



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.1187 of 2021
and WMP.No.1338 of 2021

K.Annaporani

.. Petitioner

VS.

1. The Commissioner,
Commissioner of Municipal Administration,
Ezhilagam, Chennai-600 005.

2. The District Collector,
Chengalpet District,
Chengalpet-603 001.

3. The Commissioner,
Pammal Municipality,
Pammal, Chennai-600 075.

4. Mr.D.Paneerselvam,

5. The Government of Tamil Nadu,
Rep. By its Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai-600 009.

.. Respondents

(5th respondent impleaded vide
order dated 23.07.2021 made in
WMP No.15632 of 2021)

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records pertaining to the entire proceedings pursuant to the calling of tender notification vide Na.ka.No.1994/2019/E1 dated 08.12.2012 and ending up with the tender work order issued by the 3rd respondent in favour of the fourth respondent and quash the same and further direct the 3rd respondent to call for fresh tenders for sewage and drainage cleaning works in the Pammal Municipality.



WEB COPY

For Petitioner : Mr.A.Saravanan

For Respondents : Mr.A.Selvendran,
Government Advocate for R1 and R2
Mr.P.Srinivas
Standing Counsel for R3
Mr.B.Janakiram for R4

ORDER

This Writ Petition is filed as against the tender notification issued by the third respondent dated 08.12.2020 for Sewage and Drainage cleaning work in the Pammal Municipality and the consequential allotment of tender in favour of the fourth respondent.

2. The case of the petitioner is that the third respondent has called for tenders, vide impugned notification dated 08.12.2020 for Sewage and Drainage Cleaning work in Pammal Municipality and the petitioner has also participated in the tender. The process of tender is of two categories and based on price bid, the third respondent has noted down certain conditions and one of the condition is that the participants must have sufficient experience of atleast minimum of 3 years of doing such similar work and must enclose a Solvency Certificate for a value of Rs.7.5 Lakhs and a concession has been provided that in lieu of Solvency Certificate, the participant can enclose a Demand Draft for a sum of Rs.1.50 Lakhs.

3. The petitioner has complied with all the required technical qualifications and he has quoted Rs.9.10 lakhs as bid amount, whereas the fourth respondent has quoted Rs.9.80 lakhs and therefore, the third respondent has awarded the contract for cleaning of sewage in favour of the fourth respondent, but the fourth respondent has not qualified in the technical evaluation itself.

4. Mr.A.Saravanan, learned counsel appearing for the petitioner would contend that the opening of the pre-bid document has been scheduled on 29.12.2020 and instead of opening the tender on 29.12.2020 as fixed in the tender document, the tender was opened on the next day i.e., on 30.12.2020 without informing anybody and while opening the tender, it was found that seals were found tampered and covers were found opened and though the petitioner has raised his objections, it was not considered and the fourth respondent was declared as a successful bidder. He would further contend that the fourth respondent was not having the required Solvency Certificate and instead he has not produced the Demand Draft for a sum of Rs.1.50 lakhs and on this ground alone, the fourth respondent ought to have been eliminated at the time of technical evaluation itself on 29.12.2020, but he was permitted to submit



the Demand Draft subsequently and he has been declared as a successful bidder and therefore, the entire tender process has been conducted to suit only the fourth respondent and therefore, it has to be set aside.

WEB COPY

5. Mr.P.Srinivas, learned counsel for the third respondent has drawn the attention of this Court to the counter affidavit of the third respondent, wherein the averments raised by the petitioner are opposed as follows:

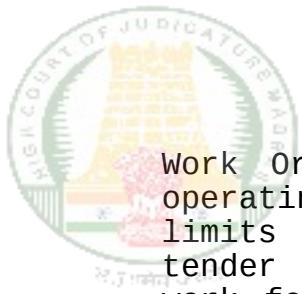
(i) With regard to the postponement of the opening of tender is concerned, it is averred that the date of opening of tender was fixed as 3.30 p.m. on 29.12.2020 and on that day, there was an urgent meeting called for by the Commissioner of Municipal Administration, Chennai for the purpose of finalizing the tender for the Underground Sewerage System (UGSS) at Pammal. The Commissioner as well as the Municipality Engineer have to attend the said meeting at the office of the Commissioner of Municipal Administration, RA Puram and therefore, a notice was published in the office of the respondents that the opening of the tender is postponed on 30.12.2020.

(ii) With regard to the second allegation is concerned, it is averred that as on the date of opening of the tender, the petitioner and her husband were also present and they have also signed in the Tender Register at the time of opening.

