



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2020

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 11207 of 2020 and

W.M.P. (MD) Nos. 9787 & 9788 of 2020

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K.S.K.Harikrishnan

... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
EVR Road, Chennai.
2. The Joint Registrar,
Madurai District Co-operative Societies,
No.13, Kanaga Apartment, LDC Road, Madurai.
3. The Deputy Registrar,
Madurai District Co-operative Societies,
42, Krishnarayar Theppakulam, Madurai - 2.
4. A1437, Madurai District Pandian
-Consumer Co-operative Whole Sale Depot,
No.162, Keelaveli Veedhi, Madurai.
5. M.Ramar, Contractor,
M/s.M.Ramar Transport,
98, Irulandi Street, Natraj Nagar, Kochadai,
Madurai 625 016.
(R-5 is suo motu impleaded
vide order dated 10.09.2020)

... 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 pertaining to the impugned tender notification of the third respondent dated 06.08.2020 published in daily newspaper namely "Tamil Sudar" and quash the same and consequently direct the respondents to conduct re-tender by effecting publication in widely circulated newspaper.

For Petitioner	: Mr.J.Anandkumar
For R-1 to R-4	: Mr.P.Mahendran, Additional Government Pleader.
For R-5	: Mr.J.Bharathan, for Mr.T.R.Jeyapalam

* * *



O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for respondents 1 to 4 and the learned counsel appearing for the fifth respondent.

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2. The writ petitioner challenges the impugned tender process on the ground that the tender notification was not published in the tender bulletin in terms of Rule 8 of the Tamil Nadu Tender Transparency in Tenders Rules, 2000. The second respondent has published the tender notification in a Tamil Daily known as "Tamil Sudar" on 06.08.2020 calling for the tenders for transportation of essential commodities for the year 2019-2020 from the Tamil Nadu Civil Supplies Corporation godowns to various Ration shops run by A1437, Madurai District Pandian-Consumer Co-operative Wholesale Depot, Madurai, both in the city and in the rural areas for the period of one year. Pursuant to the said notification, three persons participated in the tender process. The fifth respondent turned out to be L1. It is stated that the authorities bargained with the fifth respondent and made him to agree for a rate lower than what was quoted in the tender application.

3. The learned Additional Government Pleader appearing for the official respondents would state that the final result is highly beneficial to public interest and that therefore this Court ought not to interfere with the same.

4. Rules 8 and 9 of the Tamil Nadu Transparency in Tenders Rules, 2000 reads as under:-

"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.

9. Information to be published in the State Tender Bulletin.- The Notice Inviting Tenders and decisions on tenders shall be published in the State Tender Bulletin in cases where.-

(a) The value of procurement exceeds rupees twenty five lakhs;

(b) the Tender Inviting Authority is a Secretary to Government, or a head of a Government department, or Local Authority or the Chief Executive of a Public Sector Undertaking, Statutory Board, Apex



Cooperative Institution, University or State Level Society formed by the Government;

(c) in any other case, where the Tender Inviting Authority deems it fit."

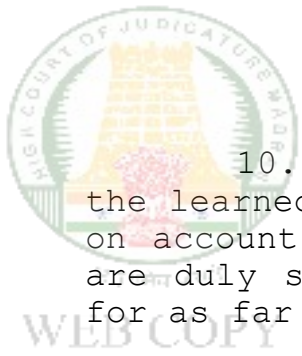
5. If the procurement value exceeds the figures mentioned above, they should be published in the respective tender bulletins. A serious mistake has occurred in the present case because the third respondent did not carry out the publication himself. He has delegated the responsibility to the fourth respondent Co-operative Society. When the third respondent is the tender inviting authority as well as the tender accepting authority, it is he who should ensure that the publication is made as per the statutory rules.

6. Now the question is whether I should interfere on this ground.

7. Of course, the learned counsel appearing for the fifth respondent would throw mud on the petitioner. He would state that the petitioner was detained under the Preventive Detention law and that the petitioner's wife filed H.C.P. in this regard. In fact materials to that effect have been enclosed in the typed set of papers.

8. I am of the view that the background of the petitioner is absolutely irrelevant for deciding the legal issue raised in this case. However, I am persuaded by the submission made by the learned Additional Government Pleader that interference may not be warranted as far as this this year is concerned. The learned Additional Government Pleader would point out that the tender notification was issued on 06.08.2020 and that the tender process was concluded on 18.08.2020. The petitioner filed representation on 25.08.2020 and filed this writ petition on 04.09.2020. The learned Additional Government Pleader would submit that the writ petitioner who was the contractor during the previous years was probably in the know of things.

9. This submission made by the learned Additional Government Pleader cannot be completely ruled out. He would submit that the remedy open to the petitioner is only to challenge the order passed by the third respondent dated 18.08.2020, under Section 11 of the Tamil Nadu Transparency in Tenders Act 1998. The learned Additional Government Pleader would solemnly undertake that from the next year onwards, the tender inviting authority as well as the tender accepting authority would ensure that appropriate publication is made in the tender bulletins in terms of Rules 8 / 9 of the Tamil Nadu Transparency in Tenders Rules 2000. He also states that the habit of giving publications in dailies that are not well known would be given up. It is further undertaken by the third respondent that the publication would be made only in reputed dailies which are having good circulation in the locality.



10. This undertaking given by the third respondent through the learned Additional Government Pleader is placed on record. Since on account of the effort taken by the petitioner, future interests are duly secured, I am of the view that no interference is called for as far as the present year is concerned.

11. With the aforesaid observations and recording the undertaking given by the official respondents, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

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:

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-Consumer Co-operative Whole Sale Depot,
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+1 CC to Mr.T.R. JEYAPALAM, Advocate (SR-18926[F] dated 05/10/2020)

+1 CC to SPL GP (SR-19036[F] dated 05/10/2020)

W.P.(MD)No.11207 of 2020

30.09.2020

VB (16.10.2020) 4P 7C