

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.10.2020

Delivered on: 13.10.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.Nos.12598 & 12601 of 2020

and

WMP Nos.15543,15537,15539 to 15542 of 2020

S.Mohamed Hanifa

..Petitioner

in W.P.No.12598/2020

.vs.

1. The Municipal Commissioner (Administration)
Cum Chief Engineer,
Municipal Administration & Water Supply Department,
MRC Nagar, Santhome,
Chennai 600 028.
2. The Regional Municipal Director,
Municipal Administration & Water Supply Department,
Salem Zone, Arisipalayam,
Salem - 636 009.
3. The Commissioner,
Narasingapuram Municipality,
Attur Taluk, Salem District.
4. S.Abubakkar Sidhick, सत्यमेव जयते
5. M/s. V.S. Associate,
Engineering Contractor,
No.39/19, Naini Street,
Attur - 636 012, Salem District.

..Respondents

in W.P.No.12598/2020

S.Mohamed Honifa

..Petitioner

in W.P.No.12601/2020

.vs.

1. The Municipal Commissioner (Administration)
Cum Chief Engineer,
Municipal Administration & Water Supply Department,
MRC Nagar, Santhome,
Chennai 600 028.
 2. The Regional Municipal Director,
Municipal Administration & Water Supply Department,
Salem Zone, Arisipalayam,
Salem - 636 009.
 3. The Commissioner,
Attur Municipality,
Attur Taluk, Salem District.
 4. S.Abubakkar Sidhick,
 5. M/s. V.S. Associate,
Engineering Contractor,
No.39/19, Naini Street,
Attur - 636 012, Salem District. ...Respondents
- in W.P.No.12601/2020

Prayer in W.P.No.12598/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed by the 3rd respondent dated 31.08.2020 quash the same and direct the 3rd respondent to process the bid of the petitioner in respect of Tender Ref.No.Na.Ka.No.974/2020A4 dated 27.07.2020, on the file of the 3rd respondent along with other tenderers in fair and reasonable manner in accordance with law.

Prayer in W.P.No.12601/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed by the 3rd respondent dated 31.08.2020 quash the same and direct the 3rd respondent to process the bids of the petitioner (Package 1 and 2) in respect of Tender Ref.No.1364/2020/E1 dated 29.07.2020, on the file of the 3rd respondent along with other tenderers in fair and reasonable manner in accordance with law.

For Petitioner : Mr.S.Doraiswamy
(in Both WPs)

For RR 1 & 2
(in W.P.No.12598/2020) : Mr.S.N.Parthasarathi
Government Advocate
(in W.P.No.12601/2020) : Mr.Mani Gopi
Government Advocate

For R 3 : Mr.P.H.Arvind Pandian
(in Both WPs) Additional Advocate General
Assd by:
Mr.L.P.Maurya
Standing Counsel

For R 4 : Mr.Gowthaman
(in Both WPs)

COMMON ORDER

The issues involved in both the Writ Petitions are common and the arguments were advanced in common by either side and hence this Court proceeds to deal with these writ petitions and pronounce this common order.

2. W.P.No.12598 of 2020 pertains to a challenge made to the rejection Order passed by the 3rd Respondent dt. 31.08.2020 and this relates to the tender called for Narasingapuram Municipality.

3. W.P.No.12601 of 2020 pertains to a challenge made to the rejection Order passed by the 3rd Respondent dt.31.08.2020 and this relates to the tender called for Attur Municipality.

4. The case of the petitioner is that he is a Class-1 contractor, who has participated in several tenders and in fact he was also a successful bidder in the earlier tenders conducted by the 3rd respondent for the very same municipality. The 3rd respondent issued tender notice on 27.07.2020, to carry on certain works like paver block road with storm water drain and culvert. It was a two-cover system consisting of a technical bid and financial bid. The petitioner and the contesting respondent had submitted their bids. The further case of the petitioner is that as per the schedule, the pre bid meeting must be held on 12.08.2020 at 11 A.M., insofar as Narasingapuram Municipality is concerned and 12 A.M., insofar as Attur Municipality. The last date for downloading and submission the bid documents was fixed on 18.08.2020. The submission of documents was provided both physically as well as through online mode. The technical bid was also slated for opening on 18.08.2020.

