

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 4.3.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.2321 of 2021

and

W.M.P.Nos.2625, 2626 and 4713 of 2021

M/s.R.S.Deepak

: Petitioner

vs.

1. The State of Tamil Nadu
rep. by its Principal Secretary,
Department of Animal Husbandry,
Fort St. George, Chennai 600 009.
2. The Managing Director,
The Tamil Nadu Co-operative Milk
Producers' Federation Limited
(Transport Unit),
3-A, Pasumpon Muthuramalinganar Road,
Chennai 600 035.
3. The Joint Managing Director,
The Tamil Nadu Co-operative Milk
Producers' Federation Limited,
29 & 30, Industrial Estate,
Ambattur, Chennai 600 098.
4. The Deputy General Manager,
The Tamil Nadu Co-operative Milk
Producers' Federation Limited
Transport Unit,
Madhavaram Milk Colony,
Chennai 600 051.

: Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari calling for the records on the file of the second respondent with respect to Na.Ka.No.2012/T1/Po.Va.Pi/2020 dated 23.12.2020 Emailed to the petitioner herein only on 19.1.2021 and quash the same.

For Petitioner : Mr.C.Manishankar, Senior Counsel
for Mr.S.Senthil

For Respondents : Mr.Vijay Narayan, Advocate General
assisted by Mr.R.Balaramesh,
Special Government Pleader

ORDER

This writ petition is filed as against the orders of the second respondent dated 23.12.2020 in and by which the petitioner was disqualified for the bids for supply of milk to the respondents.

2. The petitioner is having transport service and providing transport service for AAVIN from the year 1998 and the petitioner was awarded a contract for the period from 2016 to 2018. Whiles, the second respondent had floated a centralized Tender vide Notification dated 7.1.2019 for supply of 312 Road Milk Tankers (RMTs) and the petitioner had also participated in the same. The technical bid was opened on 20.2.2019 and this petitioner has been declared as qualified and he was also invited for participating Rate Negotiation Meeting held on 14.6.2019 and in the re-negotiation meeting on 3.7.2019 and the new rate also had been finalized, however, the said tender has been cancelled without assigning any reason.

3. The third respondent has called for a fresh tender in the month of August 2019 for supply of 303 RMT and in this Tender Notification, the Tender conditions were drastically modified in respect of experience clause and model of the vehicle when compared to the previous Tender and in this Tender also the petitioner had participated and technical bid was opened on 10.10.2019, but the petitioner was not informed about the outcome regarding the qualified bidders. The petitioner wrote a letter on 14.10.2019 requesting the respondent to furnish the qualified bidders in the technical bid and also requested to furnish the details of the date on which the commercial bid would be opened for which, the petitioner had also received a reply dated 15.10.2019 from the third respondent stating that the technical bids which were opened on 10.10.2019 were under technical evaluation process and thereafter, the petitioner has not received any reply. Subsequently, after four months, the participants were invited on 5.2.2020 to participate in the commercial bid opening on 6.2.2020 at 3:00 PM at the office of the third respondent, Ambattur, Chennai i.e., after a delay of 57 days. After opening of the commercial bid, the Tender Committee orally informed the participants that the price negotiation would be done at a later date, but the respondents

have not finalized the Tender by declaring successful bidders and therefore, the petitioner and others bidders have filed writ petitions in W.P.Nos. 5076, 5078 and 5081 of 2020. In the said writ petitions, the third respondent had reported that they were going to float new Tenders and accordingly, the said writ petitions were withdrawn by the respective petitioners.

4. Thereafter the 4th respondent has floated the present Tender in Tender Notice No.748/T4/TPT/2020 dated 17.7.2020 for supply of 288 RMTs. The petitioner has also participated in the said Tender. The date for opening of technical bid was originally fixed as 31.8.2020, but, it was postponed to 1.9.2020. The technical bids were opened and the date for evaluation was fixed as 17.9.2020.

5. In the meantime, the petitioner has got some inputs from one of the participants that there is an attempt to select a few at the cost of other participants and therefore, the petitioner has informed the same by way of an email to the first respondent on 15.9.2020 requesting the first respondent to verify the same. However, the third respondent, without conducting any inquiry on the allegations, issued a notice on 28.9.2020 calling upon him to produce the documents and evidence on 9.10.2020 at their office with regard to the allegations he has made on 15.9.2020. He had also submitted his explanation through email dated 5.10.2020 and due to the pandemic situation prevailing by that time, the petitioner could not appear in person. On 9.10.2020 also, the petitioner had once again sent an email making a request to the third respondent to keep the matter as closed as even in the personal hearing he had to say only what he had stated in his reply on 5.10.2020 and requested to dispense with his personal appearance.