6. Mr.B.Janakiram, learned counsel appearing for the fourth respondent has drawn the attention of this Court to the counter affidavit of the fourth respondent and would submit that the tender was given to the fourth respondent by strictly following the procedure contemplated under the Tamil Nadu Transparency in Tender Rules, 2000 and the fourth respondent has deposited the amount of Rs.1.50 lakhs by way of DD and a receipt was also issued by the Pammal Municipality and there is no illegality committed in the allotment of tender by the third respondent. He would further add that the petitioner has participated in all stages of the tender process and affixed her signature in every process without recording any protest and therefore, prays for dismissal of this writ petition.

7. This Court has considered the rival submissions and also perused the materials placed before it.

8. After hearing the elaborate arguments of the learned counsel for the parties, this Court opined that the third respondent/Municipality has not followed the procedures as contemplated under the Tamil Nadu Transparency in Tender Rules, 2000 and after this Court pointed out certain defects in the tender process, the third respondent has filed an affidavit before this Court dated 22.07.2021 stating that the third respondent Municipality will cancel the Work Order given to the successful tenderer M/s.D.M.Tans, who have been issued with the

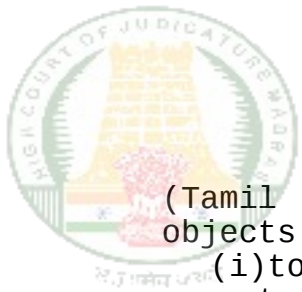


Work Order dated 13.01.2021, with regard to the licence for operating the Sewage Tanker Trucks in the Pammal Municipal limits for one year in view of the defects pointed out in the tender process and fresh tender will be notified for the same work for the subsequent period and it will take 45 to 60 days for inviting fresh tenders, completing the tender process and awarding of contract and therefore, the respondent Municipality seeks 60 days time to complete the entire tender process and awarding of contract in favour of the successful bidder. The affidavit filed by the third respondent Municipality dated 22.07.2021 is accepted and they can proceed further for issuance of fresh tender notification.

9. The learned counsel appearing for the fourth respondent also came forward to accept the said cancellation of the earlier work order and would file an undertaking affidavit that for non-performance period, he will make an application/request for proportional refund of the Licence Fees from the respondent Municipality. The fourth respondent shall file an undertaking affidavit before the Registry within a period of one week from the date of receipt of a copy of this order.

10. In view of the aforesaid submissions, the fourth respondent shall make an application to the third respondent/Municipality for refund of the proportional Licence Fees for the non-performing period and on such application being filed, the third respondent shall consider and pass appropriate orders.

11. In the case on hand, the petitioner has not made any allegation of corruption against the official respondents and the only grievance of the petitioner is that the third respondent has not followed the procedures contemplated under the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 and there is no uniformity among the Local Bodies in inviting the tenders as per the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 and they have taken out different modes in the tender process and therefore, he seeks indulgence of this Court to set right the anomalies among the Panchayats/Municipalities Corporations and appropriate direction may be given to the State Government to frame suitable guidelines for inviting tenders and awarding of contracts and issue appropriate instructions to all the Local Bodies to strictly follow the procedures as contemplated under the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 and also made it clear that they seek intervention of the Government in respect of the procedures to be followed and not in respect of the eligibility criteria.



12. The Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998) came into being with the following objects:

- (i) to provide for transparency in the public procurement and to regulate the procedure in inviting and accepting tenders and matters connected therewith or incidental thereto ;
- (ii) to maximise economy and efficiency in Government procurement ;
- (iii) to foster and encourage effective participation by tenderers in the process of tenders;
- (iv) to promote healthy competition among tenders;
- (v) to provide for fair and equitable treatment of all tenderers;
- (vi) it is expedient to eliminate irregularities, interference and corrupt practices in the matter relating to tender processes by providing transparency in such matters;
- (vii) to promote the integrity of the process of tenders and to promote fairness and public confidence in the processing of tenders by ensuring transparency in the procedure relating to procurement;

Section 7 of the Tamil Nadu Transparency in Tenders Act, 1998 deals with "Appointment of Tender Inviting Authority and Tender Accepting Authority"; Section 8 deals with "Opening of tender" and Section 9 deals with "Functions of the Tender Inviting Authority". Rule 5 of the Tamil Nadu Transparency in Tenders Rules, 2000 deals with "Publication of Tender Bulletin" and likewise Rule 16- "Supply of tender documents", Rule 18 "Place and time for receipt of tenders", Rule 20- "Minimum time for submission of tenders", Rule 21-"Opening of tenders", Rule 22- "Procedure to be followed at tender opening", Rule 23 - "Changes and alterations not to be permitted after tender opening", Rule 28 - "Initial examination to determine substantial responsiveness, Rule 29 - "Determination of the lowest evaluated price" and Rule 30 - "Preparation of evaluation report and award of tenders".

