

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.2654 of 2020
and WMP No.3091 and 3092 of 2020

S.Kalaivani

.... Petitioner

Vs.

1. The Commissioner,
Commissionerate of Municipal Administration,
Ezhilagam, Chennai 600 005.
2. The District Collector,
Chengalpet District,
Chengalpet 603 001.
3. The Commissioner,
Pammal Municipality
Pammal, Chennai 600 075.

4. N.Dinesh

...Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the tender proceedings pursuant to the calling of tender notification vide Na.Ka.No.1994/2019/E1 dated 12.11.2019 and ending up with the tender work order issued by the 3rd respondent in favour of the 4th respondent and quash the same and further direct the 3rd respondent to call for fresh tenders for the sewage and drainage cleaning works in the Pammal Municipality.

For Petitioner : Mr.Sashidhar Sivakumar

For Respondents: Mr.Annai Ezhil
Government Advocate for R1 and R2
Mr.P.Srinivas
Standing Counsel for R3

ORDER

This Writ Petition has been filed challenging the tender notification issued by the 3rd respondent dated 12.11.2019 and the tender issued in favor of the 4th respondent.

2. The case of the petitioner is that she owns a sewage cleaning lorry and she has experience in sewage and drainage cleaning work in and around Pammal, Pallavaram etc. The grievance of the petitioner is that the 3rd respondent issued a tender notification dated 12.11.2019 without making any publication in the local newspapers, which is a mandatory requirement under Rule 11 of the Tamil Nadu Transparency in Tenders Rules, 2000. In view of the same, nobody was aware about the tender called for by the 3rd respondent and it was ultimately given in favour of the 4th respondent.

3. The 3rd respondent has filed a counter affidavit. The relevant portions in the counter affidavit is extracted hereunder :-

3. It is submitted that the petitioner has been illegally operating the Septic tank disposal vehicles in the Pammal Municipal Town without any licence or permission and has been fleecing the residents with astronomical sums for the removal of the Septic tank wastes. The process of removal of the said wastes has been now entrusted to the 4th respondent after a transparent Tender process and the petitioner having not participated in the said tender is not entitled to challenge the same.

4. At the outset it is submitted that the Petitioners Husband during the earlier time, when the auction/Tender was conducted in the year 2011, had filed both a civil suit in O.S. No 45 of 2011 on the file of the Principal District Munsif Court, Alandur and also a Writ Petition in WP. No 4222 of 2011 before this Honourable Court and had stalled the said process of issuing the license by tender and in the meanwhile the Petitioner and her Husband have taken advantage of the inability of this respondent to issue the licence for the removal of Stepage had been operating the Sewage Trucks without any licence and without paying any money to the Municipality.

5. Now after the Tender process was completed and the license has been given the work order, the petitioner has once again sought for stalling the said process in order to take advantage and continue her illegal business.

6. It is submitted that the process of calling for the Tenders for the licence to operate the Septic tank clearing services, the Tender was published by means of Affixing the same in the Notice Board of the Municipality and also in the Office of the Tahsildar, Pallavaram Taluk as well as by serving the copy of the said notice to the Registered Contractors who have been doing works for the Pammal Municipality.

7. After the publication of the Tender as above, the Tender was called for and two persons have participated in the same. They have obtained the Tender schedules from the office of this Respondent and have filled up the requisite rates in the Tender Schedules and have submitted the sealed Tenders as per the schedule of submission.

8. After the last date for submission, namely on 28-11-2019 after 3:30 PM, the tenders were opened and the submitted tenders were opened. The rates quoted by the 4th respondent were found to be highest in respect of the Licence Fees payable to the Municipality and also the rates that have been quoted by him for the collection from the users has been found to be the lowest. The basis for the selection of the Bidder was on the basis of the least amount of charges that are payable by the Residents for availing the services of the Contractor for clearing their Septic Tanks.

16. It is further submitted that, due to the different nature of the work, the value Transparency Act and Rules therein, the method of Publication differs. In respect of works below a certain value, the nature of Publication is only as per the tender inviting authorities decision. In the present case, the value of the contract and the nature of work did not require any requirement to have Wide publication or participation and in fact sufficient publicity was ensured by the publication in the Notice Board and by serving on the Contractors. In fact the 4th respondent is not a registered contractor and he has participated only due to the publication of the Tender in the

Notice boards of this Respondent and the Taluk Office 17. Therefore it is submitted that sufficient publicity commensurate with the nature of the work has been done and due to this there is no illegality in the said process.