6. Whiles, the petitioner has not received any information regarding opening of commercial bid and therefore, sent another email on 18.1.2021 seeking for such information and to his shock and surprise, he had received a reply through email on 19.1.2021 with an attachment containing the impugned order of disqualification informing that the petitioner was disqualified on account of the aforesaid complaint made by the petitioner to the respondents as it amounts to violation of Rule 27(3) of the Tamil Nadu Transparency in Tenders Rules 2000 that he had attempted to establish unsolicited an unauthorized contact with the Tender Accepting Authority. Though this order of disqualification was dated 23.12.2020 and signed by the second respondent on 24.12.2020, it was served on the writ petitioner only on 19.1.2021 and the same is the subject matter in this writ petition.

7. Heard Mr.Manishankar, the learned Senior Counsel appearing for the petitioner and Mr.Vijay Narayan, learned Advocate General assisted by Mr.Balaramesh, learned Special Government Pleader appearing for the respondents.

8. Mr.Manishankar, the learned Senior Counsel appearing for the petitioner submits that letter in question dated 15.9.2020 was sent through email only in order to caution the first respondent on the allegations which they have received from other participants in the Tender and the same has been treated as an attempt for soliciting an unauthorised contact with the Tender Accepting Authority. The learned Senior Counsel would further submit that the petitioner has not been provided with an opportunity with a show cause notice that if the petitioner fails to produce the documents and evidence as called for by the respondents, then that would be a ground for disqualifying her. The learned Senior Counsel would further submit that the petitioner had only passed on the information he had received from other participations with the only intention that the respondents would be vigilant and that has been treated as one of the ground to disqualify the petitioners. The learned Senior Counsel would further point out the manner in which the previous tenders were cancelled without any finality.

9. Mr.Vijay Narayan, the learned Advocate General appearing for the respondents made his submission by referring to Rule 27 (3) of the Tamil Nadu Transparency in Tenders Rules 2000 that if any tenderer attempts to give extraneous pressure on the Tender Accepting Authority, then it could be a ground for disqualifying the tenderer. He would further submit that all the commercial bid papers were clubbed and kept in a box with proper lock and seal in front of the Committee Members after taking signature of all available tenderers and such box was kept in a separate room and therefore there is no question of any malpractice in the tender process, however, the petitioner has made a baseless complaint to the Tender Accepting Authority by way of extraneous pressure and therefore, by applying Rule 27(3) of the Tamil Nadu Transparency in Tenders Rules 2000, the petitioner was disqualified. So far as the first tender viz., Tender floated vide Tender Notification dated 7.1.2019 is concerned, the learned Advocate General has submitted that it was cancelled in view of the order of this court in W.P.Nos.4708 and 4729 of 2019 dated 10.7.2019, on the ground that the tender notification dated 7.1.2019 was published on 10.1.2019 after the announcement of Co-operative Election on 7.1.2019 from which date, the code of conduct came into force.

10. This court paid its anxious consideration to the rival submissions made by the learned Senior Counsel appearing for the

petitioner and the learned Advocate General appearing for the respondents and also perused the materials available on record.

11. The second respondent has floated a centralized tender for supply of 312 RMTs to the respondents vide Tender Notification dated 7.1.2019. The technical evaluation was also completed in the said tender process, but at the time of opening the price bids, the tender has been cancelled without assigning any reasons. Thereafter, another Tender Notification dated 27.8.2019 was floated by the third respondent. Though the technical evaluation was completed on 10.10.2019, the price bids were not opened for nearly 57 days and it was opened only on 6.2.2020 and even after the price bids and after completion of the negotiations, without assigning any reason, the second tender floated by the respondent was also cancelled and thereafter the present Tender has been issued on 17.7.2020, in which the petitioner also submitted their tenders and they have been informed that they been selected in the technical evaluation. Whiles, the petitioner has received some information that there is a chance for some malpractice to take place which they have passed on to the first respondent through an email dated 15.9.2020 which has been treated as an attempt to solicit and to bring extraneous pressure on the Tender Accepting Authority and the petitioner has been disqualified on section 23.12.2020 by applying Rule 27(3) of the Tamil Nadu Transparency in Tenders Rules, 2000.

