



W.P.(MD) No.3480 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2020

CORAM:

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE

and

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. (MD) No.3480 of 2018

Jeyaraj

... Petitioner

-vs-

1.The Secretary to Government,
Public Works Department,
St.George Fort, Chennai.

2.The Chief Engineer,
Public Works Department,
Chepauk, Chennai.

3.The Superintending Engineer(H),
Constructions and Maintenance,
Reserve line Road, Palayamkottai,
Tirunelveli District.

4.The Divisional Engineer,
Highways, Public Works Department,
Nagercoil, Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents 1 to 3 to invite e-tender bid on the basis of the Go.Ms.No.177 of Finance salaries department dated 22.05.2007 and in the light of Union Ministry of Finance notification No.10/1/2011-PPC dated 30.11.2011.

For Petitioner: Mr.A.Rajkumar Sen

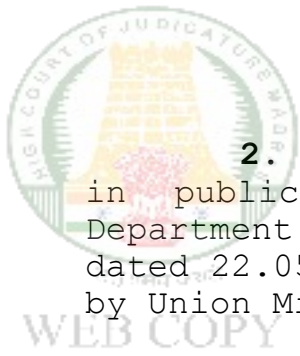
For Respondents: Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

[Delivered by the Hon'ble CHIEF JUSTICE]

Heard Mr.A.Rajkumar Sen, learned counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader for the State.

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



2. This writ petition is instituted praying for a mandamus in public interest directing the respondent - Public Works Department to invite e-tender bid in the light of G.O.Ms.No.177, dated 22.05.2007 and also keeping in view of the notification issued by Union Ministry of Finance, dated 30.11.2011.

3. The said prayer was made in the light of maintaining transparency in the award of tenders and in order to avoid any manipulations in the transaction of tender bids. The learned counsel submits that this was made mandatory, but the respondent - Public Works Department did not implement the same and thereby, caused serious discrepancies in large number of tenders giving rise to litigations unnecessarily.

4. We have heard the matter yesterday and passed the following orders:

"Heard Mr.A.Rajkumar Sen, learned Counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader, appearing for the respondents.

2. The case of the petitioner is that the respondents are not adopting e-tendering procedure, as a result whereof, transparency is lacking in the matter of awarding contracts by the respondents/Public Works Department.

3. A counter affidavit has been filed by the Superintending Engineer/respondent No.3 herein, who in paragraph No.6 and again in paragraph No.8 states that the instructions issued by the Government of Tamil Nadu does not mandate the e-submission of tenders and secondly, the Government order dated 22.05.2007, does not warrant any invitation of e-tender.

4. The said Superintending Engineer and the learned Special Government Pleader may obtain instructions directly from the respondent No.1/Government and file an affidavit on 16.10.2020, as to why and under what circumstances the e-tendering process is stated to be not warranted.

5. We may point out that in order to maintain transparency in award of contracts, the e-tendering process has been promulgated in almost all departments and therefore, we find no reason



for the respondents to resile from e-tendering method through the Superintending Engineer in the manner aforesaid.

6. Put up on 16.10.2020, for filing an affidavit to that effect and also relevant Government Orders, if any, in respect of the e-tendering procedure.

5. Learned counsel for the petitioner inviting the attention of the Court to the Government Order, dated 22.05.2007, of the Finance Department, Government of Tamil Nadu, urged "in the second phase, starting from 01.10.2007, bids can also be submitted on-line through the web sites of the concerned departments". It is submitted that this second phase commenced long ago, yet no action was taken. He therefore submits that the respondents have been avoiding the adoption of the e-tendering system and he submits that this being a mandate in public interest, this Court may issue necessary directions to give effect to the same, for which reliance has been placed by him on the Apex Court Judgment in the case of **Jaipur Aloo Aaratiya Sangh and others vs. State of Rajasthan and others**, reported in (2006) 8 SCC 450, Paragraph No.16 which is extracted herein under:

"16. Although the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India was entitled to pass appropriate orders in the said proceedings in public interest but where the requirements of law are to be complied with, the Court ordinarily should not dispense therewith. The Act is a regulatory one. While regulating the trade in agricultural produces, the State can issue notification as a result whereof the trade by the dealers in vegetables or fruits may have to be carried within the premises notified therefor. The Act contemplates steps to be taken at various stages. When such a step is taken, indisputably the validity of the action of the State will have to be judged keeping in view the nature of restraint and other relevant factors including the public interest involved."