18. If the publication is to be made in the Local Newspapers, the cost of publication is at the minimum of Rs 40,000/- to 80,000/- for publication in the District alone. If the publication is done statewide, the costs goes upto at least Rs 2,00,000/-. This cost of publication will not be justified as the nature of the contract involves no work or expense to the Municipality and the entire expense of lifting the sewage and dumping it in the Metro water STP is that of the Resident and the Operator. Therefore the publication involving such huge expenses will not be justified. It is for this reason that the Tender Transparency Rules also states that method of publication has to be as per the requirements and the wish of the Tender Inviting Authority.

4. Heard the learned counsel for the petitioner and Mr. Annai Ezhil, learned Government Advocate appearing for respondents 1 and 2 and Mr. P. Srinivas, learned Standing counsel for the 3rd respondent municipality. The 4th respondent was served with the notice and his name was also printed in the cause list and there was no appearance for the 4th respondent.

5. The main ground that has been raised by the learned counsel for the petitioner is that the tender called for by the 3rd respondent was not widely published in the newspapers and hence no one was aware about the tender called for by the 3rd respondent municipality. A reading of the counter filed by the 3rd respondent would show that there were only two participants in the tender process. Obviously, the non-publication of the tender notification in the newspapers has resulted in only two persons participating in the tender.

6. The 3rd respondent municipality has alleged that the petitioner is carrying on with the cleaning of sewage and drainage in and around Pammal area without obtaining any license from the municipality. It is further alleged that every time the municipality issues a tender, the same is challenged either by the petitioner or by her husband. To substantiate this allegation, the earlier suit that was filed by the husband of the petitioner against tender conducted in 2011, was pressed into service.

7. The only defense that has been taken by the municipality for not publishing the tender notification in the newspapers is by quoting high cost that is involved in giving advertisement in the newspapers. According to the municipality, the value of the tender itself is only Rs. 5 Lakhs and if the advertisement had been published in newspapers, the municipality would have incurred a cost of Rs. 40,000/- to Rs. 80,000/- for publication in the district and a cost of nearly Rs. 2 lakhs, if the publication had been done state wise.

8. The rule that was quoted by the learned counsel for the petitioner clearly contemplates publishing the tender notification in the newspapers. This is the only way in which extensive publicity can be given to enable more people to participate in the tender. In fact, when the tender notification was issued by the same municipality in the year 2011, the notification was published in at least three newspapers. Therefore, cost factor can never be a ground for not publishing tender notification in the newspapers. This cost for publication can always be added to the total cost of the tender. No tender can be floated without widely publishing the tender notification. If the same is permitted, it will go against the very spirit of the Tamil Nadu Transparency in Tenders Act, 1998. The object of this Act is to provide for transparency in the public procurement and to regulate the procedure in inviting and accepting tenders. The Act also has the most important objective of encouraging effective participation by tenderers in the process of tender and to promote healthy competition among tenderers. Such a healthy competition can take place only if there is maximum participation. Therefore, this Court is not in agreement with the stand taken by the 3rd respondent municipality that due to the cost of advertisement, the tender notification was not published in the newspapers.

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9. This Court is not inclined to go into the merits of the case and interfere with the tender notification at this stage since the tender period itself is coming to an end this month. Therefore, no useful purpose will be served in interfering with the notification at this stage.

10. In view of the above, this Writ Petition is disposed of with a direction to the 3rd respondent to widely publish in newspapers, as and when any tender notification is issued for awarding any work in future. Every time after the completion of the period, fresh tenders must be invited by giving wide publicity. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Commissionerate of Municipal Administration,
Ezhilagam, Chennai 600 005.
2. The District Collector,
Chengalpet District,
Chengalpet 603 001.
3. The Commissioner,
Pammal Municipality
Pammal, Chennai 600 075.

+1cc M/s.Sashidhar Sivakumar, Advocate Sr.36251
1cc to the Government Pleader Sr.36081

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and WMP No.3091 and 3092 of 2020

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