5. According to the Petitioner, he had satisfied all the pre-qualification criteria as provided in the tender notification and had submitted all the relevant documents. The grievance of the petitioner is that the technical bid was not opened on 18.08.2020, insofar as Narasingapuram Municipality is concerned since the Office was closed. However, insofar as Attur Municipality is concerned, the petitioner did not receive any information till 20.08.2020. On the representation made by the petitioner, he received the proceedings of the 3rd respondent dt. 31.08.2020, informing the petitioner the reasons for rejection of his bid for both the municipalities. Aggrieved by the same, the present Writ Petitions have been filed before this Court.

6. The 3rd respondent has filed separate counter affidavits in both the Writ Petitions.

7. The relevant portions in the counter affidavit in Writ Petition 12598 of 2020, is extracted here under:

"REJECTION DUE TO IMPROPER DOCUMENTS, INCLUDING TAMPERED DOCUMENTS

6. I respectfully submit that the signature of the owner of the vehicle in the R.C. book of Paver vehicle varies when compared to the signature in the Lease agreement. I respectfully submit that, the petitioner had put the signature of the owner of the paver vehicle in the lease agreement dt. 08.08.2020. This tampered Lease Agreement was scanned and uploaded by the petitioner as part of his bid. These acts of the Petitioner are in bad faith and illegal. The particulars given by the petitioner were false, fudged and contain manifest illegalities. I respectfully submit that the petitioner has made misleading and false representations submitted in the proof of the qualification reequipments thereby leading to his disqualification.

7. I respectfully submit that, further, the Petitioner had also failed to provided permits and insurance details of the vehicles and other major equipment enclosed in the bid which was not renewed. The consequence of the bidder not having the required permits would pose a potential safety issue with regard to the vehicles and heavy equipment.

8. I respectfully submit that, in consequence of all of the above submissions the technical bid of the petitioner was disqualified as the details

required under Annexure- 'C' of of the bid document to be filed by the petitioner was incomplete and incorrect due to failure to comply with the relevant clauses of the tender document.

REJECTION DUE TO UNSATISFACTORY PAST PERFORMANCE BY PETITIONER

9. I respectfully submit that, as per the tender-technical bid qualification of the bidders in Clause 4, Clause 4.1(A)(4), requires the bidders to have satisfactorily completed BT or BT and Paver Block Road Work(s) of not less than 50% of the value put to tender under a "single agreement" in any one of the preceding three years (2017-18 to 2019-20) for Government Department/Board/Government Undertaking. Along with proof of the same enclosed in the bid.

10. I respectfully submit that, however, the petitioner has not performed such a work in the preceding three years as stipulated in the tender document, in the last three years. Rather, the Petitioner has enclosed a certificate done by him for work done in the year 2016-2017 which is beyond the cut-off year 2017-2018. Therefore, the Petitioner has not satisfied the bid requirements for criteria laid out in Clause 4.1 (A)(4). Therefore, Annexure-D of the bid by the Petitioner was not as per the qualifications of the bidder.

11. I respectfully submit that, furthermore, the value of such past work must be not less than 50% of the values of the tender being applied, which means that it should not be for less than Rs. 95 lakhs. However, the certificate produced by the petitioner for past works in Annexure-'D' was for Rs. Rs. 86,57,780/- therefore it was less than the conditions mandated under clause 4.1 (A)(4) to be disclosed in Annexure- 'D'.

12. I respectfully submit that, as per tender compliance criteria clause 4.1 (A)(5), as proof of the applicant for having working capital sufficient to finance at least 15% of the value put to the tender, the petitioner submitted bank letter stating that in case of tender sanctioned to the petitioner, the bank would extent funding in the future, but the requirement as per the tender is, fund should have already been sanctioned and the sanctioned letter shall be produced at the time of submitting the tender. I respectfully submit that, at the time of submitting the tender, the petitioner did not

have sufficient finance as per the above said provision. Further, account number and account statement of the petitioner revealing the funds that he holds amounting to at least 15% of the values unutilized fund in his account should have also been put up with the tender.

