



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2019

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.18482 of 2019

and

W.M.P(MD).No.14891 of 2019

M.Krishnamoorthy

...Petitioner

-Vs-

The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Sewerage Circle, Madurai.

...Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in connection with the impugned order of rejection passed vide his proceedings in Lr.No.8819/JDO/F.RMD UGSS/STP/2019 dated 08.08.2019 and quash the same as illegal and arbitrary and consequently, direct the respondent to declare the petitioner as successful bidder in the bid opened on 29.07.2019 and thereby allot him Work Order to execute the work stated in the Tender Notification in CTN No.01/F.Tender Notice/JDO/2019 dated 11.07.2019.

For Petitioner : Mr.G.Thalaimutharasu
For Respondent : Mr.Porkodi Kannan
Standing Counsel

ORDER

The prayer sought for in this writ petition is that, to quash the records on the file of the respondent in connection with the impugned order of rejection passed vide his proceedings in Lr.No.8819/JDO/F.RMD UGSS/STP/2019, dated 08.08.2019 and consequently, direct the respondent to declare the petitioner as successful bidder in the bid opened on 29.07.2019 and thereby, allot him Work Order to execute the work stated in the Tender Notification in CTN No.01/F.Tender Notice/JDO/2019, dated 11.07.2019.

<https://hcservices.courtservice.mca.gov.in/> 2019-08-27 11:50:00 AM G.Thalaimutharasu, learned counsel appearing for



the petitioner and Mr.Porkodi Kannan, learned Standing Counsel appearing for the respondent.

3.With consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

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4.The petitioner is a Contractor and he made a bid for the tender notification called for by the respondent on 11.07.2019, under which, that the work namely 'rectification at 07.00 MLD Sewerage Treatment Plant' at Kalugoorani for a period of completion of one month including maintenance for three months under UGSS to Ramanathapuram Municipality in Ramanathapuram District has to be undertaken. Accordingly, the petitioner has also submitted his tender and in this regard, after having opened the technical bid, the respondent seems to have found that, the petitioner has not satisfied with the credential furnished by it with the eligible criteria fixed by the respondent. Accordingly, his tender was rejected on opening the technical bid itself through the impugned order dated 08.08.2019, where the respondent has stated the following :-

"Your tender received for the above work is scrutinized and evaluated in this office as per the bid document requirements.

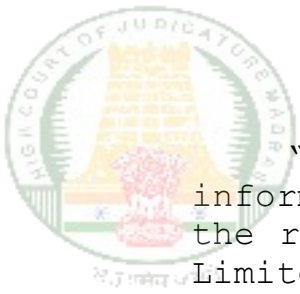
After the evaluation of technical bid, it is observed that the credentials furnished by you was not satisfied the eligible criteria fixed by this department.

You are requested to produce the advanced stamp receipt to this office early for refund of EMD already furnished while offering above tender."

Challenging the same, the present writ petition has been filed.

5.The learned counsel appearing for the petitioner submits that, the petitioner is already having an experience in the same area i.e., installation of sewerage treatment plant and in this regard, he is able to demonstrate that, he had been working with Avin, where, he already installed a treatment plant for 1 MLD i.e., 1 million ltr or 10 lakhs ltr and with that experience, the petitioner would be a suitable Contractor and accordingly, his technical bid could not have been rejected by the respondent through the impugned order on the ground that, he does not satisfy the eligible criteria fixed by the respondent.

6.In this context, the learned counsel for the petitioner also relied upon a communication issued by the Tamil Nadu Co-operative Milk Producers' Federation Limited, dated 05.08.2019, where, it has stated the following :-



"With reference to your letter 1st cited we are to inform you that the federation had issued work order in the reference 2nd & 3rd cited to M/s.CES Builders Private Limited, Madurai for the work of Construction of Additional Civil Works and increasing the capacity of ETP at Pattukottai and Expansion of existing ETP at Pudukkottai Dairy.

The above two works have been completed physically and the trial run is under progress."

7.He would further submit that, one of the eligibility condition, which according to the respondent, allegedly not satisfied by the petitioner, is only with regard to the capacity of the treatment plant that the petitioner since have already installed and having experience with regard to IMLD or 10 million litre treatment plant, the said experience cannot be brushed aside, as the condition imposed by the respondent through the tender is that the tenderers must have the experience with the similar set of treatment plant and therefore, if that is the only criteria, there is no impediment for the respondent to accept the technical bid of the petitioner.

