

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.31945, 29319, 31952, 31955 and 31958 of 2019
and
WMP Nos.35342, 35343, 35345, 29125, 32212, 35336, 32198, 32203
and 32208 of 2019

M/s.Salem Automech,
Rep. by its Authorized Signatory Mr.S.Sidesh Kumar,
No.5/37-A, Salem- Bangalore N.H. Road,
Jagir Ammapalayam, Salem 636 302.

... Petitioner in all the W.Ps.

Vs

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai 600 009.
...1st respondent in all the W.Ps.
- 2.The Project Director/Tender Inviting Authority,
District Rural Development Agency (DRDA),
Tiruvannamalai District.
... 2nd Respondent W.P.Nos. 31945,
31952, 31955 and 31958 of 2019
3. The Project Director/Tender Inviting Authority,
District Rural Development Agency (DRDA),
Salem District.
... 2nd Respondent in W.P.No.29319 of 2019

Prayer in W.P.31945/2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the second respondent culminating in his impugned proceedings communicated vide email dated 06.11.2019 informing that the petitioner's bid submitted for the tender bearing Tender ID:2019_RDTN_127634_2, Tender Reference No:Roc.No.A10/1974/2019 dt. 30.05.2019 PO1, Name of the work: Rate contract for the supply of Tri-cycle with rear body/Pushcart for garbage handling 532 Nos. for the village panchayats in package No.01 Tiruvannamalai Sub Division of

Tiruvannamalai District, has been rejected, quash the same, consequently direct the second respondent to permit the petitioner to participate further in the said tender by opening and evaluating the petitioner's price bid.

Prayer in W.P.31952/2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the second respondent culminating in his impugned proceedings communicated vide email dated 06.11.2019 informing that the petitioner's bid submitted for the tender bearing Tender ID:2019_RDTN_127637_2, Tender Reference No:Roc.No.A10/1974/2019 dt. 30.05.2019 PO2, Name of the work: Rate contract for the supply of Tri-cycle with rear body/Pushcart for garbage handling 403 Nos. for the village panchayats in package No.02 Polur Sub Division of Tiruvannamalai District, has been rejected, quash the same, consequently direct the second respondent to permit the petitioner to participate further in the said tender by opening and evaluating the petitioner's price bid.

Prayer in W.P.31955/2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the second respondent culminating in his impugned proceedings communicated vide email dated 06.11.2019 informing that the petitioner's bid submitted for the tender bearing Tender ID:2019_RDTN_127638_2, Tender Reference No:Roc.No.A10/1974/2019 dt. 30.05.2019 PO3, Name of the work: Rate contract for the supply of Tri-cycle with rear body/Pushcart for garbage handling 544 Nos. for the village panchayats in package No.03 Chengam Sub Division of Tiruvannamalai District, has been rejected, quash the same, consequently direct the second respondent to permit the petitioner to participate further in the said tender by opening and evaluating the petitioner's price bid.

Prayer in W.P.31958/2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the second respondent culminating in his impugned proceedings communicated vide email dated 06.11.2019 informing that the petitioner's bid submitted for the tender bearing Tender ID:2019_RDTN_127637_2, Tender Reference No:Roc.No.A10/1974/2019 dt. 30.05.2019 PO4, Name of the work: Rate contract for the supply of Tri-cycle with rear body/Pushcart for garbage handling 442 Nos. for the village panchayats in package No.04 Cheyyur Sub Division of Tiruvannamalai District, has been rejected, quash the same, consequently direct the second respondent to permit the

petitioner to participate further in the said tender by opening and evaluating the petitioner's price bid.

Prayer in W.P.29319/2019:

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the second respondent culminating in his impugned proceedings communicated vide email dated 30.09.2019 informing that the petitioner's bid submitted for the tender bearing Tender ID:2019_RDTN_125132_1, Tender Reference No:Roc.No.481/2019/A6, Name of the work: Rate contract for the supply of Tri-cycle with rear body/Pushcart for garbage handling for the village panchayats in Salem District, has been rejected, quash the same, consequently direct the second respondent to permit the petitioner to participate further in the said tender by opening and evaluating the petitioner's price bid.

