

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.09.2020

Delivered on: 21.09.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.No.31350 of 2019

and

WMP.No.31525 of 2019

K.Balaraman

....Petitioner

.vs.

1.The Commissioner,
The Commissionerate of
Municipal Administration,
11th Floor, Urban Administrative Building,
75, Santhome High Road,
MRC Nagar,
Raja Annamalai Puram,
Chennai 600 028.

2.The Commissioner,
Avadi City Municipal Corporation,
New Military Road, Avadi,
Chennai 600 054.

3.The Municipality Engineer,
Avadi City Municipal Corporation,
New Military Road, Avadi,
Chennai 600 054.

4.M.A.Mathew,
[R-4 impleaded as per order dt.30.01.2020
made in WMP No.2561/2020 in
W.P.No.31350/2019 by PDAJ]

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari mandamus, calling for the records on the file of the 2nd respondent in Ref.Na.Ka.No.12086/2018/E2 dated 31.10.2019 and to quash the same and direct the respondents to allot the

tender to any of the qualifying successful tenderers who have participated in the tender.

(Prayer amended as per order dt.30.01.2020 made in WMP.2565/2020 in WP.No.31350/2019 by PDAJ)

For Petitioner : Mr.L.Chandrakumar
for Mr.V.S.Jagadeesan

For R 2 : Mr.P.Srinivas
Standing Counsel

ORDER

This writ petition has been filed challenging the tender issued in favour of the 4th respondent by the 2nd respondent - Municipal Corporation.

2.The case of the petitioner is that he is a tanker lorry operator, who is supplying water in and around Chennai for the last so many years. The 2nd respondent published a tender notification on 24.01.2019, calling for applications from eligible participants in order to supply drinking water through water tankers in various areas falling under Avadi Corporation. The tender was also published in two daily newspapers. The tender was challenged in W.P.No.4279/2019. This Court passed a final order in the writ petition by extending the time for submission of the applications. Tender applications were received and none of the participants were found to be eligible and the tender itself was cancelled. A subsequent tender was also cancelled during June 2019 since the participants were found to be ineligible.

3.The 2nd respondent thereafter proceeded to issue a fresh tender notification on 25.10.2019 and invited applications both through physical form as well as through online mode. The last date for submission of the tenders was fixed on 25.10.2019. The tenders were opened and it was found that there were totally four participants including the petitioner and the 4th respondent herein. The tenders were invited under two cover system containing the technical bid and the financial bid. The tender scrutiny was taken up on 28.10.2019. The 4th respondent was found to be qualified and his bid was found to be equal to the estimated base price of the respondent Corporation and work order was issued to him on 31.10.2019. Thereafter, the 4th respondent started supplying drinking water using the tanker lorries in all areas covered under the Avadi Municipal Corporation.

4.The learned counsel for the petitioner primarily raised two issues for the consideration of this Court. The first issue raised by the petitioner is that the opening of the tender was not intimated to the petitioner and therefore, it is opposed to the provisions of the Tamil Nadu Transparency in Tenders Act,1988. The second issue that was raised by the petitioner is that the persons participating in the tender should own four lorries out of six lorries for supplying water and the 4th respondent does not own four lorries and therefore, he is ineligible to be selected as the successful bidder in the tender called for by the 2nd respondent.

5.The 2nd respondent has filed a counter affidavit. The relevant portions in the counter affidavit is extracted hereunder:

"15.As per the Tender Notice, the last time for submission of the Tenders in 15.00 on 25.10.2019 and the opening of the Tenders is at 15.30 on the said date. On 25.10.2019, the received tenders were all opened. During the opening of the Online portal, it was found that there were no Online Tenders and in the Physical submission there were 4 Tenders by 1.Valarmathi, 2.M/s.VVA & Co. 3.M.A.Mathew and 4.K.Balraman.

16.The said Tenders were opened by the 3rd respondent at about 3.40 PM. The Online Tenders were opened first and it was found that there were no Online tenders. Thereafter in the presence of the tenderer who were present the physical Tender Covers were opened. It was found that there were 4 tenders including that of the Petitioner. VVA & Co, Valarmathi and M.A.Mathew. The said Tenders were invited under the two cover system, where the first cover contains the Technical bids, namely the technical qualifications and financial qualifications details. The said tenders were opened and the Date seal was affixed and the same were entered in the Tender Register.

17.As 26 and 27th were Holidays due to Deepavali, the Tender Scrutiny was taken up on the next working day namely on 28.10.2019. At that time, the technical details were perused and the Tender Evaluation Committee has prepared the comparative statement for the pre-qualifications".

6.Mr.P.Srinivas, learned Standing Counsel appearing on behalf of the respondent Corporation submitted that the 4th respondent was the owner of four tanker lorries and he fulfilled the requirements of the tender notification. In order to substantiate the same, the learned counsel submitted the materials to show that the 4th respondent was the owner of the lorries carrying Registration Nos.TN23X0779, TN32A7227, TMA6474, TN02B4379.

7.The learned counsel for the 2nd respondent further submitted that the opening of the tender was intimated to the petitioner also. Even though, the opening of the tender was fixed on 25.10.2019, since it was the previous day to Deepawali and the following two days on 26th and 27th were holidays, the tender scrutiny was taken up on 28.10.2019 and this was known to all the four participants in the tender. The learned counsel therefore submitted that there are absolutely no grounds to interfere with the tender granted in favour of the 4th respondent and the 4th respondent has been functioning from October 2019 onwards.

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

9.Insofar as the ownership of four lorries are concerned, the 2nd respondent has sufficiently satisfied this Court that the 4th respondent was owning four lorries. The particulars of those lorries have also been submitted to this Court.

10.Insofar as the intimation about the time of opening of the tender, the 2nd respondent has taken a categorical stand that the tenders received from the four participants was opened on 25.10.2019 at 3.40 p.m and at that time, all the four participants were present. The scrutiny of the tenders was postponed to 28.10.2019 since it was Deepawali time. On such scrutiny, even rejection orders were issued to the other three participants in the tender since they did not qualify.

11.In the considered view of this Court, this Court does not find any ground to interfere with the tender granted in favour of the 4th respondent. Even otherwise the 4th respondent has been functioning from November 2019 onwards and the period comes to an end on 31.10.2020. At this stage, this Court cannot interfere with the tender issued in favour of the 4th respondent.

12.In the result, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner,
The Commissionerate of
Municipal Administration,
11th Floor, Urban Administrative Building,
75, Santhome High Road,
MRC Nagar,
Raja Annamalai Puram,
Chennai 600 028.
- 2.The Commissioner,
Avadi City Municipal Corporation,
New Military Road, Avadi,
Chennai 600 054.
- 3.The Municipality Engineer,
Avadi City Municipal Corporation,
New Military Road, Avadi,
Chennai 600 054.

+1cc to Mr.Jagadeesan, Advocate Sr.30622

WP.No.31350/2019

WEB COPY

mg[co]

srg 02/11/2020