



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.3519 of 2020

and

WMP (MD)Nos.2986 & 2987 of 2020

A. Karuppasamy

... Petitioner

Vs.

1. State of TamilNadu,
Rep by its Secretary to Government,
Public Works Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. State of TamilNadu
Rep by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
3. The Engineer in Chief,
Public Works Department (Buildings),
Chepauk, Chennai.
4. The Chief Engineer, (Buildings),
Madurai Region, Thallakulam,
Madurai - 625 002.
5. The Superintending Engineer,
Public Works Department,
Buildings (C&M) Circle (Medical Works),
Madurai District.

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned G.O (Ms) No.556, Health and Family Welfare (J2) Department dated 18.12.2019 passed by the second respondent and the subsequent notification issued by the fifth respondent in Tender Notice No.14/SE/BCMC(MW)/2019-2020/ Dated 13.01.2020 and quash the same as illegal and consequently restrain the respondents from issuing tender notifications under the Package system or lumpsum contract. (Prayer is amended as per the court order dated 27.07.2020).



For Petitioner : Mr.R.J.Karthick
For Respondents : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

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ORDER

The petitioner is a Class II Contractor registered with the Public Works Department. The fifth respondent had issued the impugned tender notification dated 13.01.2020 inviting sealed tenders from registered contractors for the work of construction of new buildings and for carrying out certain works to the existing buildings in Tirunelveli Medical College in Tirunelveli. The tenders were opened on 21.02.2020 to assess the technical eligibility of the applicants. This notification was questioned before the tender opening by the petitioner. The writ petition was listed for admission on 21.02.2020 and on the same day, notice was taken by the respondents. This Court recorded the submissions of the petitioner's counsel and permitted the tender process to go on and directed the listing of the writ petition after four weeks. Due to lock down, the matter could not be taken up immediately. The respondents have filed a detailed counter affidavit. The counsel on either side filed their notes of arguments and reiterated their contentions.

2.I carefully considered the rival submissions and went through the materials on record. The approximate value of the contract is Rs.5185.00 lakhs. But, interestingly, only three contractors took part in the bid :

- "1.M/s.RSK Construction Projects, Coimbatore
- 2.Mr.Kulanthairaj, Dindigul.
- 3.M/s.Abirami Engineering Construction and Company, Namakkal."

M/s.RSK Construction Projects, Coimbatore was eventually awarded the contract.

3.The learned Additional Government Pleader appearing for the respondents points out that the petitioner is only a Class-II Contractor and he can take part in contracts valued upto Rs.75.00 lakhs. Therefore, in the very nature of things, the writ petition is liable to be dismissed on the sole ground that the petitioner lacks locus standi. The petitioner being a Class-II Contractor cannot challenge the tender notification whose contract value is to the tune of Rs.5185.00 lakhs.

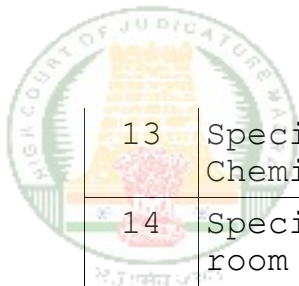
4.The learned counsel for the petitioner argued with emphasis that the tender works have been substantially funded by the central government. Since it is a centrally sponsored scheme, clubbing of works is not permitted in view of G.O(Ms)No.17, Public Works (G2) Department, dated 15.02.2019.



5.I am not impressed with this submission. As rightly contended by the learned Additional Government Pleader appearing for the respondents, the tender notification is in respect of works pertaining to Tirunelveli Medical College. If this work is combined with any other contract work, then there will be some merit in the allegation of clubbing. That is not the case here. Therefore, I uphold the contention of the learned Additional Government Pleader in this regard.

6.Now, the core question is whether on these grounds, namely, lack of locus standi on the part of the petitioner and non applicability of G.O(Ms)No.17, Public Works (G2) Department, dated 15.02.2019, the writ petition has to be dismissed. I am afraid I cannot do so. G.O (Ms) No.556, dated 18.12.2019, by which administrative and financial sanction was accorded for the impugned works, contemplated as many as 24 works. The details of the works are as follows :

Sl.N o	Name of Work	Rupees in Lakh
1	Construction of UG Men's Hostel in Government Medical College	1045.00
2	Construction of UG Ladies Hostel in Government Medical College	1045.00
3	Construction of CRRI Quarters for Boys	287.00
4	Construction of CRRI Quarters for Girls	287.00
5	Construction of Resident Doctor Quarters -Male	459.00
6	Construction of Resident Doctor Quarters - Female	459.00
7	Construction of proposed additional Demo Hall Block in Government Medical College campus at Tirunelveli in Tirunelveli District	1000.00
8	Construction of Embalming room to Anatomy Department in Tirunelveli Medical college at Tirunelveli District	10.00
9	Special Repairs and modification of Dissection Hall to Anatomy Department	7.75
10	Special Repairs and Re-Modification Lab and Faculty rooms in Anatomy Department	17.20
11	Special Repairs and Modifications of Faculty rooms in Clinically Physiology Lab and Mammalian Lab	14.40
12	Special Repairs and Re-Modification of Hematology Lab, PG Research Lab and Amphibian lab in Physiology Department	8.30



