



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.7378 of 2020

and

W.M.P. (MD)No.6823 of 2020

J.Robinson

... Petitioner

Vs

1.The District Collector,
Kanyakumari District,
at Nagercoil.

2.The Assistant Director of Town Panchayat,
Collectorate Campus,
Nagercoil,
Kanyakumari District.

3.The Executive Officer,
Kollemcode Town Panchayat,
Kollemcode,
Kanyakumari District.

... Respondents

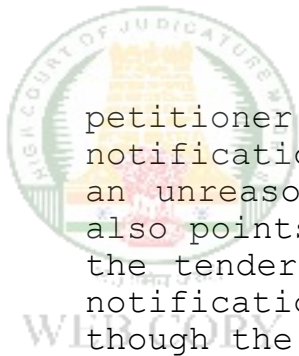
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned tender notification issued by the 3rd respondent in Na.Ka.No.25/2020/91 dated 23.06.2020 and to quash the same and consequently direct the 3rd respondent to issue fresh tender notification by deleting the condition No.19 and conduct fair and proper tender process by complying the Rules and Regulations contemplated in Tamil Nadu Transparency in Tenders Act, 1998.

For Petitioner : Mr.M.R.Sreenivasan
For Respondents : Mrs.S.Srimathy,
Special Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2.The petitioner is a registered contractor. He questions the impugned tender notification dated 23.06.2020 issued by the third respondent/panchayat. The purpose of the tender is to lay link road and to reinforce of an existing road. The two tenders have been valued at Rs.20,00,000/- and Rs.18,00,000/- respectively. The



petitioner in particular questions Clause No.19 of the tender notification. According to the petitioner, Clause No.19 incorporates an unreasonable condition and that it should be struck down. He also points out that the tenders were to be opened on 07.07.2020 but the tender notification was issued only on 26.03.2020. The tender notification was not published in the district tender bulletin, even though the value is above Rs.10,00,000/-.

3.Thus according to the petitioner, the impugned tender notification is violative of the mandatory provisions set out in Tamil Nadu Transparency in Tenders Act and the Rules framed thereunder.

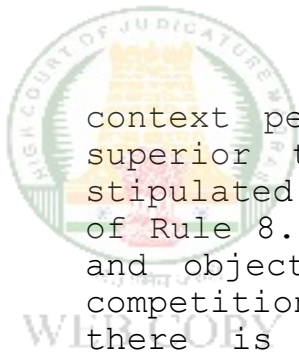
4.The learned Special Government Pleader appearing for the respondents admitted that even though as per Rule 20 of the Tamil Nadu Transparency in Tenders Rules, 1998, the minimum time for submission of the tender in this case should be fifteen days, what was provided in this case was only thirteen days. She however contended that still the impugned tender process would not be vitiated on that account. She drew my attention to the order dated 30.09.2019 made in **W.A.(MD)No.981 of 2019 (Evethasankara Narayanan v. The Managing Director, Tamil Nadu Civil Supplies Corporation)** passed by the Hon'ble Division Bench of this Court. The Hon'ble Division Bench in the aforesaid order had specifically held that the minimum time period set out in Rule 20 of the Rules should be construed as directory and not mandatory.

5.I fully concur with the aforesaid submission of the learned Special Government Pleader. But then, the mandate set out in Rule 8 of the Tamil Nadu Transparency in Tenders Act, 1998, has also been violated in this case. Rule 8 of the Act reads as follows:-

'8.Information to be published in the District Tender Bulletin.- Subject to the provisions of rule 10, Notices Inviting Tenders and decisions on tenders in all cases where the value of the procurement exceeds rupees [ten lakhs and is] below rupees twenty five lakhs shall be published in the District Tender Bulletin of the district where the headquarters of the Tender Inviting Authority is located and in the district where the work is to be executed or the goods and services supplied.

I posed a specific question to the learned Special Government Pleader as to whether this requirement was complied with. It was fairly submitted by the learned Special Government Pleader that the tender notification according to her instruction, was not published in the district tender bulletin.

6.Now the question arises whether the requirement set out in Rule 8 is mandatory or not. One may note straight away that the said Rule incorporates the expression "shall be published". Of course, the expression "shall" can be construed as "may" if the



context permits. Unlike Rule 22 which authorizes the authority superior to the Tender Inviting Authority to reduce the time stipulated in Rule (21), no such relaxation is envisaged in respect of Rule 8. I must also have regard to the over all statutory scheme and object. Tenders are called for to ensure that there is competition. For that there must be wide publicity. That is why, there is often a requirement that the notifications must be published in newspapers having wide circulation in the locality. Of course, even such publications may not attract or catch the attention of the persons concerned. But, tender bulletins are not like newspapers. They are also hosted in the website. All the stake holders make it a point to go through the tender bulletins. If the value of the tender is below a particular limit and publication is dispensed with, the tender inviting authority is expected to put all the registered contractors on notice. The law relating to tender flows from Article 14 of the Constitution of India. It is meant to avoid and prevent arbitrariness. Hence I hold that Rule 8 is mandatory and has to be complied with.

7. In this case, the tender process has not complied with the aforesaid rule requirement. Therefore, I do not propose to examine the other contention, namely, validity of Clause 19 of the notification. The tender notification is quashed for not having been published as per Rule 9. The matter is remitted to the file of the third respondent to issue a fresh tender notification. It is open to the Tender Inviting Authority to revisit the said tender clause. If the fresh publication is made by the Tender Inviting Authority and the aforesaid Clause No.19 is retained, it will be open to the petitioner herein to renew his challenge. I make it clear that I have consciously refrained from going into the validity of Clause No.19. Leaving open the contentions of the respective parties in this regard, the impugned tender notification is quashed. The writ petition is allowed. It is for the third respondent to issue a fresh notification in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

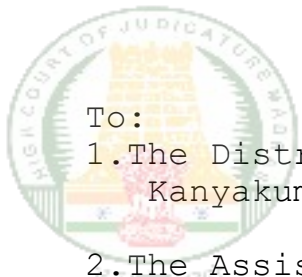
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Sub Assistant Registrar(CS)

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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 District Collector,
Kanyakumari District at Nagercoil.
- 2.The Assistant Director of Town Panchayat,
Collectorate Campus,
Nagercoil,
Kanyakumari District.
- 3.The Executive Officer,
Kollemcode Town Panchayat,
Kollemcode,
Kanyakumari District.

+1 CC to M/s.M.R.SRINIVASAN, Advocate (SR-13215[F] dated 23/07/2020

W.P. (MD)No.7378 of 2020
21.07.2020

SMA/06/08/2020/4P/5C