



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) Nos. 8360, 8380, 8419 & 8420 of 2020 and

W.M.P. (MD) Nos. 7769, 7787, 7815 & 7816 of 2020

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W.P. (MD) No. 8360 of 2020

K. Chandrasekar

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Public Works Department,
Fort St. George, Chennai - 600 009.
 2. The Chief Engineer,
Public Works Department,
Buildings (Construction and Maintenance),
Thallakulam, Madurai.
 3. The Superintending Engineer,
Public Works Department,
Buildings (Construction and Maintenance).
Circle-2, PWD Compound,
Thallakulam, Madurai.
 4. Sukumaran,
Superintending Engineer,
Public Works Department,
Buildings (Construction and Maintenance),
Circle-2, PWD Compound,
Thallakulam, Madurai.
 5. Balamurugan,
Deputy Superintending Engineer,
Public Works Department,
Buildings (Construction and Maintenance),
PWD Compound,
Thallakulam, Madurai.
- ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to receive the petitioner's tender for the work i.e. "Construction of Four Class Room Building, Laboratory, Boys(1 No.) Toilet, Drinking Water facilities and compound wall for Government Higher Secondary School at Kirungakottai(Slice No.1).



Construction of Fifteen Class Room building, Laboratory, Boys(1 No.) and Girls(1 No.) Toilet, Drinking Water facilities and compound wall for Government Higher Secondary School at Keeladi(Slice No.2) in Sivagangai District" and permit the petitioner to participate in the above tender process.

W.P. (MD)No.8380 of 2020

P.Manickam

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Public Works Department,
Fort St. George, Chennai - 600 009.
2. The Chief Engineer,
Public Works Department,
Buildings(Construction and Maintenance),
Thallakulam, Madurai.
3. The Superintending Engineer,
Public Works Department,
Buildings (Construction and Maintenance).
Circle-2, PWD Compound,
Thallakulam, Madurai.
4. Sukumaran,
Superintending Engineer,
Public Works Department,
Buildings(Construction and Maintenance),
Circle-2, PWD Compound,
Thallakulam, Madurai.
5. Balamurugan,
Deputy Superintending Engineer,
Public Works Department,
Buildings(Construction and Maintenance),
PWD Compound,
Thallakulam, Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to receive the petitioner's tender for the work i.e. "Construction of Four Class Room Building, Library, Toilet, Compound Wall and Drinking Water facilities in Government Higher Secondary School at Pottapatty in Melur Taluk(Slice No.1). Construction of Four Class Room Building, Toilet, Compound Wall and Drinking Water arrangements in Government High School at Kodukkampatti in Melur Taluk(Slice No.2) in Madurai District and permit the petitioner to participate in the above tender process.



W.P. (MD) No.8419 of 2020

K.Chandrasekar

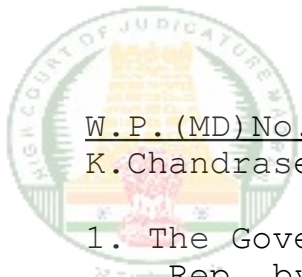
... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Public Works Department,
Fort St. George, Chennai - 600 009.
2. The Chief Engineer,
Public Works Department,
Buildings(Construction and Maintenance),
Thallakulam, Madurai.
3. The Superintending Engineer,
Public Works Department,
Buildings (Construction and Maintenance).
Circle-2, PWD Compound,
Thallakulam, Madurai.
4. Sukumaran,
Superintending Engineer,
Public Works Department,
Buildings(Construction and Maintenance),
Circle-2, PWD Compound,
Thallakulam, Madurai.
5. Balamurugan,
Deputy Superintending Engineer,
Public Works Department,
Buildings(Construction and Maintenance),
PWD Compound,
Thallakulam, Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to receive the petitioner's tender for the work i.e. "Construction of Science Lab, Library, Art and Craft Room, Computer Room and Drinking Water facilities in Government High School at Chinna Ulagani (Slice No.1) and construction of Science Lab, Library, Art and Craft Room, Computer Room in Government High School at V.Chatrapatti (Slice No.2). Construction of Additional Class Room, Science Lab, Library, Art and Craft Room and Drinking Water facilities in Government Higher Secondary school at T.Kunnathur(Slice No.3) in Madurai District" and permit the petitioner to participate in the above tender process.



W.P. (MD) No.8420 of 2020

K.Chandrasekar

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Public Works Department,
Fort St. George, Chennai - 600 009.

2. The Chief Engineer,
Public Works Department,
Buildings (Construction and Maintenance),
Thallakulam, Madurai.

3. The Superintending Engineer,
Public Works Department,
Buildings (Construction and Maintenance).
Circle-2, PWD Compound,
Thallakulam, Madurai.

4. Sukumaran,
Superintending Engineer,
Public Works Department,
Buildings (Construction and Maintenance),
Circle-2, PWD Compound,
Thallakulam, Madurai.

5. Balamurugan,
Deputy Superintending Engineer,
Public Works Department,
Buildings (Construction and Maintenance),
PWD Compound,
Thallakulam, Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to receive the petitioner's tender for the work i.e. "Construction of Four class Room Building, Library, Toilet, Compound Wall and Drinking Water facilities in Government Higher Secondary school at Pottapatty in Melur Taluk(Slice No.1). Construction of Four Class Room building, Toilet, Compound Wall and Drinking Water arrangements in Government High School at Kodukkampatti in Melur Taluk(Slice No.2)in Madurai District" and permit the petitioner to participate in the above tender process.

(in all W.Ps.)

For Petitioners

For R-1 to T-3

: Mr.M.Saravanan

: Mr.K.Chellapandian,

Additional Advocate General,

assisted by, Mr.M.Rajarajan,

Additional Government Pleader.