For Petitioner in all W.P.s : Mr.Arun Anbumani

For Respondents in all W.P.s : Mr.S.R.Rajagopal,
Additional Advocate General
for Mr.V.Jayaprakash Narayanan,
State Government Pleader

C O M M O N O R D E R

This matter is taken up for hearing through Video Conferencing mode.

2. In all these writ petitions, the petitioner is one and the same. The challenge made in Writ Petition Nos. 31945, 31952, 31955 and 31958 of 2019 and W.P.No.29319 of 2019 is against the communication received on 06.11.2019 and 30.09.2019 respectively, informing the petitioner that their technical bid is rejected. Consequently, the petitioner seeks for a direction to the second respondent to permit them to participate further in the said tender by opening and evaluating the petitioner's price bid.

3. The short facts, which are enough for disposal of the writ petitions viz., W.P.Nos. 31945, 31952, 31955 and 31958 of 2019 are as follows:

3.1. The petitioner is carrying on the business of Steel Fabrication Works at Salem. The respondents invited bids for supply of Tri-cycle with rear body/Pushcart for garbage handling utilization. The E-tender document has a tender reference as ROC.No.A10/1974/2019 dated 30.05.2019. The last date for submission of tender through on-line was fixed as 15.10.2019 upto 15.00 hours. The date, time and place for opening of technical bids through online was fixed as 16.10.2019

from 16.00 hours onwards at the office of the Project Director, DRDA, Tiruvannamalai. The bid is under two cover system viz., Technical bid (pre-qualification) and Price bid. The petitioner submitted their bid on 15.10.2019 on-line. According to the petitioner, they complied with all the eligibility conditions and other terms and conditions of the tender by uploading the scanned copies of all necessary documents. On 16.10.2019, an E-mail and SMS were sent to the petitioner that their technical bid was opened and the same was admitted. However, by the impugned communication dated 06.11.2019, the petitioner was informed that the petitioner's technical bid during technical evaluation by the duly constituted committee was rejected. According to the petitioner, they sent E-mail on 06.11.2019 itself objecting to the rejection of their technical bid and specifically requesting to furnish the reasons for rejection. It is their further case that apart from sending the said Email, they have also sent a letter by RPAD on the very same day viz., 06.11.2019 objecting to the rejection and requesting for furnishing reasons. The reasons were not furnished. On 09.11.2019, the price bid was opened. At this juncture, the petitioner approached this Court and filed the present writ petitions wherein, an order of status quo was granted on 13.11.2019 as existed that day. The order of status quo was subsequently extended.

3.2. Insofar as W.P.No.29319 of 2019 is concerned, the relevant facts are as follows:

The tender reference was dated 26.03.2019. The period of availability is from 10.03.2019 to 26.03.2019. The impugned proceedings rejecting the petitioner's technical bid was made on 30.09.2019. The petitioner sent a communication seeking reasons for rejection was dated 01.10.2019 and the same was received by the respondents on 02.10.2019. However, the price bid was opened on 01.10.2019.

4. Individual counter affidavits are filed in these cases justifying the impugned communications. The common reply affidavit is also filed by the petitioner answering the averments made in the counter affidavits.

5. Mr.Arun Anbumani, learned counsel for the petitioner, after inviting this Court's attention to various terms and conditions of the tender and also the petitioner's communications dated 06.11.2019 seeking for explanation, one said to have been sent by E-mail and other said to have been sent by RPAD, submitted that the respondents have violated their own terms and conditions of the tender, more particularly, Clause 20.6 of the conditions by not giving a clear 5 working days between the date of evaluation of Part-1 of the bid and the date of opening of the price bid. He also invited this Court's attention to various other documents to contend that the

petitioner has in fact satisfied the technical qualification as required and therefore, he submitted that the rejection is bad.

