Tirunelveli District under Tamil Nadu Mineral Foundation Trust Fund within a stipulated time that may be fixed by this Court.

For Petitioner

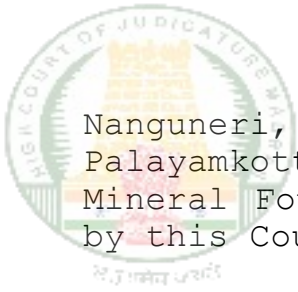
:Mr.R.Karunanidhi

For Respondents

:Ms.Porkodi Karnan for R1 & R2
No appearance for R3

ORDER

The prayer sought for in this writ petition is for a writ of mandamus to direct the respondents 1 and 2 to re-conduct fresh tender auction for the work namely, "improvement works to combined water supply scheme to Nanguneri, Thisayanvilai, Pathamadai, Kalakkadu, Melavasal town Panchayat and 297 Rural habitations in



Nanguneri, Radhapuram, Valliyoor, Kalakkad, Sathankulam and Palayamkottai unions in Tirunelveli District under Tamil Nadu Mineral Foundation Trust Fund within a stipulated time to be fixed by this Court.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2. Since notice has been returned for the third respondent, he did not appear, any how, since this Court is not going to pass any adverse order against the third respondent, further notice to him is dispensed with.

3. Pursuant to the tender notification issued by the respondents 1 and 2 to have a pipeline project, though the petitioner claimed to have approached the respondents' office on 05.03.2019 to submit the tender, allegedly he was physically prevented by the third respondent in front of the respondents 1 and 2. Therefore, the petitioner could not file the tender form in the tender box before the fixed time and date, ie., on 05.03.2019 at 3.00 p.m. and on that date itself, the petitioner has preferred a complaint before the police, which has not yielded any result. Subsequently, the third respondent has been awarded the contract for a sum of Rs.35 lakhs, whereas, the petitioner has quoted in the tender only Rs.25 lakhs. Knowing well that, the petitioner would be the L1, he was physically prevented by the third respondent with the connivance of the respondents 1 and 2 from filing the tender form on the said date and therefore, the petitioner is before this Court with the present writ petition with the aforesaid prayer.

4. I have heard the learned counsel for the petitioner, who reiterated the said submission recorded by the petitioner and further submitted that, only in order to help the third respondent, the first and second respondents allowed the third respondent to prevent the petitioner from filing the tender form and by virtue of that, more than Rs.10 lakhs of the quote made by the petitioner, now, for a sum of Rs.35 lakhs, the tender has been finalised and has been given to the third respondent. Therefore, it is illegal and unlawful, by thus, the public money could get wasted to the extent of Rs.10 lakhs. Therefore, interference of this Court is required, he contended.

5. I have heard the learned standing counsel for the respondents 1 and 2, who has relied upon the following submissions made in the counter affidavit filed by the second respondent, which reads thus:

"4. It is further submitted that as per the rules, the tender documents can be downloaded from TWAD Board official web site and any Contractor under Class II & above can offer their tender for the particular work. The Tender box was placed in a room to put tenders freely without any disturbance. Accordingly only three numbers of tenders were put in to the tender box for the particular tender on



05.03.2019 and the box was closed @ 3.00 p.m. on the same day as per the rules. The alleged incidents affirmed by the Writ Petitioner in Para 5 of affidavit had not happened in this office premises. Even as per the statement of the petitioner, the dispute is between the writ petitioner and other Contractors and not with the department officials. Nowhere in the entire affidavit, the Writ Petitioner had made allegations against the department officials."

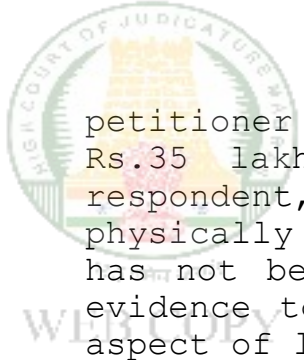
6. By relying upon the counter affidavit, the learned standing counsel for the respondents 1 and 2 would submit that, as per the tender notification, till 05.03.2019 at 3.00 p.m., the tender box was kept opened and no one was prevented including the petitioner by anyone, including the third respondent and in this regard, if at all any grievance is there between the petitioner and the third respondent, that would not in any way affect the first and second respondents to proceed with the tender notification and accordingly, on 05.03.2019, at 3.00 p.m., ie., after the deadline, the tender box was opened, three tenderers had made their tenders, out of which, the L1, ie., the third respondent was awarded the contract and he has been undertaking the work now.

7. The learned counsel for the respondents 1 and 2 would further submit that, as far as the petitioner is concerned, he is also one of the Contractor under the respondent department and notwithstanding the aforesaid alleged upset, the petitioner has been awarded another work and he has been undertaking the said work and therefore, there can be absolutely no quarrel or animosity against the petitioner with the respondent department. Therefore, the said allegation made against the respondents 1 and 2 is without any basis, the learned counsel contended.

8. I have considered the said submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondents 1 and 2 and have perused the materials placed before this Court.

9. Even though such an allegation has been made by the petitioner that, he was prevented by the third respondent on the said date, ie., last day of filing the tender form, ie., on 05.03.2019, there is no proof to show that, the petitioner was physically prevented by the third respondent in front of the respondents 1 and 2 and even though a police complaint in this regard was made, there is no investigation from the police and nothing has been revealed out of the said complaint.

10. In that circumstances, this Court cannot come to the conclusion that, the petitioner has been physically prevented by the third respondent with the connivance of the respondents 1 and 2, by thus, the petitioner could not make the tender. Assuming that the



petitioner has quoted a lowest amount of Rs.25 lakhs instead of Rs.35 lakhs, as claimed to have been submitted by the third respondent, since the claim of the petitioner that, he has been physically prevented from submitting the tender on the closing date, has not been proved it cannot be accepted. In the absence of any evidence to that effect, this Court cannot take into account that aspect of lowest quote, claimed by the petitioner.

11. In that view of the matter, the prayer sought for in this writ petition cannot be granted. Accordingly, the writ petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Superintending Engineer
Tamil Nadu Water Supply and Drainage
(TWAD Board)
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2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage
(TWAD Board)
Maintenance Division,
Seevalaperi Division,
Shanthi Nagar, Tirunelveli - 627 002

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-74986[F] dated 12/07/2019)

+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-74948[F] dated 12/07/2019)

W.P. (MD) No.5664 of 2019
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11.07.2019

RR

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