13. The aforesaid procedures have not been followed by the tender inviting authorities and therefore, it is submitted by the respective learned counsel for the parties that appropriate direction may be given to the Government to frame suitable guidelines for inviting tenders and awarding of contracts and to issue appropriate instructions to all the Local Bodies to follow the procedures as contemplated under the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000.

14. Mr.A.Saravanan, learned counsel for the petitioner has put forward the following suggestions, in order to prevent corruption, malafide and irregularities in the conduct of tender process:



WEB COPY

- (i) All deposits of EMD and other mandatory deposits should be made online.
- (ii) Any certificates which is required to be submitted as per the qualification criteria, the submission process should be made online. As far as practicable, all physical points of contact should be avoided to ensure a level playing field.
- (iii) The authorities should not be given any leeway to tweak any tender condition or allow dilution of a tender conditions once the tender documents are published.
- (iv) At the time of opening of the tender, if any of the bidder does not have any of the mandatory qualifications or has not submitted any of the documents, or has not deposited the amounts as per the tender conditions, those tenders have to be summarily rejected.
- (v) Any tender above a sum of Rs.5,00,000/- should only be by way of open tender and limited tenders should not be entertained, if the value is more than Rs.5,00,000/-.

15. The learned counsel for the fourth respondent has brought to the notice of this Court that there is no transparency followed in the tender process and in some of the cases, bidders were not allowed to participate in the tender process and therefore, the entire process should be videographed or put under CCTV coverage to avoid disputes in future and would further add that whenever tenderers approach Tahsildar or other departments for documents/certificates, especially for issuance of Solvency Certificate or Experience Certificate, they are not furnishing the same within time and therefore, they are deprived of their right to participate in the tender process and therefore, appropriate instructions be issued to the officers concerned for issuance of those certificates to the tenderers without any delay.

16. All the learned counsel for the parties have uniformly submitted that while submission of tender applications, the tenderers should furnish/enclose all the requisite documents/certificates along with the tender applications, failing which the Tender Scrutinizing Authority shall reject the same in accordance with the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 and however, this method has not been followed and also pointed that the participant shall enclose a Solvency Certificate and a concession has been provided that if the participant could not produce the Solvency Certificate, they can enclose a Demand Draft to participate in the tender, but unfortunately, in the case on hand, the aforesaid Demand Draft was paid by the fourth respondent after declaring him as the successful bidder.



WEB C

17. It is to be pointed out at this juncture that several litigations have been filed challenging the tender process conducted by tender inviting authorities and there are allegations of corruption, malpractices, nexus between the officials and the contractors, bias in awarding of contracts and unless the aforesaid allegations/irregularities are rectified, the object of Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 would be defeated. Strict compliance of the procedures contemplated under the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000, is required from the officers concerned in the tender processing system and deviations should be strictly viewed by the Government.

18. Therefore, in order to avoid serious allegations of corruption, bias, malafide and irregularities in the conducting of tender process and to set right the anomalies among the Municipalities/ Panchayats /Local Bodies in inviting tenders and awarding of contracts, this Court is of the view that it is appropriate for the State Government to take into consideration the aforesaid suggestions of the parties concerned, frame suitable guidelines for inviting tenders and awarding of contracts and to issue appropriate instructions to all the Local Bodies / Municipalities / Panchayats, through the Chief Secretary, Government of Tamil Nadu, to follow the procedures as contemplated under the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000, without any deviation.

19. This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

Jvm

To

1.The Commissioner,
Commissioner of Municipal Administration,
Ezhilagam, Chennai-600 005.

2.The District Collector,
Chengalpet District,
Chengalpet-603 001.



3.The Commissioner,
Pammal Municipality,
Pammal, Chennai-600 075.

4.The Secretary,
The Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009.

Copy to:
The Chief Secretary to Government,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

+1CC to Mr.A.Saravanan, Advocate, SR.No. 35288

W.P.No.1187 of 2021

VG II(CO)
B.VC (04/10/2021)