13	Special Repairs and Re-modification of Bio-Chemistry Lab	6.53
14	Special Repairs and Re-modification of Faculty room in Community Medicine Department	16.30
15	Special Repairs and Re-Modification of Faculty complex to Bio-Chemistry Department	14.55
16	Special Repairs and Modification of Faculty complex to Pharmacology Department	17.45
17	Special Repairs to Pharmacology Lab and Museum	3.20
18	Special Repairs to Morbid Anatomy Laboratory to Pathology Department	4.35
19	Re-modification and special repairs of 4 x 180 students Lecturer Hall to First Floor MEU workshop, MEJ conference Hall and Ground Floor common Rooms for Girls and Boys	45.00
20	Construction of Pathology Additional Demo Hall for Department of Pathology & Forensic Medicines and central skill lab in First Floor and Second Floor over the Additional library building	320.00
21	Construction of Cadaver Research Centre	315.00
22	Construction of Common Mess Block for boys	230.00
23	Construction of Common Mess Block for ladies	230.00
24	Cost Escalation	123.13
	Total	5965.16
		59.65 crore

7.The works can be straightaway classified into two, namely, a)construction of new buildings, b)carrying out of repair works in the existing buildings. In fact, the tender notification itself has brought out this distinction and classification. Item Nos.1 to 8 related to construction of new buildings. Likewise, item nos.20 to 24 also pertain to construction of new buildings. But, item nos.9 to 19 relate to carrying out of special repair works to existing buildings.

8.The learned counsel for the petitioner would rightly point out that such repair works are to be done on periodical basis. Enhancement of the infrastructural facilities became imperative, since the Government of India had directed the increase of the number of students in the medical college from 150 to 250. But the repair works have to be in any event carried out on a regular basis. Therefore, combining the repair works to the old and existing buildings along with the construction of new buildings is an issue that should have been specifically considered by the authority



concerned. The respondents have not drawn my attention to the relevant file notings in this regard. The failure to consider this aspect of the matter has vitiated the decision making process. The result is obvious. The tender process could not elicit response even from a single contractor from Tirunelveli or Thoothukudi. It is not as if contractors from Tirunelveli cannot carry out even repair works. The subject matter of tender notification is only civil work. However, I make it clear that it is not because of absence of local participation I interfere. The reason for interference is that during the decision making process, this aspect of the matter was not even taken note of. There is total non application of mind on this.

9.It is true that courts will not interfere with the terms of the tender process. However, they have to conform to the constitutional mandate set out in Article 14 of the Constitution of India. That is why, the Government of Tamil Nadu brought in the Tamil Nadu Transparency in Tenders Act, 1998. The preamble of the statute states that it is intended to ensure effective participation by tenderers and to promote a healthy competition among them. There must be a fair and equitable treatment to all tenderers. More than anything else, the integrity of the tender process must be promoted. There must be fairness and public confidence in the system. Constitutional courts cannot lose sight of Article 39 of the Constitution of India which states that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and operation of the economic system does not result in concentration of wealth and means of the production to the common detriment. That is why, we have what is known as competition law. Government must have due regard to the constitutional values while awarding contract (***vide West Bengal State Electricity Board vs. Patel Engineering Co. Ltd. and Ors, (2001) 2 SCC 451***). The terms of the tender process must be formulated in such a way that it fosters competition. The small or medium level players must not left out. Only then there will be healthy competition in the long run.

10.As a result of combining the construction of new buildings and carrying out repairs to old buildings, the tender value is Rs.5185.00 lakhs. The threshold requirement is that only those contractors who had completed work of similar nature whose value is not less than Rs.5185.00 lakhs in any of the preceding five years alone are eligible. In the whole State of Tamil Nadu, there are only twelve such pre-qualified contractors. Even out of them, only three had taken part. It is not as if the tender works form a single integrated work. Tirunelveli Medical College is not lying within a single compound. Even according to the respondents it is spread over 215 acres. Some major roads cut across the campus. Since the repair works are to be regularly performed, there is absolutely no justification in combining the repair works with the



construction of new buildings. When the tender notification itself speaks of both these categories of works to be performed, the tender inviting authority ought to have applied his mind as to whether these categories can be segregated. Non consideration of this aspect, in my view, vitiates the decision making process. The father of the nation eloquently said that we must keep the last man in mind. Likewise, the Government must keep small players also in mind. If the repair works can be done by ordinary Class-II contractors, I find combining it with high value works to be arbitrary. What can be segregated ought not be combined. The new buildings are to come up at a distance of more than 1 k.m away. The repair works and the construction activities can very well be independently carried out.

11.I am therefore inclined to interfere with the impugned notification to this extent. But, the learned Additional Government Pleader for the respondents informs this Court that the works in respect of item nos.12 and 19 have already commenced. Therefore, there is no justification in interfering with those works also. I therefore quash the impugned notification to the extent that it includes item nos.9 to 11 and 13 to 18. The fifth respondent is directed to issue a fresh tender notification in respect of those items.

12.With this direction, this writ petition is allowed in part. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skm

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Secretary to Government,
State of TamilNadu,
Public Works Department,
Secretariat, Fort St.George,
Chennai - 600 009.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Secretary to Government,
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Secretariat, Fort St.George, Chennai - 600 009.

3. The Engineer in Chief,
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4. The Chief Engineer, (Buildings),
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