

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.08.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.10888, 10896, 10898, 10900, 10891, 10893, 10902, 10903
of 2020
and WMP Nos.13236, 13239, 13231, 13213, 13215, 13223, 13219,
13234, 13235, 13238, 13240, 13241 of 2020

M.Ravi ..Petitioner in all WPs

Vs.

1. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai - 600 003.
2. Regional Deputy Commissioner (North),
Greater Chennai Corporaton,
No.62, Basin Bridge Road, Old Washermenpet,
Chennai - 600 021.
3. Zonal Officer, Zone III,
Greater Chennai Corporation,
Thattankulam Road, Madhavaram, Chennai 600 060
4. Executive Engineer - II, Zone III,
Greater Chennai Corporation,
No.1, Thattankulam Road, Madhavaram,
Chennai 600 060.
5. Executive Engineer III, Zone III,
Greater Chennai Corporation,
No.1, Thattankulam Road Madhavaram,
Chennai 600 060

..Respondents in all WPs

Common Prayer in W.P.Nos.10888, 10891, 10893 and 10896 of 2020:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records and quash Z.O.III.C.No.E1/1749/2020, Z.O.III.C.No.E1/1748/2020, Z.O.III.C.No.E1/1744/2020 and Z.O.III.C.No.E1/1745/2020 dated 13.07.2020 respectively issued by the 3rd and 5th respondent and consequently direct the 3rd respondent to accept the assurance dated 09.07.2020 submitted by the petitioner and award the contract to the petitioner in tender contract number Z.O.III.C.No.E1/1749/2020, Z.O.III.C.No.E1/1748/2020, Z.O.III.C.No.E1/1744/2020 and Z.O.III.C.No.E1/1745/2020 respectively of the 3rd respondent.

Common Prayer in W.P.Nos.10898, 10900, 10902 and 10903 of 2020:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records and quash tender ID.Nos.2020_CoC_174352_1, 2020_CoC_174359_1, 2020_CoC_174358_1 and 2020_CoC_174350_1 issued by the 3rd respondent.

For Petitioner : M/s.S.Tanvi
in all WPs

For Respondents : Mrs.Karthikaa Ashok
in all Wps Standing Counsel
to corporation

COMMON ORDER

On consent given by either side, the writ petitions are taken up for final hearing.

2. The petitioner is a Registered Class 2 Contractor of Chennai Corporation. The petitioner claims that he has been a Contractor for more than 20 years and he has executed several construction and civil works contract for the Chennai Corporation.

3. The Chennai Corporation had called for bids for constructions of a compound wall at Chinnasekkadu Village. The third respondent was the tender inviting authority and the petitioner applied for eight tenders. The tenders were received and opened on 19.06.2020 for all the eight tenders. The petitioner was the successful bidder in four tenders and remaining four bids were allotted in favour of some other contractor. The petitioner was issued notice dated 22.06.2020 and he was asked to justify the estimate given by him. The reason for issuing this notice was that the petitioner had given an estimate containing a lesser rebate of minus (-) 14.99% and therefore, the Corporation wanted to get an assurance with regard to the quality of work for the cost estimate given by the petitioner. The petitioner was called for providing his justification and assurance to the Zonal Officer on or before 02.07.2020.

4. The petitioner had sent an email on 02.07.2020 to the Zonal Office and informed that he was not able to meet the Zonal Officer. Therefore, the petitioner made a representation on 09.07.2020 and gave an assurance to the Corporation to provide a quality work at the price estimate submitted by him. The petitioner received four impugned notices each dated 13.07.2020 and the petitioner was informed that the explanation given by him is not acceptable and consequently, the tender submitted by the petitioner was canceled and the petitioner was also informed that the EMD and

ASD will be refunded. Thereafter, the Corporation proceeded to issue/call for four fresh tenders. Aggrieved by the same, eight writ petitions have been filed before this Court. Four writ petitions challenging the cancellation of four tenders and another four writ petitions challenging the fresh tenders called for by the Corporation of Chennai.

5. The learned counsel for the petitioner submitted that the cancellation of the bids submitted by the petitioner is arbitrary and discriminatory. The learned counsel by bringing to the notice of this Court, the Engineering manual submitted that the bid that was submitted by the petitioner was well within the acceptable bid range. Therefore, the cancellation of the bids was against the guidelines given in the Engineering Manual. The learned counsel further submitted that the Chennai Corporation did not take into consideration the assurance given by the petitioner and also the competitive bid offered by the petitioner and therefore, the cancellation of the tender is illegal and it is not in line with Section 12 of the Tamil Nadu Transparency in Tenders Act, 1998.