12. Rule 27(3) of the Tamil Nadu Transparency in Tenders Rules, 2000 is extracted hereunder:-

"(3) Tenderers shall not make attempts to establish unsolicited and unauthorised contact with the Tender Accepting Authority, Tender Inviting Authority or Tender Scrutiny Committee after the opening of the Tender and prior to the notification of the Award and any attempt by any tenderer to bring to bear extraneous pressures on the Tender Accepting Authority shall be sufficient reason to disqualify the tenderer."

13. There is no doubt that Rule 27(3) of the Tamil Nadu Transparency in Tenders Rules, 2000 says that if any attempt is made by a tenders to solicit an unauthorized contact with the Tender Accepting Authority or to give extraneous pressure on the Tender Accepting Authority shall disqualify the tenderer after recording sufficient reasons therefor.

14. But, in this case, on receipt of an email dated 15.9.2020 from the petitioner, the third respondent had called for furnishing details and evidence, the petitioner is having with him in support of his claim and to appear for an inquiry on 9.10.2020. The petitioner had also sent his explanation stating that he had shared the information which he received orally and there was no intention at all for him to hurt anybody and if it is found that the complaint is bereft of any materials, that may be closed as one without merit and he sought for dispensing with his personal appearance for the enquiry considering the pandemic situation. It appears that the object of the complaint is only to caution and sensitise the respondents, but the same has been treated as an attempt to solicit the Tender Accepting Authority and the respondent has went to the extent of disqualifying the petitioner under Rule 27 (3) of the Tamil Nadu Transparency in Tenders Rules, 2000.

15. The learned Senior Counsel appearing for the petitioner has drawn the attention of this court that the order of disqualification dated 23.12.2020 was signed by the 2nd respondent on 24.12.2020, but, was communicated to the petitioner only on 19.1.2021. If the order of disqualification was very much available on 23.12.2020 or on 24.12.2020, in all fairness, it ought to have been communicated to the petitioner immediately, but, it has been sent belatedly through email only on 19.1.2021 after receipt of the petitioner's representation dated 18.1.2021 requesting for information on the opening of the Tenders.

16. It appears from the process of tender that the first tender was floated on 7.1.2019 and it was subsequently cancelled without assigning any reasons therefor after opening of technical bid in February 2019 and rate negotiation meeting on June 2019 and thereafter another tender was called for and even in that tender, the price bids were opened after 57 days after opening the technical bids, however, that Tender was also cancelled and in the present Tender, the petitioner appears to be disqualified without affording an opportunity of hearing merely for passing of the information to the Authorities which he had received orally, without providing an opportunity to the petitioner treating the same as a ground for the disqualification under section 27(3) of the Tamil Nadu Transparency in Tenders Rules, 2000 and communicated such order of disqualification 23.12.2020 to the petitioner only on 19.1.2021. All these things would prove that the order of disqualification was made in a malicious manner to eliminate the petitioner.

17. In view of the above, this writ petition is allowed. The impugned order of disqualification dated 23.12.2020 issued by the second respondent and emailed to the petitioner on 19.1.2021 is hereby quashed. The respondent shall open the price bid of the petitioner and consider the same along with other bids. No costs. The connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The State of Tamil Nadu
Principal Secretary,
Department of Animal Husbandry,
Fort St. George, Chennai 600 009.
2. The Managing Director,
The Tamil Nadu Co-operative Milk
Producers' Federation Limited
(Transport Unit),
3-A, Pasumpon Muthuramalinganar Road,
Chennai 600 035.
3. The Joint Managing Director,
The Tamil Nadu Co-operative Milk
Producers' Federation Limited,
29 & 30, Industrial Estate,
Ambattur, Chennai 600 098.
4. The Deputy General Manager,
The Tamil Nadu Co-operative Milk
Producers' Federation Limited
Transport Unit,
Madhavaram Milk Colony, Chennai 600 051.

+1cc to Mr.S.Senthil, Advocate, S.R.No.13905.
+1cc to the Government Pleader, S.R.No.14433.

W.P.No.2321 of 2021

PMK (CO)
CSR 26.03.2021