



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2020

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.P. (MD)Nos.21551 and 21552 of 2019

and

W.M.P. (MD)Nos.18223, 18224, 18225, 18226 and 19718 of 2019

WEB COPY

M/s.Salem Automech (India) Private Limited
Represented by its Director Mr.S.Sidesh Kumar,
Regd. Office at No.5/37, Salem-Bangalore N.H. Road,
Jagir Ammapalayam, Salem-636 302,
Tamil Nadu ... Petitioner in both petitions
Vs.

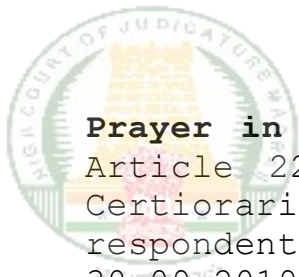
1.The Government of Tamil Nadu,
Represented by its Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai-600 009.

2.The Project Director/
Tender Inviting Authority,
District Rural Development Agency (DRDA),
Pudukkottai District. ... Respondents 1 and 2 in both
petitions

3.A.Mohamed Jawahir,
Proprietor,
Fountain Trading Company,
2328, West 2nd Street,
Pudukkottai. ... 3rd Respondent in W.P.(MD)No.21552 of 2019

[3rd respondent is impleaded vide order dated 10.09.2020
in W.M.P.(MD)No.8523 of 2020 in W.P.(MD)No.21552 of 2019]

Prayer in W.P.(MD)No.21551 of 2019: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent's impugned proceedings communicated vide email dated 30.09.2019 informing that the petitioner's bid submitted for the Tender bearing Ref.No: Package No.1-Push Cart-Pudukkottai District with Tender Tile: Package No.01-Rate contract for the supply of Pushcart for garbage handling required for the Village Panchayats in Pudukkottai District, dated 20.09.2019 has been rejected, quash the same and consequently, direct the respondents to permit the petitioner to participate further in the said Tender by opening and evaluating the petitioner's Price Bid.



Prayer in W.P. (MD)No.21552 of 2019: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent's impugned proceedings communicated vide email dated 30.09.2019 informing that the petitioner's bid submitted for the Tender bearing Ref.No: Package No.2-Push Cart-Pudukkottai District with Tender Tile: Package No.02-Rate contract for the supply of Pushcart for garbage handling required for the Village Panchayats in Pudukkottai District, dated 20.09.2019 has been rejected, quash the same and consequently, direct the respondents to permit the petitioner to participate further in the said Tender by opening and evaluating the petitioner's Price Bid.

[Prayer is amended vide order dated 18.09.2020 in W.M.P(MD). No.19719 of 2019 in W.P. (MD)No.21552 of 2019]

For Petitioner
(in both petitions) : Mr.Arun Anbumani
for Mr.N.Murali

For R1 and R2
(in both petitions) : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.M.Rajarajan
Additional Government Pleader

For R3
(in W.P. (MD)No.21552 of 2019)
: Mr.Ajmalkhan
Senior Counsel
for M/S.Ajmal Associates

COMMON ORDER

Heard Mr.C.Arun Anbumani, learned counsel appearing for the writ petitioner, Mr.K.Chellapandian, learned Additional Advocate General assisted by Mr.M.Rajarajan, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.Ajmal Khan, learned Senior Counsel appearing for the impleaded third respondent in W.P. (MD)No.21552 of 2019.

2.The Project Director, DRDA, Pudukkottai District, issued a tender notification dated 05.09.2020 calling for tenders for supply of Tri-cycle with rear body/Pushcart for garbage handling. The tender notification had two packages. The writ petitioner applied in response to the said tender notification. The writ petitioner is a company incorporated under the Companies Act and



was established in the year 2004. The petitioner is basically engaged in fabrication industry and they have been vendors for Public Sector Undertakings such as BHEL, etc.

3. The tender notification contemplated two stages, namely, Technical Bid Stage and Price Bid Stage. According to the writ petitioner, the tender inviting authority uploaded information in the web portal on 30.09.2019 that the petitioner was rejected at the technical evaluation stage itself. According to the petitioner, they submitted their complaint on the same day. Their grievance is that without their complaint being disposed of, the authorities opened the price bids and awarded the contract in favour of the impleaded third respondent. When the petitioner came to know of the same, they filed these writ petitions on 09.10.2019. The writ petitions were listed for admission on 10.10.2019. On the said date, the official respondents entered appearance and sought time to get instructions. The case was adjourned to 16.10.2019. On the said date, it was submitted by the learned Senior Counsel for the impleaded third respondent including the learned Additional Advocate General that work order was issued on 03.10.2019 itself and out of 1577 Pushcarts, 1500 Pushcarts had already been supplied. The learned Judge passed the following interim order:-

"The challenge made under the writ petitions is as against the tender issued by the respondents for procuring pushcarts. The tender was floated on 05.09.2019.

