



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .Nos.8232 & 8234 of 2020

and

W.M.P. (MD) .Nos.7639 to 7642 of 2020

MJD Construction and Engineering Contractors
Private Limited, Represented by its,
The Managing Director,
Janaka Jebangelin,
5/112-B, Main Road,
Kannumamoodu,
Palugal Village,
Kanyakumari District.

...Petitioner in both petitions

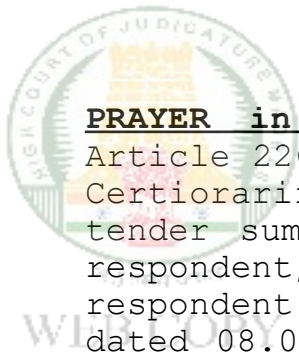
Vs.

1.The Chief Engineer,
Highways Department,
Constructions and Maintenance,
Chennai-32.

2.The Superintending Engineer,
Highways Department,
Constructions and Maintenance,
Tirunelveli Circle,
Tirunelveli-2.

...Respondents in both petitions

PRAYER in W.P. (MD) .No.8232 of 2020: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the tender summary report dated 15.07.2020 on the file of the second respondent, which was uploaded in the official website of the second respondent for Package No.56 in tender notice No.6/2020-21/HDO, dated 08.06.2020 and quash the same in so far as the rejection of the petitioner's companies Bid No.354685 (Item No.3) and the conclusion of Retender on the file of the second respondent and direct the second respondent to accept the tender bids of the petitioner's company and proceed further for awarding contract with respect to Package No.56 in tender notice No.6/2020-21/HDO, dated 08.06.2020 on the file of the second respondent as per law.



PRAYER in W.P. (MD) .No.8234 of 2020: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the tender summary report dated 15.07.2020 on the file of the second respondent, which was uploaded in the official website of the second respondent for Package No.57 in tender notice No.6/2020-21/HDO, dated 08.06.2020 and quash the same in so far as the rejection of the petitioner's companies Bid No.354681 (Item No.3) and consequently accept the technical bid application of the petitioner's company in Bid No.354681 and proceed further in accordance with law for awarding contract with respect to Package No.57 in tender notice No.6/2020-21/HDO, dated 08.06.2020 on the file of the second respondent as per law.

For Petitioner : Mr.AN.Ramanathan

For Respondents : Mr.M.Rajarajan
Government Advocate
(In both petitions)

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2. Though the petitions are two in number, the petitioner is common and the issue raised is also common. The petitioner applied in online mode in response to the tender notification dated 08.06.2020 issued by the second respondent. The tender notification was in respect of as many as seven works. The last date for receiving the tender was on 09.07.2020 and they were to be opened on 10.07.2020. Due to certain reasons, the tender opening did not take place and it was adjourned to 15.07.2020. The petitioner's application in respect of Package Nos.56 and 57 were rejected. The stand of the respondents is that the petitioner did not furnish the original EMD. Challenging the same, these Writ Petitions have been filed.

3. As regards Package No.56, the Authority has decided to going for retender. This is because after rejecting the ineligible participants, there was only one tender left. Even if the case of the petitioner is accepted that would still leave the field with only two players. Therefore, in these circumstances, the decision of the Authority to go for retender in respect of Package No.56 cannot be questioned. The decision of the authority to go for retender in respect of Package No.56 is sustained and the writ petition in W.P.(MD).No.8232 of 2020 is dismissed.

4. The real contest took place in W.P.(MD).No.8234 of 2020. It pertains to Package No.57. The petitioner's counsel strongly contended that when the petitioner has taken the original EMD by way



of original Demand Draft and also sent the details through online mode, it is unbelievable and rather incredible that he would not have furnished the same.

5. I posed a specific question to the petitioner's counsel as to the number of packages in respect of which the petitioner submitted his tender. The petitioner's counsel fairly submitted that the petitioner applied in respect of all the seven package works. It is not in dispute that the petitioner has been found to be eligible to take part in respect of four works, namely, Package Nos.51, 53, 54 and 55.

6. Now according to the petitioner's own showing when he appeared in person on 09.07.2020, he gave original Demand Drafts only for six tenders. The case of the Authority is that he gave original EMD for four tenders. Admittedly, the petitioner did not furnish the original EMD for all the seven package works. Therefore, this is not an open and shut case as initially projected by the petitioner's counsel. Though the petitioner had applied for all the seven works, even according to him he gave the original Demand Draft only for six works. That means, the petitioner decided to give up as regards for one package work. If that be so, it is quite possible that due to some understanding with the other participants, the petitioner chose to compete only for four works and not for six works as claimed by him. Thus the matter is shrouded in a bit of doubt. I can understand if the tender notification was in respect of only one work and on the given date, the petitioner was present and the Authority is taking a stand that the petitioner did not come or did not furnish the original Demand Draft, then, this Court would probably come in favour of the petitioner herein. This is not the case here. The Authority, who had accepted the petitioner's Demand Draft for four works, had no reason to deny his claim as regards the remaining work. Even as regards one package work, the Authority has decided to go for retender. I am of the view that this is not a case which can be decided under Article 226 of the Constitution of India. Therefore, I am not in a position to interfere. The writ petition in W.P.(MD). No.8234 of 2020 is also dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

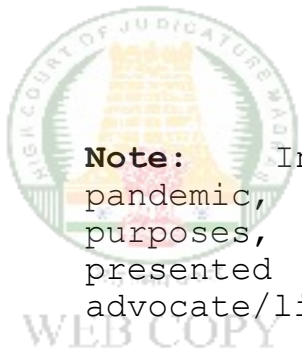
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Sub Assistant Registrar (CS)

tsg

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



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 Chief Engineer,
Highways Department,
Constructions and Maintenance,
Chennai-32.
- 2.The Superintending Engineer,
Highways Department,
Constructions and Maintenance,
Tirunelveli Circle, Tirunelveli-2.

**COMMON ORDER MADE IN
W.P. (MD) .Nos.8232 & 8234 of 2020**

31.07.2020

SPU(07.08.2020) 4P 3C