6. Per contra, Mrs. Karthika Askok, learned counsel appearing on behalf of the Chennai Corporation submitted that the Zonal Officer found that the bid that was submitted by the petitioner was absurdly low and therefore, the authority in exercise of its power under clause 2.7.1 of the Engineering Manual had decided to cancel the bid and call for a fresh tender. The learned counsel further submitted that the petitioner can always participate in the fresh tender and quote the bid and the cancellation of the earlier bid does not in any way take away the right of the petitioner to participate in the fresh tender called for by the Corporation of Chennai. The learned Counsel submitted that the impugned order was passed canceling the tender after taking into consideration the fact that the bid amount that was quoted by the petitioner was unduly low and the same did not give an assurance of a quality work and therefore, the Corporation had to go for a fresh tender.

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

8. This Court has to remind itself of the fact that the scope of interference in tender cases is very limited. The Hon'ble Supreme Court has spelt out the law very clearly in the case of Tata Cellular Vs. Union of India reported in (1994) 6SCC 651 and in the case of Air India Ltd., Vs. Cochin International Airport Ltd., and Others reported in (2000) 2SCC 617. This Court must also bear in mind that a bidder has no right to have the auction concluded in his favour and the only right that he has is the right of equality and fair treatment in the matter of evaluation of competitive bids in a transparent manner. The contract comes to a conclusion only on the acceptance of a bid and till then, it is only at the

stage of offer. Useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of Uttar Pradesh Avam Vikas Parishad and Others Vs. Om Prakash Sharma reported in (2013) 5 SCC 182 and in the case of Haryana Urban Development Authority and Others Vs. Orchid Infrastructure Developers Private Limited reported in 2017 4 SCC 243.

9. The rejection of a bid by an authority after evaluating the same, can be subjected to only a very limited judicial review and it can be interfered only if it is perverse, arbitrary, malafide or it is actuated with bias. Useful reference can be made to the judgment in the case of ION Exchange Waterleau Ltd., Vs. The Commissioner, Madurai Municipal Corporation reported in 2008 3 CTC 675.

10. In the present case the petitioner had participated in the tender and was declared to be successful bidder. The concerned authority found that the bid that was quoted by the petitioner which contained a lesser rebate of minus (-) 14.99% had to be scrutinized, since the Authority thought that this rebate may not result in an assured quality of work. The petitioner was asked to give his explanation and on the explanation given by the petitioner, the authority found that the explanation was not acceptable and the authority was not confident enough with the assurance of a quality work on the lesser rebate of minus (-) 14.99% quoted by the petitioner. Hence, the tender was canceled.

11. The concerned authority had given an opportunity to the petitioner to explain the lesser rebate quoted by him and the authority subjectively satisfied himself that there is no assurance for a quality work. This was a decision that was taken by a person, who is well-versed in the Engineering work and it is not for this Court to sit on judgment over the same. This is more so considering a very limited judicial review available to this Court.

12. In view of the above discussion, this Court is not inclined to interfere with the impugned letters through which the earlier tenders were canceled. This Court is also not inclined to stop the fresh tender process initiated by the Corporation of Chennai. Interest of Justice will be served if the petitioner is also allowed to participate in the fresh tender called for by the third respondent. The EMD and ASD that has already been deposited by the petitioner need not be refunded and it can be adjusted for the fresh tender in which the petitioner can participate.

13. In the result, all the Writ petitions are disposed of by giving liberty to the petitioner to participate in the fresh tender called for by the 3rd respondent by submitting his bid and the 3rd respondent shall allow the petitioner to participate in the fresh tenders process without insisting for any fresh payment of EMD and ASD, unless there is any

shortfall and the 3rd respondent shall adjust the EMD and ASD that has already been deposited by the petitioner while participating in the earlier tender process. The petitioner is permitted to submit all the necessary documents by 1.30 p.m on 14.08.2020. This extension of time is applicable only to the petitioner and no one else can take advantage of this order to submit any bid, since the last date comes to an end today.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

rka/rst

To

1. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai - 600 003.
2. Regional Deputy Commissioner (North),
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+1cc to Mr.J.Ashok, Advocate SR.No.26693

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VG II (CO)
GMY (28/08/2020)