8.In this regard, the learned counsel appearing for the petitioner also relied upon the qualification of the bidder mentioned in the tender document and would further submit that, at any rate, the present impugned order without even disclosing any specific reason for rejecting the technical bid of the petitioner cannot be sustained in the eye of law, as it is nothing but arbitrariness and hence, it shall be enquired with and the petitioner's technical bid shall be directed to be accepted and accordingly, the prise bid shall be directed to be opened.

9.However, the learned Standing Counsel appearing for the respondent/TWAD Board, on instructions, would submit that, it is the admitted case of the petitioner that, he is having the experience of handling the treatment plant with the capacity of 1 MLD, whereas, the requirement of the respondent/TWAD Board was 7 MLD, therefore, the tender conditions imposed for the tenderers in the tender document to have a experience with similar treatment plant is nothing but a treatment plant to the capacity of 7 MLD. Therefore, the experience admittedly having by the petitioner is far below the expectation of the respondent and therefore, after having opened the technical bid of the petitioner, the respondent since was not satisfied with the credential of the petitioner with the eligible criteria fixed by the department, it was decided to reject.

10.The learned Standing Counsel further submitted that, in



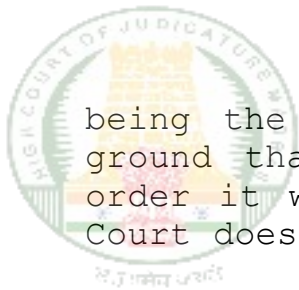
respect of the said tender notification, apart from the petitioner, one more tenderer had also submitted the tender and his tender was also rejected for similar reason and therefore, the net result would be that both the tender documents submitted by two separate tenderers including the petitioner, since has been rejected, the respondent/TWAD Board has decided to float a new tender. Accordingly, on 20.08.2019 a second tender notification was issued, according to which, the last date of receipt of tender document has been fixed as 05.09.2019 and based on the tender documents to be submitted pursuant to the second tender notification, the technical bid would be opened and on satisfaction of such criteria already fixed by TWAD Board with regard to the previous experience of the dealing or handling similar treatment plant to the extent of 7 MLD alone, the eligible person would be considered and accordingly, the tender would be finalised.

11.I have considered the said submissions made by both sides and perused the materials placed before this Court.

12.No doubt, in the impugned order no specific reason has been stated by the respondent to reject the technical bid of the petitioner, except to say that, credential furnished by the petitioner was not satisfied to the eligible criteria fixed by the department. Normally this kind of order without giving or assigning specific reason to reject the tender document of the parties, can be successfully assailed on the ground that no reason has been given.

13.In this regard, even though *prima facie* it appears that the impugned order cannot be sustained as no specific reason has been given in the impugned order, now the learned Standing Counsel appearing for the respondent has given details about the eligibility criteria, especially, the previous experience of the tenderer that, without the experience as expected by the respondent to the extent on 7 MLD treatment plant, the proposed plant to be installed pursuant to the present tender cannot be effectually installed and maintained by any tenderer like the petitioner and that is the reason why, since the main criteria fixed by the respondent has not been met by the petitioner, based on the technical criteria, the same was rejected.

14.It is also to be noted that, the one more tenderer, who filed the tender along with petitioner, also has been rejected for similar reason and accordingly, the respondent decided to go for fresh tender and such tender notification also, according to the respondent, has been issued on 20.08.2019 expecting filled up tender form to be submitted till 05.09.2019, thereafter, as per the procedure, the technical bid would be evaluated. When that



being the position, if the impugned order is interfered on the ground that no specific reason has been stated in the impugned order it would nothing but a futile exercise and therefore, this Court does not want to make such exercise.

15. In that view of the matter, this Court finds that there is a plausible and sound reasoning for rejecting the technical bid of the petitioner and as per the present scenario, since second tender notification has already been issued expecting tender documents, this Court is not inclined to interfere with the impugned order.

16. For all the reasons stated above, this Court finds no merits in this writ petition accordingly, the same is failed. Hence, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

rmk

+1 cc to Mr.G.Thalaimutharasu , Advocate SR.No.83857

+1 cc to Mr.Porkodi Karnan , Advocate SR.No.83690

W.P.(MD)No.18482 of 2019

27.08.2019

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