6. On the other hand, Mr.S.R.Rajagopal, learned Additional Advocate General, after reiterating various averments made in the counter affidavit, submitted that the petitioner did not send any E-mail on 06.11.2019 as contended before this Court seeking for explanation and on the other hand, a letter to that effect dated 06.11.2019 sent by RPAD was received by the respondents on 09.11.2019. He further submitted that the above representation of the petitioner was noticed to the second respondent on 11.11.2019 and the reasons for rejection of the petitioner's tender was prepared and the file has been submitted to the Executive Engineer for approval on 12.11.2019. Thus, he submitted that before getting reply from the second respondent, the petitioner approached this Court and obtained the interim order.

7. Upon hearing the learned counsel for the petitioner and the learned Additional Advocate General for the respondents, this Court is of the view that without going into the other merits and the contentions raised on the technical qualification of the petitioner, these Writ Petitions can be disposed of by remitting the matter back to the respondents to adhere to Clause 20.6 of the tender conditions and to pass orders accordingly, for the following reasons and findings.

8. Under the Clause 20 of the terms and conditions of the tender documents, 20.4 and 20.6 read as follows:

"20.4. The Employer will also prepare minutes of the Bid opening, including the information disclosed in accordance with Clause 20.3 and upload the same for viewing online.

20.6. The result of evaluation of Part I of the Bids shall be made public on e-procurement following which there will be a period of 5 working days during which any Bidder may submit complaint which shall be considered for resolution before opening of Part II of the bid. Any complaint shall be dealt with in accordance with complaint handling protocol as available on the e-procurement portal, www.tntenders.gov.in"

9. A careful perusal of both the above referred Clauses would indicate that the evaluation of Part-1 of the bids viz., Technical qualification bid shall be made public on e-procurement, following which, there will be a period of 5 working days, during which, any Bidder may submit their

complaints and such complaints shall be considered for resolution before opening of Part-II (Price bid). It is further seen that any such complaint can be dealt with in accordance with the Complaint Handling Protocol as available on the e-procurement portal www.tntenders.gov.in.

10. In these cases, the technical bid of the petitioner was rejected and such decision was communicated to the petitioner through E-mail on 06.11.2019 only by informing that the petitioner's bid in the subject matter tender has been rejected during technical evaluation by the duly constituted committee for the reason "Rejected". It is a single word rejection. Apart from the said communication, no other communication was sent to the petitioner indicating the reasons for rejection. It is claimed by the petitioner that on the very same day, i.e. on 06.11.2019, they sent an E-mail requesting for exact reason for rejection of their bids, as they will be in a position to clarify their technical qualification. However, it is disputed by the respondents that no such E-mail was received by them on 06.11.2019 from the petitioner. However, it is admitted by the respondents that the very same communication sent by the petitioner by RPAD was received by them on 09.11.2019. Assuming that no E-mail was sent by the petitioner on 06.11.2019 and only a letter by RPAD was sent on that day, admitted fact remains that the said letter was received by the second respondent on 09.11.2019. It is stated by the respondents in the counter affidavit that the above representation of the petitioner was noticed to the second respondent on 11.11.2019 and the reasons for rejection of the petitioner's tender was prepared and the file has been submitted to the Executive Engineer for approval on 12.11.2019. In the meantime, the admitted fact remains that the price bid was opened on 09.11.2019. Therefore, it is evident that the respondents, having received the above said communication on 09.11.2019 from the petitioner, before ever informing the petitioner the reasons for rejection, has chosen to open the price bid on 09.11.2019. I have already extracted Clause 20.6 of the terms and conditions of the tender, which clearly states that the period of 5 working days must be left between the result of evaluation and the opening of the price bid, so as to enable any bidder who is disqualified in the technical qualification to approach the concerned authority for resolution and for considering such complaint in accordance with the Complaint Handling Protocol.

11. In this case, in my considered view, the respondents have failed to follow Clause 20.6 of the terms and conditions of the tender. Therefore, this Court is of the firm view that the petitioner must be given an opportunity to utilize the avenue available under Clause 20.6 for resolution of their grievance. As this Court is convinced that the respondents have failed to adhere to Clause 20.6 and convinced to remit the matter back to

the respondents to follow such clause insofar as the petitioner is concerned, the other merits and contentions raised by both parties in respect of the technical qualification of the petitioner are not taken into consideration and dealt with to express any view on the same.

