

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.5584 of 2020
and W.M.P Nos.6539 & 6540 of 2020

M/s.Thukkaram Builders
and Contractors Pvt. Ltd.,
No.34, Kumaran Nagar,
80 Feet Road, Peravallore,
Chennai - 600 082.
Represented by Director
C.L. Thukkaramr

Petitioner

vs.

The Superintending Engineer,
CEDC/North,
'5A' Block,
144, Anna Salai,
Chennai - 600 002.

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the cancellation of the tender Specification No.SE/CEDC/North/Civil-23/2019-20 by the respondent in his intimation dated 28.02.2020 and quash the same.

For Petitioner : Mr.S.Elamurugan
For Respondents : Mr.P.R.Dhilipkumar
Standing Counsel

सत्यमेव जयते

O R D E R

By consent of both sides, this writ petition is taken up for final disposal.

2.This writ petition has been filed challenging the cancellation of the tender by the respondent by his proceeding dated 28.02.2020.

3.The case of the petitioner is that the respondent had invited tender for conducting civil works. The tender is a two covered system. The first part relates to taking commercial bid

and the second part to the financial bid. The petitioner had participated in the said tender. The petitioner received a communication from the respondent on 18.11.2019 to the effect that the tender has been accepted during technical evaluation by the Committee and the opening of the financial bid was fixed on 19.11.2019. The petitioner thereafter, received a communication on 19.11.2019 to the effect that their bid has been admitted by the Committee. Thereafter, the petitioner was informed by communication dated 28.02.2020 that the bid submitted by the petitioner is not admitted by the Committee. Subsequently, the tender itself was cancelled. Aggrieved by the same, the present writ petition has been filed before this Court seeking for appropriate directions.

4.The learned counsel for the petitioner submitted that as per Clause 5.35, once the tender document has been accepted, it will form a binding contract between buyer and the bidder and therefore, if the tender is cancelled at that point of time it has civil consequences and therefore, according to the petitioner, it should not have been cancelled without issuing notice to the petitioner.

5.The learned counsel appearing on behalf of the respondent furnished the proceedings of the TANGEDCO dated 27.02.2020. The relevant portions in the said proceeding are extracted hereunder:

- i. Though M/s.Thukklaram Builders & Contractors Pvt. Ltd., are the L1, the firm have not complied with the bid qualification requirement (BQR) of being registered contractor with TNEB/ TANGEDCO and hence stand disqualified for the award of work. Also, the other bidder who have satisfied the BQR condition have negotiated a higher rate. Hence the entire tender process for the above work shall be cancelled and retender may be resorted to by due notification.
- ii.Bid Qualification Requirements (BQR) conditions shall be relaxed in instances where the work value is more than 15 lakh to include bidders registered with other State/Central Government Department to ensure wider participation to increase the competitiveness with an expected benefit of competitive prices leading to cost saving for the TANGEDCO.
- iii.The members of Tender Opening committee are directed to be more careful in uploading the evaluation report in future.

6.The learned counsel by pointing out to the above proceedings submitted that the petitioner had not complied with the bid qualification requirements of being registered as a contractor with TNEB/TANGEDCO and therefore, the petitioner stands disqualified for award of work. The learned counsel further submitted that the petitioner was informed about the acceptance of financial bid by mistake and actually the petitioner was found disqualified and therefore, ultimately the respondent decided to cancel the entire tender.

7.The learned counsel submitted that the petitioner does not have a legal right to insist upon the respondent to grant the work in favour of the petitioner. In order to substantiate his submissions, the learned counsel relied upon the judgments of the Hon'ble Supreme Court in Uttar Pradesh Avas Evam Vikas Parishad and Others vs. Om Prakash Sharma reported in 2013 (5) SCC 182 and Haryana Urban Development Authority and Others vs. Orchid Infrastructure Developers Private Limited reported in 2017 (4) SCC 243.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.This Court is not able to find any illegality or infirmity in the process adopted by the respondent while cancelling the tender. In the considered view of this Court, the petitioner does not have any legal right to insist for the completion of the tender process and it is not necessary for the respondent to compulsorily accept the bid that was offered by the petitioner. The law on this issue has been well settled by the Hon'ble Supreme Court in the judgments cited by the learned counsel for the respondent. Now that the tender itself has been cancelled, this Court is not inclined to entertain the relief that has been sought for in this writ petition. Ultimately, when a new tender is floated, it is always left open to the petitioner to participate in the same if he fulfills all the qualifications.

10.In the result, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No Costs.

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Sd/-
Assistant Registrar

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Sub Assistant Registrar

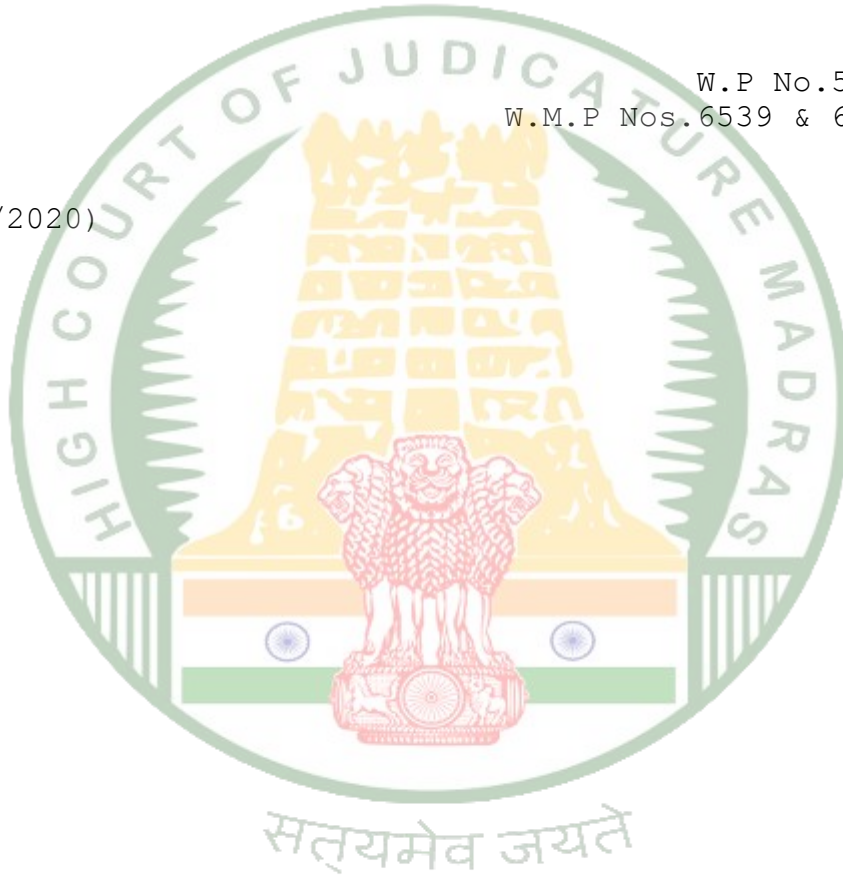
ssr

To
The Superintending Engineer,
CEDC/North,
'5A' Block,
144, Anna Salai,
Chennai - 600 002.

+1 CC to Mr. S.Elamurugana, Advocate, sr 18981
+1 CC to Mr. P.R.Dhilipkumar, Standing Counsel, sr 19014

W.P No.5584 of 2020
W.M.P Nos.6539 & 6540 of 2020

RSK (CO)
AT (21/05/2020)



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