8. The relevant portions in the counter affidavit in Writ Petition 12601 of 2020 is extracted here under:

"REJECTION DUE TO IMPROPER DOCUMENTS,
INCLUDING TAMPERED DOCUMENTS

6. I respectfully submit that the signature of the owner of the vehicle in the R.C. book of Paver vehicle varies when compared to the signature in the Lease agreement. I respectfully submit that, the petitioner had put the signature of the owner of the paver vehicle in the lease agreement dt. 08.08.2020. This tampered Lease Agreement was scanned and uploaded by the petitioner as part of his bid. These acts of the Petitioner are in bad faith and illegal. The particulars given by the petitioner were false, fudged and contain manifest illegalities. I respectfully submit that the petitioner has made misleading and false representations submitted in the proof of the qualification reequipments thereby leading to his disqualification.

7. I respectfully submit that, further, the Petitioner had also failed to provided permits and insurance details of the vehicles and other major equipment enclosed in the bid which was not renewed. The consequence of the bidder not having the required permits would pose a potential safety issue with regard to the vehicles and heavy equipment.

8. I respectfully submit that, in consequence of all of the above submissions the technical bid of the petitioner was disqualified as the details required under Annexure- 'C' of the bid document to be filed by the petitioner was incomplete and incorrect due to failure to comply with the relevant clauses of the tender document.

REJECTION DUE TO UNSATISFACTORY PAST PERFORMANCE BY
PETITIONER

9. I respectfully submit that, as per the tender-technical bid qualification of the bidders in Clause 4, Clause 4.1(A)(4), requires the bidders to have satisfactorily completed BT or BT and Paver

Block Road Work(s) of not less than 50% of the value put to tender under a "single agreement" in any one of the preceding three years (2017-18 to 2019-20) for Government Department/Board/Government Undertaking. Along with proof of the same enclosed in the bid.

10. I respectfully submit that, however, the petitioner has not performed such a work in the preceding three years as stipulated in the tender document, in the last three years. Rather, the Petitioner has enclosed a certificate done by him for work done in the year 2016-2017 which is beyond the cut-off year 2017-2018. Therefore, the Petitioner has not satisfied the bid requirements for criteria laid out in Clause 4.1 (A) (4). Therefore, Annexure-D of the bid by the Petitioner was not as per the qualifications of the bidder.

11. I respectfully submit that, furthermore, the value of such past work must be not less than 50% of the values of the tender being applied, which means that it should not be for less than Rs.95 lakhs. However, the certificate produced by the petitioner for past works in Annexure-'D' was for Rs. 86,57,780/- therefore it was less than the conditions mandated under clause 4.1 (A) (4) to be disclosed in Annexure- 'D'.

12. I respectfully submit that, the poor performance of the Petitioner in the past is the matter of record, the Petitioner has not completed a project even after 6 months and 45 days, in fact, a notice issued by the Attur Municipality for the above said reason to the petitioner.

13. I respectfully submit that, as per tender compliance criteria clause 4.1 (A) (5), as proof of the applicant for having working capital sufficient to finance at least 15% of the value put to the tender, the petitioner submitted bank letter stating that in case of tender sanctioned to the petitioner, the bank would extent funding in the future, but the requirement as per the tender is, fund should have already been sanctioned and the sanctioned letter shall be produced at the time of submitting the tender. I respectfully submit that, at the time of submitting the tender, the petitioner did not have sufficient finance as per the above said provision. Further, account number and account statement of the petitioner revealing the funds that he holds amounting to at least 15% of the values

unutilized fund in his account should have also been put up with the tender."

