



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.10.2020

Pronounced on : 29.10.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.11812 of 2020

and

W.M.P (MD) Nos.10225 & 10226 of 2020

WEB COPY

Bairavi Foundation,
Rep by its Managing Trustee,
C.Shoba, 1332/4, 2nd Street,
Singarathoppu, Parvathipuram,
Nagercoil, Kanyakumari District.

... Petitioner

vs.

1.The District Collector,
Kanyakumari District @ Nagercoil.

2.Marungoor Town Panchayat,
Rep by its Special Officer,
Kanyakumari District.

3.The Special Officer,
Sucheendrum Town Panchayat,
Kanyakumari District.

4.The Executive Officer,
Marungoor Town Panchayat,
Kanyakumari District.

5.St.Roche Social Welfare Association,
Rep by its Authorized person,
Mr.Jenson Roche,
Ramanathichan Puthoor,
Marungoor,
Kanyakumari District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned Resolution No.32 passed in Marungoor Town Panchayat in proceedings vide Nil dated 14.08.2020 by the 3rd Respondent and the Consequential proceedings passed by the 4th Respondent vide Na.Ka.No.95/2020 dated 14.08.2020 by issuing the work order to the 5th respondent herein and quash the same as illegal



and permit the Petitioner's Foundation to continue the work before the 4th Respondent Panchayat in Solid Waste Management Scheme.

For Petitioner : Mr.B.Brijesh Kishore

For Respondents : Mr.C.Ramar

Additional Government Pleader for R1

Mr.V.Anand, Government Advocate for R2 to R4.

Mr.G.Antoprince, for R5.

ORDER

The writ petitioner is a registered Trust. It had entered into a contract with the 4th respondent for implementing Solid Waste Management Scheme. The said contract work was performed by the petitioner from 2017 till 20.07.2020. The Panchayat issued the tender schedule for the year 2020-2021. When the petitioner approached the 4th respondent in this regard, the petitioner was asked to submit their quotation by filling the tender application. The petitioner submitted the tender application in a sealed cover on 31.07.2020. The tender was opened on 06.08.2020 and it was announced that totally 3 persons including the petitioner had submitted their tenders.

2.The grievance of the petitioner is that the 4th respondent had conducted a private negotiation with the 5th respondent and allotted the work order in favour of the 5th respondent. The petitioner had earlier filed Writ Petition in WP(MD)No.10507 of 2020 for directing the authorities to issue order to the petitioner to enable them to continue work on Solid Waste Management Scheme.

3.When the said writ petition was taken up for hearing, the fourth respondent informed the Court that the work order had already been issued in favour of the 5th respondent on 14.08.2020. Therefore, the earlier writ petition was disposed of by giving liberty to the petitioner to challenge the impugned order. Aggrieved over the said impugned order, the present writ petition came to be filed.

4.The writ prayer is strongly opposed both by the 4th respondent as well as the 5th respondent. The 4th respondent has filed a detailed counter affidavit. The stand of the 4th respondent is that all the three participants had quoted the same quotation of Rs.490/- per head. Therefore, the tender inviting Authority had to negotiate with the participants. Communication in this regard was issued to the 5th respondent and also Madharsha Women and Men Self help Group and it was finally decided to award the work order in favour of the 5th respondent. The reason for not inviting the petitioner for private negotiations was that the 4th respondent had received a number of complaints against the petitioner herein.



5. In the counter affidavit, the 4th respondent had stated that the 5th respondent quoted Rs.485/-. Since the 5th respondent is capable, they were selected to carry out the Solid Waste Management Work for the year 2020-2021 and the 4th respondent had chosen them. Since the petitioner had violated the terms and conditions stipulated in the work during the previous lease period, it would not be in the interest of the workers or the panchayat to award them with the contract for the current year also. The petitioner is the contractor for the panchayat from 2017-2020. Their work during the said period was not satisfactory and a number of complaints were received from the workers. Therefore, in the interest of the administration, it was decided not to invite the petitioner for private negotiation. Since the said decision was taken for bonafide reason, the 4th respondent wants this court not to interfere with the orders impugned in the writ petition.