2. According to the respondents, the Technical Evaluation Committee opened the Technical bid on 24.09.2019 and rejected the petitioner's bid for non-submission of qualification documents. This decision was communicated to the petitioner and was also uploaded in the web-site on 30.09.2019.

3. Clause 20.6 of the tender conditions provides a period of five working days for making complaints, which shall be dealt with complaint handling protocol as available on the e-procurement portal.

4. But, it is submitted by the respondents that the work order was issued on 03.10.2019 and almost the successful bidder completed supply of the pushcarts. They have supplied 1,500 pushcarts, out of 1,577 pushcarts specified in the Work Order.

5. The petitioner has approached this Court on 09.10.2019, i.e., on the fifth day for making complaints specified in Clause 20.6 of the tender conditions.

6. A perusal of the printout from the web portal of the tender status dated 08.10.2019, reveals that



portal only on 30.09.2019. There is also no dispute that on the very same date, the writ petitioner lodged his complaint. The petitioner wanted to know as to why they have been rejected. The rejection order tersely reads that the petitioner had not filed the qualification documents. The petitioner wanted to know the exact details and called upon the tender accepting authority to furnish the same.

7. Even though the learned Additional Advocate General as well as the learned Senior Counsel would contend to the contrary, I am satisfied that this complaint given by the writ petitioner was not at all disposed of. I have no doubt whatsoever in my mind that Clause 20.6 of the tender notification was not adhered to by the tender accepting authority.

8. In fact, when similar infraction of the tender evaluation procedure took place in two other districts, namely, Thiruvannamalai and Salem, the writ petitioner's sister concerns filed W.P.No.31945 of 2019 etc., before the Principal Seat. By order dated 03.08.2020, the writ petitions were disposed of and the learned Judge specifically gave a finding that the Court was convinced that the authorities have failed to adhere to Clause 20.6 and therefore, remitted the matter back to them to follow the tender procedure as adumbrated in the notification.

9. I, also arrive at a similar finding.

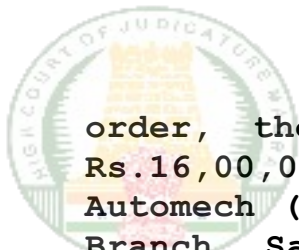
10. Even though I have held in favour of the writ petitioner by upholding his contention, I was wondering whether I could also grant the consequential relief of nullifying what had happened subsequently.

11. I felt that the writ petitioner can show magnanimity by accepting the offer of compensation made by the impleaded respondent.

12. I called upon the learned Senior Counsel appearing for the third respondent to deliberate on this aspect of the matter. I heard Thiru.S.Sideshkumar, who had filed these writ petitions, on behalf of M/s.Salem Automech (India) Private Limited through Video Conferencing.

13. Even though Mr.S.Sideshkumar does have some reservation, I persuaded him to accept the offer of the impleaded third respondent, so that, the issue can be given a quietus.

(*)14. Mr. Ajmal Khan, learned Senior counsel appearing for the impleaded third respondent on instructions states that within a period of three weeks from the date of receipt of a copy of this



order, the impleaded third respondent will deposit a sum of Rs.16,00,000/- (Rupees Sixteen Lakhs only) in favour of M/s.Salem Automech (India) Private Limited, State Bank of India, Commercial Branch, Salem-7, Account No.34227935140, IFSC Code: SBIN0007201, towards compensation for loss of source of income for the petitioner.

15.Since the petitioner has decided to treat the chapter as closed by accepting the offer made by the impleaded third respondent, the tender accepting authority shall disburse the amount payable to the impleaded third respondent within a period of two weeks.

16.The writ petitions are partly allowed with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

**(*) Amended as per order of this Court
made in WP(MD).21551 and 21552 of 2019
dated 29.09.2020.**

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sji

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

(*) to be substituted the order already despatched on 23/09/2020

1.The Secretary,
Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai-600 009.



2.The Project Director/
Tender Inviting Authority,
District Rural Development Agency (DRDA),
Pudukkottai District.

+1 CC to M/s.GP (SR-17690[F] dated 22/09/2020)

+2 CC to M/s.A. SARA VANAKUMAR, Advocate (SR-17589[F] ,SR-17588[F]
dated 21/09/2020)

W.P. (MD) Nos.21551 and 21552 of 2019
and

W.M.P. (MD) Nos.18223, 18224,18225,
18226 and 19718 of 2019
18.09.2020

VR (CO)
KK (23.09.2020) 7P 6C

PK (CO)
TR (29.09.2020) 7P 6C