



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.08.2020
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P. (MD)No.9633 of 2020
and
WMP(MD)Nos.8675 & 8679 of 2020

I.Ganapathy ... Petitioner

Vs.

- 1.The Secretary,
Department of Municipal Administration and water
supply secretariat,
Chennai - 600 009.
- 2.The Commissioner of Municipal Administration,
Department of Municipal Administration and Water supply,
No.75, Santhome High Road,
M.R.C Nagar, Chennai.
- 3.The Commissioner,
Tirunelveli Corporation, Tirunelveli.
- 4.G.Kannan,
Commissioner,
Tirunelveli Corporation, Tirunelveli.
- 5.The Executive Engineer,
Tirunelveli Corporation, Tirunelveli.
- 6.L.K.Baskar,
Executive Engineer,
Tirunelveli Corporation, Tirunelveli.
- 7.M/s.N.H.A Associates, 664-8, A-1, TVM Road,
Tirunelveli - 627 005.
- 8.T.Balasubramanian
- 9.M/s.Mercy Rajan Associates,
No.54, Chellathai Nagar,
Magilchi Nagar,
Tirunelveli.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the 1st respondent in Letter

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No.8185/MC2 (1)/2020-6, dated 03.08.2020 and quash the same as illegal and consequently direct the 3rd respondent to cancel the condition No. 4.5 B of the Tender Notification No.21/2019-20 dated 08.01.2020 and declare the petitioner as successful bidder for 22 works under the 14th Central Finance Commission.

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For Petitioner : Mr.R.R.Kannan

For R1 & R2 : Mr.P.Mahendran
Additional Government Pleader

For R3 & R5 : Mr.Aayiram K.Selvakumar

O R D E R

Heard the learned counsel appearing for the writ petitioner.

2.The petitioner is a Class-I contractor. Thirunelveli Corporation issued a notification dated 08.01.2020 inviting tender for laying of B.T Road of 31 works. The said tender notification had a condition that a contractor in order to eligible to take part in the tender process, must own the following machineries.

	For B.T Roads	
1	Central Mixing Plant	1 No.
2	Base Mixing Plant (Pug Mill)	1 No.
3	Bitumen Paver Finisher	1 No.
4	Tipper Lorry	4 Nos.
5	Vibratory Roller	2 Nos.
6	Static Roller	1 No.
7	Vehicle Mounted Mechanical Sprayer	1 No.
8	Water Lorry	2 Nos
9	Excavator cum Loader	3 Nos.
10	Tractor Mounted Compressor	2 Nos.

3.The petitioner however owned three of the basic machineries in his name. Hence, he filed WP(MD)No.1647 of 2020 challenging the incorporation of such condition. The tender process was allowed to go on and the petitioner was also allowed to participate. But then the petitioner's technical bid was rejected. Challenging the same, the petitioner filed WP(MD)No.3436 of 2020. Both the writ petitions were taken up for final disposal by a common order dated 06.05.2020. Both writ petitions were dismissed. However, while doing so, the learned Judge passed the following directions.

"37.Accordingly, the writ petitions are dismissed.

However, the following directions are issued:



If the petitioner feels it appropriate, he is at liberty to file an appeal before the Appellate Authority within a period of two weeks from the date of receipt of a copy of this order along with a petition for interim orders under Section 11 (4) of the said Act and on such filing of appeal, the Appellate Authority shall entertain the appeal, if the papers are otherwise in order without insisting on the issue of limitation and after putting the respondents in the writ petitions on notice, shall take up the petition for stay at the first instance and give a disposal in accordance with law within a period of three weeks from the date of submission of the appeal. The Appellate Authority also has the option to give disposal of the appeal itself, within a period of six weeks from the date of entertainment of the appeal."

4. Availing the said liberty granted by this Court, the petitioner filed an appeal before the Appellate Authority namely the first respondent herein. The appeal was rejected by an order dated 30.08.2020. Questioning the same, this writ petition has been filed.

5. Heard the learned counsel appearing for the writ petitioner at length.

6. The petitioner's counsel pointed out that there was a formation of cartel and as a result interest of revenue has been seriously prejudiced. He further pointed out that the petitioner has actually been shown as L1. He also contended that in all other corporations such a condition had not been incorporated. He seriously questioned the fairness of the entire process. He also pointed out that immediately after his writ petition was dismissed, in great haste, the agreement was also executed with successful tender on 8.05.2020 itself. He also seriously faulted the reasoning of the Appellate Authority. He stated that even though this Court in so many words indicated that the Appellate Authority can consider the validity of the conditions, the Appellate Authority has not chosen to take up the matter in right earnest. Even for getting disposal of the appeal, he had to move this Court and obtain a direction.

7. The learned counsel appearing for the petitioner placed reliance on the decisions of both this Court as well as the Hon'ble Supreme Court. In particular, he placed reliance on the decision reported in **2019 4 SCC 401** in the case of **Icomm Tele Limited Vs Punjab State Water Supply and Sewerage Board and another**. The petitioner's counsel repeatedly contended that the petitioner is very much in possession of the basic machineries, but the insistence on personal ownership of the other machineries was only to frustrate his participation in the tender process.



8.I must note that even though the petitioner's counsel's submissions appear to be very persuasive, I am afraid I cannot interfere at this point of time. The petitioner virtually missed the bus 06.05.2020, when his WP(MD)Nos.1647 & 3436 of 2020 were dismissed. The petitioner could have persuaded the learned Judge that till the appeal is disposed of, the status-quo that obtained on 06.05.2020 should continue. The petitioner did not succeed in getting such a direction. All that the learned Judge observed was that it is open to the petitioner to try his luck before the Appellate Authority. It is true that the learned Judge indicated that the Appellate Authority can consider the correctness of the stipulation of condition as regards the ownership of even non-basic machinery. The fact remains that this Court did not choose to interfere at that point of time. The matter was remitted to the Appellate Authority. The Appellate Authority was permitted to examine whether considering the nature of work calling for ownership of each and every machinery was really necessary. The Appellate Authority after hearing the tender inviting authority had stated that in the imposition of such conditions there was no discrimination. The Appellate Authority in the facts and circumstances of the case, had come to the conclusion that the condition was necessary. When the matter was put up challenge, this Court had chosen to trust the wisdom of the Appellate Authority. Now, the Appellate Authority had held that the condition was rightly imposed. I am afraid, no purpose will be served by interfering at this point of time. It is seen that the agreements were executed on 08.05.2020. We are now on 20.08.2020. Almost 31/2 months have lapsed. Obviously much water had flown under the bridge; the works must have substantially progressed. Interfering at this point of time will cause confusion. I make it clear that merely because I have dismissed this writ petition at the admission stage it does not mean that I have given seal of approval to the decision of the Appellate Authority as regards the validity of the aforesaid tender condition. The issue of law is left open to be considered in an appropriate case.

9.Leaving this question of law open, the writ petition is dismissed. No costs. Consequently, connected miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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,
Department of Municipal Administration and water
supply secretariat,
Chennai - 600 009.
- 2.The Commissioner of Municipal Administration,
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- 3.The Commissioner,
Tirunelveli Corporation,
Tirunelveli.
- 4.The Executive Engineer,
Tirunelveli Corporation,
Tirunelveli.

+1 CC to M/s.Special Govt.Pleader (SR-14770[F] dated 24/08/2020)

+1 CC to M/s.R.R. KANNAN, Advocate (SR-14709[F] dated 21/08/2020)

W.P. (MD)No.9633 of 2020

and

WMP (MD) Nos.8675 & 8679 of 2020

20.08.2020

dss/msa

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