6. The learned counsel for the 5th respondent also adopted the stand taken by the 4th respondent and urged this Court to dismiss the writ petition.

7. I carefully considered the rival contentions and went through the materials on record. It is not in dispute that the 4th respondent called for tenders for awarding the work of handling Solid Waste Management Scheme for the panchayat for the year 2020-2021. Three tenders had been submitted. The petitioner, the 5th respondent and Madharsha Women and Men Self Help Group had quoted Rs.490/- per head as a daily wage which will be paid by them. Since all the three participants had quoted the same rate, the panchayat had to go in for private negotiations. This was clearly an incorrect action on the part of the panchayat.

8. As rightly pointed out by the learned counsel for the petitioner, the District Collector, Kanyakumari District had issued the proceedings dated 03.08.2018, fixing the minimum wage payable for the workers engaged in Solid Waste Management Scheme at Rs.490/- per head per day. Therefore, the rate quoted by the petitioner as well as the other two participants was only in consonance with the proceedings issued by the District Collector. The panchayat has fixed a lower rate. If the minimum wage quoted by the three tenderers was the same as fixed by the District Collector, in order to choose the contract, some other method should have been adopted. When the rate offered by all the participants itself was the lowest, the Tender Inviting Authority could not fix the counter rate below the rate fixed by the District Collector, Kanyakumari District. That was the first error committed by the panchayat.

9. The other and more fundamental error is not inviting the petitioner for the negotiations. All the three persons should have been invited for negotiations. The 4th respondent, in the counter affidavit stated that the performance of the petitioner during the



previous years was not satisfactory. It is further claimed that complaints had been received against the petitioner. If that be so, the 4th respondent as the Authority who awarded the contract should have issued communication then and there. It is not open to the 4th respondent to now take the stand that the petitioner's performance during the years 2017-2020 was not satisfactory. Virtually, the petitioner has been black listed. If that be so, the petitioner could not have been allowed to take part in the tender process in the first instance. Having allowed the petitioner to take part in the tender, the 4th respondent cannot now cite the earlier performance of the petitioner as a ground for not allowing them to take part in the subsequent negotiation. This is nothing but violating the principles of natural justice. The petitioner has contended that only in the counter affidavit filed in this writ petition, the Panchayat has taken this stand of non satisfactory performance of contract in the previous years and that the petitioner was never put on notice earlier. Therefore, viewed from any angle, the order awarding the contract in favour of the 5th respondent cannot be said to be proper. The conduct of the 4th respondent Panchayat is discriminatory and violative of Article 14 of the Constitution of India.

10.The order impugned in this writ petition is quashed. The 4th respondent is directed to issue a fresh tender notification. The 4th respondent can evolve his norms for finalizing the tender. Till the same is finalized, the 5th respondent can continue the contract of carrying Solid Waste Management Scheme for the 4th respondent. The fourth respondent Panchayat is directed to complete the process of exercising and finalizing the new tender within a period of six weeks from the date of receipt of a copy of this order.

11.The writ petition is allowed on this terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skm



To

1.The District Collector,
Kanyakumari District @ Nagercoil.

2.Marungoor Town Panchayat,
Rep by its Special Officer,
Kanyakumari District.

3.The Special Officer,
Sucheendrum Town Panchayat,
Kanyakumari District.

4.The Executive Officer,
Marungoor Town Panchayat,
Kanyakumari District.

+1 CC to M/s.R.BRIJESH KISHORE, Advocate (SR-20729[F] dated
29/10/2020)

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-20752[F] dated
29/10/2020)

order made in
W.P. (MD) .No.11812 of 2020
and
W.M.P. (MD) .Nos.10225 & 10226 of 2020
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KMV(CO)
TR(07.12.2020) 5P 7C