9. Mr.S.Doraiswamy, learned counsel appearing for the petitioner made the following submissions:

- The Petitioner has satisfied the pre-qualification conditions provided in the tender notification and therefore his bid should not have been disqualified and the bid submitted by the Petitioner should have been processed further.
- The grounds that have been stated in the counter affidavit filed by 3rd respondent gives certain reasons for the rejection of the bid which are not even available in the impugned rejection order.
- The counter filed by the 3rd respondent cannot come up with new grounds for rejection and the case cannot be improved through a counter affidavit.
- The 3rd Respondent did not follow Section 8 of the Tamil Nadu Transparency in Tenders Act, 1998 (hereinafter called as the "Act") and the petitioner was not even called at the time of opening of the tender. In Narasingapuram Municipality, the Office itself was closed on 18.08.2020 and in Attur Municipality, even though the petitioner was present at the time of opening of the tender and informed that his pre-qualification bid was accepted, later through the impugned rejection order, the petitioner was informed that his bid has been rejected for not fulfilling the pre-qualification condition. This attitude of the 3rd respondent goes against the spirit of this provision.
- The petitioner has been served with No Satisfaction Notice only after this writ petition was filed and it was dispatched to the petitioner only on 10.09.2020. That itself will show that the 3rd respondent was only developing the grounds at every stage to justify the rejection of the bid of the petitioner.
- The 3rd respondent has acted in such a manner only to favor the contesting respondent and the entire tender process was arbitrary and hence the proceedings of the 3rd respondent is liable to be interfered and the 3rd respondent must be directed to accept the bid submitted by the petitioner and process the same to evaluate the technical bid and the financial bid.

10. Per contra, Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing on behalf of the 3rd respondent made the following submissions:

- The contest in this case is between the petitioner and his brother and their personal disputes are attempted to be ventilated through this dispute and as a result of the same, the 3rd respondent is put to hardship.
- When the 3rd respondent had floated the earlier tender process, that also resulted in a challenge before this Court which is again a fight between the petitioner and his brother in W.P.No.3075 and 3299 of 2020 and ultimately the 3rd respondent had to cancel the tender. Therefore every time, the petitioner approaches this Court for one reason or the other and the petitioner does not want his brother to get the contract due to personal animosity. The 3rd respondent is now caught in the middle of the fight between the petitioner and his brother.
- The petitioner after coming to know that the bid will not go in his favour, made his son file Writ Petitions before this Court in W.P.Nos. 10801 and 10906 of 2020 and the same was also dismissed by this Court by order dated 17.08.2020. Therefore, the whole attempt of the petitioner is to somehow see to that his brother does not get this contract.
- The proceedings of the 3rd respondent dt. 31.08.2020, cannot be looked like an Order passed by the 3rd respondent and it only indicated the broad reasons for the rejection of the bid submitted by the petitioner. The tender notification itself provides for qualification of the bidder at Clause 4 of the notification and if any bidder does not satisfy this qualification, the bid is liable to be rejected at the pre-qualification stage itself.
- The petitioner has tampered with the lease agreement and has also failed to provide the permits and insurance details of the vehicles and that itself is a reason for the rejection of the bid. That apart, the experience certificate produced by the petitioner did not satisfy the requirement and the petitioner also did not possess sufficient working capital as provided in the notification. Therefore, there are valid reasons for the rejection of the bid

that was submitted by the petitioner.

11. Mr. Gowthaman, learned counsel appearing on behalf of the contesting respondent adopted the arguments of the learned Additional Advocate General and submitted that the petitioner has approached this Court with unclean hands without even revealing the fact that he is fighting with his blood brother and the personal animosity is the only reason for filing the above Writ Petitions and the petitioner does not want his brother to get the contract. The learned counsel therefore submitted that both the writ petitions are liable to be dismissed.

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

13. Before going into the issue involved in the present writ petitions, this Court must remind itself that the scope of Judicial Review on rejection of bids is very limited and this Court can only interfere if the rejection order is perverse, arbitrary, malafide or it is actuated with bias.

14. The impugned proceedings of the third respondent dt. 31.08.2020, only gives the broad reasons for the rejection of the bid. In fact, the relevant Act itself does not contemplate passing any detailed orders when the bids are rejected. Therefore, in that sense, the impugned proceedings of the 3rd respondent cannot be treated as an order as understood in the legal parlance. Therefore, the submissions of the learned counsel for the petitioner to the effect that the 3rd respondent has attempted to improve the case in the counter affidavit, cannot be countenanced.

15. The entire materials have been placed before this Court and this Court must only see if the materials placed by the petitioner while submitting his bid satisfies the pre-qualification requirements provided in the tender notification.