C O M M O N O R D E R

Heard, Shri.M.Saravanan, learned counsel appearing for the petitioners and Shri.K.Chellapandian, learned Additional Advocate General assisted by Shri.M.Rajarajan, learned Additional Government Pleader appearing for the respondents.

2. The writ petitioners are Class-I contractors. The grievance of the writ petitioners is that the tender inviting authority did not receive their tenders in respect of the petition mentioned works. The learned counsel appearing for the petitioners took me through the averments set out in the affidavits filed in support of these writ petitions. The specific stand of the petitioners is that they were very much present in the office of the third respondent on 24.07.2020 at 2.00 p.m. and that the fourth respondent who was holding the post of the third respondent was not available. The other officials also declined to receive the petitioners' tenders. The petitioners' claim is that they called the third respondent on his mobile. They also pointed out that at about 2.53 p.m., they sent a complaint through speed post.

3. The stand of the respondents on the other hand is that the petitioners approached them only at 3.10 p.m. The respondents have filed a detailed counter affidavit controverting the stand taken by the writ petitioners herein.

4. The learned counsel appearing for the petitioners drew my attention to the website information which indicates that the last date for submission of the tenders was on 24.07.2020 up to 3.00p.m. The pointed contention of the petitioners' counsel is that the petitioners have more than probablised the arrival in the office of the tender inviting authority well before 3.00 p.m. on 24.07.2020. He would further contend that the petitioners went only by the website information and that therefore, the respondents cannot now be allowed to take the stand that in the tender documents, the time for reception of the documents has been mentioned as 1.30 p.m. Since there is an apparent discrepancy between the website information and the information set out in the tender documents, the benefit should go only to the applicants and not to the department. The learned counsel appearing for the petitioners would further contend that in any event, the tenders were not opened on 24.07.2020 and that the opening of the tenders was postponed. The respondents would not have been put to any prejudice by accepting the petitioners' tenders. More so, when the fault was squarely on the side of the respondents.

5. The learned Additional Advocate General appearing for the respondents took me at length through the materials enclosed in the typed set of papers.



6. I carefully considered the rival contentions and went through the materials on record.

7. There is no doubt that the website information states that the last date for submission of tenders will be up to 3.00 p.m. on 24.07.2020. But then, the various tender documents clearly mention that the Pre-qualification Tender schedules and Price Tender schedules will be received in sealed covers up to 1.30 p.m. on 24.07.2020 and the tenders will be opened on the same day at 2.00 p.m. by the Superintending Engineer, PWD, Buildings(C&M) Circle, Madurai -2, in the presence of all the tenderers or their authorised representatives.

8. My attention has been specifically drawn to the publication made in the State Tender Bulletin also. It also clearly states that the tender schedules will be received up to 1.30 p.m. on 24.07.2020. In the publication made in 'The Hindu' English daily on 18.06.2020 and in 'Makkal Kural' Tamil daily also on 18.06.2020, it has also been mentioned that the last date for receiving tender applications will be on 24.07.2020 up to 1.30 p.m. No doubt there is a discrepancy between the website information and these publications. But then, as rightly argued by the learned Additional Advocate General appearing for the respondents, the petitioners could have very well sought clarification in terms of Rule 17(2) of the Tamil Nadu Transparency in Tender Rules, 2000. The said Rule reads as follows:-

"17. Clarification to tender documents -

(1) ...

(2) In case any tenderer asks for a clarification on the tender documents before 48 hours of the opening of the tender, the Tender Inviting Authority shall ensure that a reply is sent and copies of the reply to the clarification sought shall be communicated to all those who have purchased the tender documents without identifying the source of the query and upload such clarification to the designated website for the information of those who have downloaded the tender documents from the website, without identifying the source of the query."

9. As again rightly contended by the learned Additional Advocate General appearing for the respondents, they have not rushed through with tender process. The publication was originally made on 18.06.2020. The last date was more than a month later (i.e.) on 24.07.2020. It is also rightly pointed out by the learned Additional Advocate General that the tender documents had been downloaded by the petitioners from the website. In fact at 1.30 p.m. on 24.07.2020, the petitioners did not submit their tender schedules. Even according to the petitioners, they were in the office of the third respondent only at about 2.00 p.m. That was well beyond the cut-off time.



10. Therefore, in these circumstances, I find no ground to grant relief. The petitioners' counsel states that if only the petitioners had been allowed to participate, they would have quoted a lower price and the interest of revenue would have been served better. But then, if this argument is accepted, this Court would be infringing the rights of third parties. No case has been made out for granting relief.

11. Even while dismissing the writ petition, I have to express my displeasure over the conduct of the respondents. These are high value tenders. Therefore, the respondents cannot publish one information in the website and another information in the documents. The respondents are warned to be careful in future and avoid such confusions.

12. With these observations, these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)

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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 Principal Secretary to Government,
Public Works Department,
Fort St. George, Chennai - 600 009.
2. The Chief Engineer,
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Buildings(Construction and Maintenance),
Thallakulam, Madurai.



3. The Superintending Engineer,
Public Works Department,
Buildings (Construction and Maintenance).
Circle-2, PWD Compound,
Thallakulam, Madurai.

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+4 CC to Mr.R. SUBRAMANIAN, Advocate (SR-15626,15625,15624,15623[F]
dated 02/09/2020)

+1 CC to SPL.GP (SR-15706,15834,15843,15844,15845[F] dated
02/09/2020)

W.P.(MD)Nos.8360, 8380, 8419 & 8420 of 2020 and
W.M.P.(MD)Nos.7769,7787, 7815 & 7816 of 2020
01.09.2020

VB (04.09.2020) 8P 9C