



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **23.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P. (MD)No.20183 of 2019

and

W.M.P. (MD)Nos.16740 and 16742 of 2019

K.Govindan

: Petitioner

Vs.

- 1.The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk,
Chennai-600 005.
- 2.Mr.P.N.S.Ramesh Babu,
The Superintending Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Sivagangai and Ramanathapuram
Cum Project Monitoring Circle,
Sivagangai,
Ramanathapuram District.
- 3.The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Sivagangai and Ramanathapuram
Cum Project Monitoring Circle,
Sivagangai, Ramanathapuram District.
- 4.Thiru.T.Maruthupandian,
Contractor,
Sethupathy Nagar,
Kottaimedu, Kamuthi (Tk),
Ramanathapuram District-623 604.
- 5.Thiru.Ramar,
Contractor,
15, Kattapomman Street,
Narimedu, Madurai.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the impugned order dated 22.08.2019 passed by the third respondent vide his No.228-3/Package VIIC/F.O.&M of Ramnad CWSS/DO1/2019/2015/F1 and quash the same and

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further, direct the first respondent to direct the third respondent to accept the petitioner's lowest tender with 35.60% less percentage on departmental value and to consequently cancel the award of tender to any of the respondents 4 or 5.

For Petitioner

: Mr.G.P.Arivuchudar,

For M/s.Law Square

For Respondents

: Mrs.Porkodi Karnan

ORDER

The petitioner challenges the communication issued by the third respondent to collect his Earnest Money Deposit from his office. In that letter, it is mentioned that the tender submitted by the petitioner was rejected.

2. According to the petitioner, he is fully qualified and without prior intimation to the petitioner, the technical bids were opened contrary to Rules 21(3) and 22 of the Tamil Nadu Transparency in Tenders Rules, 2000. The third respondent has acted *mala fidely* to select either the fourth respondent or the fifth respondent, on extraneous consideration. Even though the petitioner quoted lowest price in the bid, the third respondent has chosen the fourth respondent or fifth respondent, who quoted the amount more than the amount quoted by the petitioner. Therefore, the impugned order calling to get refund of the earnest money deposit, is liable to be quashed. The petitioner also seeks for a consequential direction to the first respondent to direct the third respondent to accept his tender by cancelling the tender given to the fourth respondent or the fifth respondent.

3. The learned counsel appearing for the official respondents would contend that the tender is floated for a sum of Rs.75,00,000/- [Rupees Seventy Five Lakhs only] and above. As per the norms, Class I contractors can only participate. The petitioner, being the Class II contractor, is not eligible to participate in the tender itself. The eligibility criteria fixed is as under:

"Contractors registered in TWAD under Class I i.e., those who are eligible to take up the work costing more than Rs.75.00 lakhs are eligible to tender for this work. Contractors registered in other Departments and Undertakings of the Central or State Government in the corresponding class for taking up such work, who have carried out similar works of the same or higher magnitude are also eligible to tender for this work. Contractors not registered in the Board and who intend to participate in the tender, subject to their eligibility as above are requested to obtain a copy of the tender document from



the office referred before submitting their Tender. They should furnish proof of their registration in the appropriate class and experience as indicated above while submitting their tenders, otherwise their tenders will be treated as non-responsive. The tender received from ineligible contractors will be treated as non-responsive. However, the successful Tenderer will have to get himself registered in the Board in the appropriate class."

4. Even, according to the eligibility criteria, the petitioner would have been considered, if he has produced some certificates from other departments and undertakings of the Central or State Government in the corresponding class that he has carried out similar work of the same or higher magnitude. In that event, he is entitled to submit his tender. But in this case, the petitioner has not submitted any document to prove that he has done the similar work of the same or higher magnitude and that he has not annexed the certificate issued by the other departments and undertakings of the Central or State Government. Therefore, his prayer has to be rejected.

5. I have considered the rival submissions.

6. Admittedly, as per condition No.7.2, contractors registered under the respondent Board under Class I, that is, those who are eligible to take up the work costing more than Rs.75,00,000/- [Rupees Seventy Five Lakhs only], are eligible to tender for this work. But, the petitioner is a Class II Contractor under the respondent Board. Secondly, he had not produced any certificate showing that he had carried out work, which is similar to the nature of the work awarded by the Tamil Nadu Water Supply and Drainage Board or of higher magnitude. Work experience in construction work is different from the specialized work, namely constructing the channels and other specialized work. Therefore, the petitioner's tender was rejected at the technical bid stage itself. The rejection was not challenged by the petitioner at the appropriate stage. Having failed to challenge the same at the threshold, the petitioner came before this Court at the stage when the respondents were about to refund the earnest money deposit. Thirdly, the impugned order is only a letter calling upon the petitioner to get refund of the earnest money deposit. It is not an order challengeable under writ proceedings.

7. It is well settled by the Hon'ble Supreme Court that in contractual matters, where there are lot of disputed facts involved, the Court should not interfere with the commercial contracts of the departments. Therefore, a writ cannot be entertained. Since the petitioner's bid was rejected on technical reason, this Court cannot re-write the terms and conditions and direct the official respondents to consider the application. In any view, the Writ



Petition is not maintainable against a letter, that too, in a commercial contract.

8. In the result, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Managing Director,
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Drainage Board,
31, Kamarajar Salai,
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Chennai-600 005.

2.Mr.P.N.S.Ramesh Babu,
The Superintending Engineer,
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Sivagangai,
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3.The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Sivagangai and Ramanathapuram
Cum Project Monitoring Circle,
Sivagangai, Ramanathapuram District.

+1 CC to M/s.PORKODI KARNAN, Advocate SR-88795.

+1 CC to M/s.LAW SQUARE, Advocate SR-89001.

Order made in
W.P. (MD)No.20183 of 2019

Dated: 23.09.2019

CS(01.10.2019) 4P 6C