16. Clause 4 of the notification provides for the qualification of the bidders, evidence to be produced and also the previous work undertaken by the bidder. In the present case, this Court finds that the petitioner has not fulfilled two pre-qualifications provided in the notification. One of the qualification that is provided in the notification is that the bidder should have working capital sufficient to finance

at least 15% of the value put to the tender. The document produced by the petitioner which is a letter from Union Bank of India, only shows that the bank was prepared to provide for overdraft/credit facilities to an extent of rupees one crore to meet the working capital for executing the contract. Which means that the bank was willing to extend the facility only if the contract is given in favour of the petitioner. Whereas, the tender qualification requires the bidder to have sufficient finance of at least 15% of the value of the tender even at the time of submitting the bid. This qualification has not been fulfilled by the petitioner. This has been clearly explained in the Counter affidavit.

17. There is yet another important requirement that has to be fulfilled under Clause 4.1 (A) (3) & (4). This provides for an annual minimum financial turnover of not less than 100% of the value of the tender in any financial year in the preceding three years (2017-18 to 2019-20). That apart, the bidder must have satisfactorily completed B.T or paver block pavement work of not less than 50% of the value under a single agreement in any one of the preceding three years. The documents produced by the petitioner is found at page nos.59 and 67 of the typed set of papers. Those documents do not fulfil the requirements of the qualification prescribed in the tender notification.

18. It is not necessary for this Court to go into any of the other grounds that has been raised in the counter affidavit, considering the limited jurisdiction that can be exercised in matters of this nature. This Court on the basis of the materials placed before it is satisfied that the petitioner has not fulfilled the pre-qualification requirements and the bid submitted by the petitioner has been rightly rejected by the 3rd respondent at the pre-qualification stage itself.

19. This Court has to necessarily comment upon the attitude of the petitioner in this case. The petitioner is having a standoff with his brother for quite sometime and the petitioner does not even reveal anywhere that the contesting respondent is his own blood brother. Even on an earlier occasion, the petitioner had approached this Court and filed W.P.Nos.3075 and 3299 of 2020 and this Court had to sit and analyse the documents submitted by both the parties. By the time it was over, the 3rd respondent was constrained to cancel the tender process. That apart, the petitioner actually attempted to somehow stop the present tender and for that purpose he used the services of his Son and filed W.P.Nos.10801 & 10906 of 2020, dt.17.08.2020. The

Son of the petitioner approached this Court and questioned the tender notification on the ground that it is a package tender in which only Class-I contractors can participate and the small contractors are deprived of an opportunity to participate in the tender. While filing this writ petition, the participation of the petitioner who is the father, was not revealed to this Court and it came to light only when the Special Government Pleader brought it to the notice of the Court. The relevant portions in the order is extracted hereunder:

"3. Mr.Mauriya, learned Standing Counsel appearing on behalf of the fourth respondent submitted that the petitioner does not have any locus standi to challenge the tender notice issued by the fourth respondent Municipality. The learned counsel submitted that the petitioner and his father are Class 1 contractors and the father of the petitioner has already submitted an application to participate in the bid in both the packages and simultaneously the son has moved the writ petitions challenging the tender notification. The learned counsel submitted that the petitioner has not been prevented from participating in the tender process and therefore the petitioner cannot be called as aggrieved person.

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

5. The only ground on which the writ petitions have been filed before this Court is that each small works must be allotted to various small contractors and it should not be consolidated into a package whereby it will benefit only a single contractor. According to the petitioner, the fourth respondent issued a tender notification under two packages of different works and this goes against the statement made by the Government before this Court to the effect that the package tender system has been dispensed with.

6.This Court would have appreciated the ground raised by the petitioner if any of the small contractors had approached this Court questioning the tender notification. In this case the petitioner is eligible to participate in the tender and his father has already submitted an application to participate in the tender. Therefore the petitioner does not have

the locus standi to challenge the tender notification issued by the fourth respondent and this Court cannot convert this writ petition as a Public Interest Litigation and allow the petitioner to plead on behalf of the small contractors. A writ of certiorari cannot be issued and the tender notification cannot be interfered on this ground.