12. Accordingly, all these Writ Petitions are disposed of, by passing the following order:

(a) The respondents shall give the reasons for rejection of the petitioner's technical bid through E-mail and also through RPAD on or before 07.08.2020.

(b) On receipt of the above said communication in either of the two modes, the petitioner shall give their objections through E-mail and RPAD on or before 14.08.2020.

(c) On receipt of such objections, the respondents shall consider and deal with the same in accordance with the Complaint Handling Protocol under Clause 20.6 and pass orders on the same on or before 20.08.2020.

(d) It is made clear that such communication shall be sent to the petitioner through E-mail as well as RPAD.

(e) Depending upon the outcome of such order, it is open to the petitioner to work out their remedy in the manner known to law by separate proceedings, if their objection is rejected.

(f) Till an order is passed by the respondents as stated supra, the status quo as on today shall be maintained in respect of the subject matter tender.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True copy//

WEB COPY
Sub Assistant Registrar

vsi/mk

To

1. The Secretary
Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai 600 009.

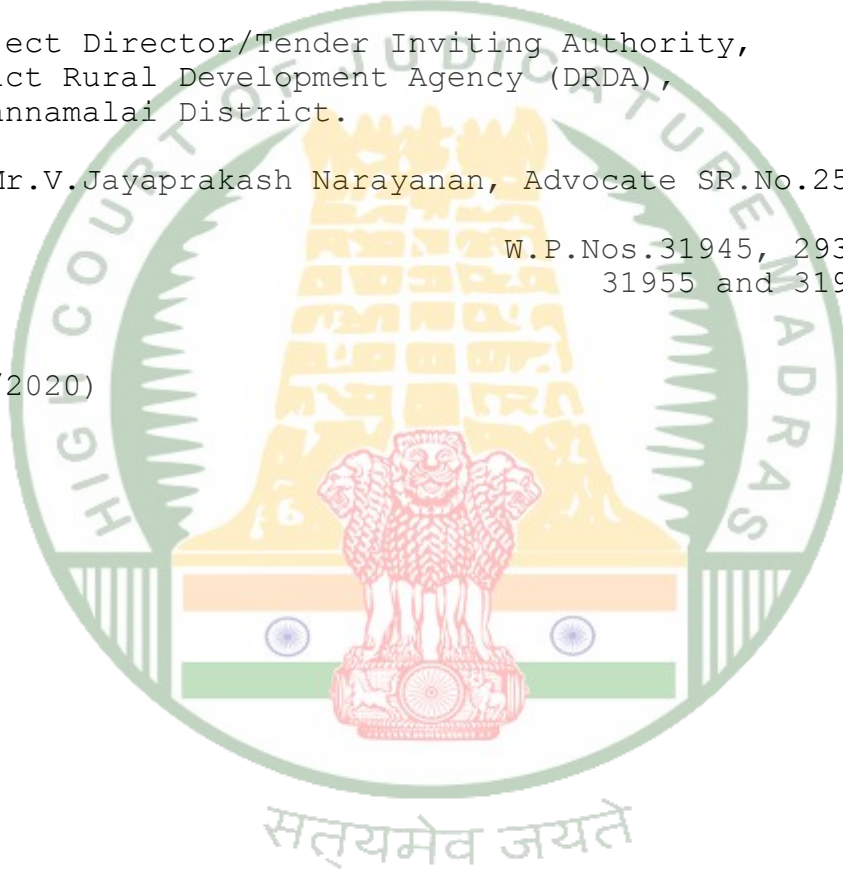
2. The Project Director/Tender Inviting Authority,
District Rural Development Agency (DRDA),
Salem District.

3. The Project Director/Tender Inviting Authority,
District Rural Development Agency (DRDA),
Tiruvannamalai District.

+3ccs to Mr.V.Jayaprakash Narayanan, Advocate SR.No.25889

W.P.Nos.31945, 29319, 31952,
31955 and 31958 of 2019

RLD(CO)
GMY(06/08/2020)



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