6. On the other hand, the learned Special Government Pleader for the respondents, in response to our orders passed yesterday, has filed an additional affidavit of the third respondent / Superintending Engineer. The contents thereof are extracted herein under:

"1. It is respectfully submitted that as per the



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Government of Tamil Nadu G.O.Ms.No.177, Finance (Salaries) Department, dated 22.05.2007, it has been decided to implement e-tendering in a phased manner by electronic supply of tender documents in respect of open tender exceeding the value of Rs.10.00 lakhs and it shall commence from 01.07.2007 with the accessibility of tender documents on Government web site in addition to the other forms of supply of tender documents.

2. It is respectfully submitted that the procedure in the above Government order is being adopted by providing access to downloading of tender documents from Government web site and submitting tenders by the contractors and that has been stated in Para 6 of the counter affidavit by the 3rd Respondent. Further it is respectfully submitted that no online submission of tenders is stipulated in the G.O.Ms.No.177 Finance (Salaries) Department dated 22.05.2007.
3. It is respectfully submitted that the 3rd Respondent had submitted the above counter on 5th day of March 2018 and by now, the Government has upgraded the tender process by online submission.
4. It is respectfully submitted that Chief Engineer (H), Construction and Maintenance, Chennai in circular memo No.9133/Contracts-1/2016, dated 19.08.2019 has instructed to implement the e-tendering procedures including e-submission through Government web site "<https://tntenders.gov.in>" in respect of procurement where the estimated value of procurement is Rupees Twenty Five Lakhs and above in value for construction and Rupees Ten Lakhs and above in value for other categories of procurement inclusive of consultancies for construction from 22.08.2019 onwards.
5. It is respectfully submitted that 3rd Respondent, complying the above Chief Engineer (H), Construction and Maintenance, Chennai circular memo, invited tenders through online only from 30.08.2019 onwards and all the tender procedures are adopted only through online including downloading, uploading and e-submission.



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6. It is respectfully submitted that the Petitioner Thiru.T.Jeyaraj has also participated in the online tendering in response to 3rd Respondent's Tender Ref.No.TN.No.18/2019-20/HDO dated 29.01.2020 through e-Procurement System Government of Tamil Nadu.

7. It is respectfully submitted that the e-tendering procedure is being adopted from 22.08.2019 onwards as per Chief Engineer (H), Construction and Maintenance, Chennai circular memo and Petitioner is also being one of the Participant in the e-tendering procedure.

In the circumstances explained above, it is humbly prayed that this Writ Petition may be dismissed as e-tendering procedure is adopted since 22.08.2019."

7. Further, the learned Special Government Pleader for the State has brought on record G.O.Ms.No.73, dated 29.02.2016; circular memo issued by the Chief Engineer, Highways, dated 19.08.2019 and e-procurement system adopted by the Government of Tamil Nadu submitted in the Tender Summary Report dated 20.05.2020. These typed set of papers have been pressed into service to contend that all appropriate steps have been taken and the e-tendering system has been enforced and according to the additional affidavit, the petitioner himself has participated in the e-tendering process conducted by the Department.

8. Having considered the aforesaid submissions and having perused the aforesaid affidavit, at this stage, we are satisfied that the respondents have taken appropriate steps for enforcing the e-tendering process and therefore, we dispose of this writ petition taking notice of the same with a further direction to the respondents that they shall continue to abide by such directions, which are issued from time to time by the State Government and shall not register any failure in compliance of the e-tendering system, which is currently in vogue.

9. The writ petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CS-III)

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/ /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 to Government,
Public Works Department, St.George Fort,
Chennai.
- 2.The Chief Engineer,
Public Works Department, Chepauk, Chennai.
- 3.The Superintending Engineer (H),
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