7. This Court without going into the merits of the case, proceeds to dismiss both the writ petitions only on the ground of locus standi of the petitioner to question the tender notification issued by the fourth respondent”.

20. It is clear from the above that the petitioner is making all attempts to ensure that this tender does not go through. A family dispute is attempted to be ventilated through this process and unfortunately the 3rd respondent is caught in between. Writ Petitions have been filed before this Court only with an intention to settle scores as between the brothers. This attitude of the Petitioner is also one more ground that has to be taken note of by this Court to test the genuineness of the claim made by the Petitioner. This Court does not find any bonafides in the claim made by the petitioner.

21. In the result, this Court does not find any ground to interfere with the tender process conducted by the 3rd respondent Municipality and accordingly, both Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

KP
To

1.The Municipal Commissioner (Administration)
Cum Chief Engineer,
Municipal Administration & Water Supply Department,
MRC Nagar, Santhome, Chennai 600 028.

2.The Regional Municipal Director,
Municipal Administration & Water Supply Department,
Salem Zone, Arisipalayam, Salem - 636 009.

3. The Commissioner,
Narasingapuram Municipality,
Attur Taluk, Salem District.

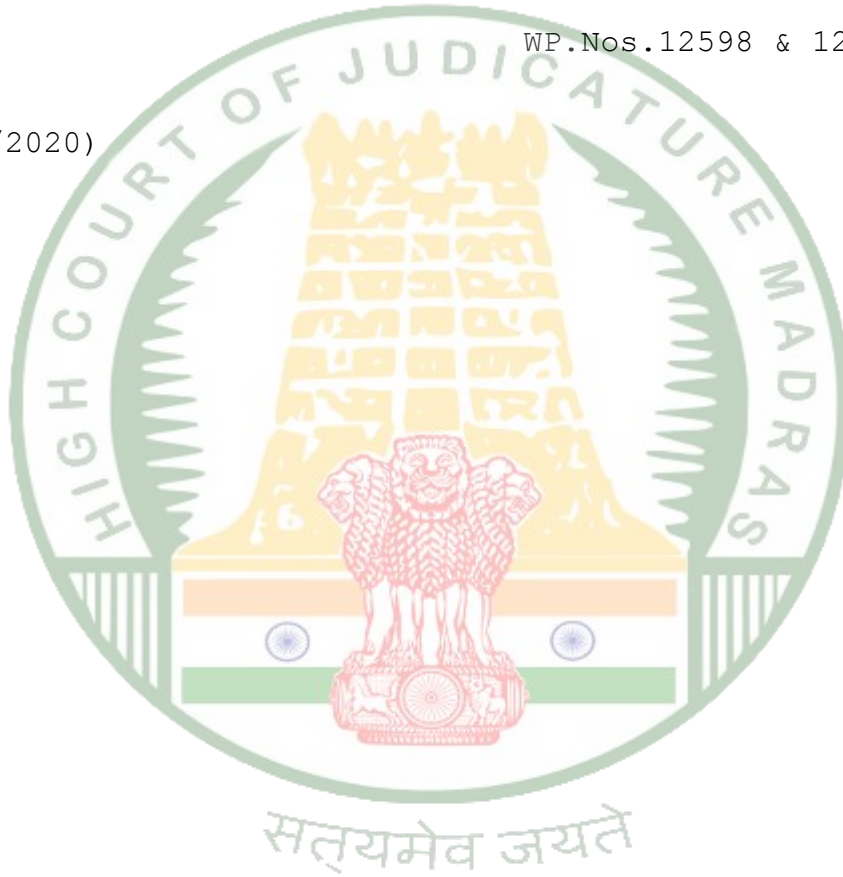
4. The Commissioner,
Attur Municipality,
Attur Taluk, Salem District.

+2 ccs to M/s.S.Dorasamy, Advocate Sr.No. 33798,33797
+1 cc to M/s.L.P.Maurya,Advocate Sr.No. 33816

WP.Nos.12598 & 12601 of 2020

RSV(CO)

RMP(09/11/2020)



WEB COPY