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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No. 14355 of 2021 and
W.M.P.Nos.15249, 15252 to 15254 of 2021

M/s.P.Rayin Constructions Company (P) Ltd
Rep. by its Managing Director P.Rahim
Having Office at
278A Cherambadi Bazar
Cherambadi
Nilgris District.643205

...

Petitioner

Vs.

Naduvattam Town Panchayat
Represented by its Executive Officer
Door No.16/129 Naduvattam
Naduvattam Post
Nilgris District 643 224

...

Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned notice in Na.Ka.No.285/2020 dated 11.06.2021 issued by the respondent and quash the same and consequently direct the respondent to issue work order in the name of the petitioner company pursuant to the petitioner's bid dated 22.06.2020 for the tendered work viz., improvements to B.T.Road and Construction of Culverts at Deivamalai and Improvements to B.T.Road at Mettuchery under (14th Finance IInd Part) - 2019-2020.

For Petitioner : Mr.P.Wilson
senior counsel for
M/s.P.Wilson Associates

For Respondent : Mr.T.Arunkumar

O R D E R

This writ petition was filed challenging the impugned notice issued by the respondent dated 11.06.2021 and for a consequential direction to the respondent to issue work order in



2. When the matter came up for hearing on 13.08.2021, this Court passed the following order:

2. When this Court entertained the writ petition, considering the facts and circumstances of the case, this Court ascertained from the petitioner as to whether he is ready and willing to continue with the work as per tender notification and the learned counsel appearing on behalf of the petitioner gave an undertaking that the petitioner will proceed further with the work and complete the same within a time limit.

4. It is seen from the records that the work order is dated 29.06.2020 and this work order is said to have been served on the petitioner on 20.07.2020. The learned Senior counsel appearing on behalf of the petitioner, on instructions, submitted that the work order was not served on the petitioner. Thereafter, a reminder notice was issued on 28.05.2021, wherein, the petitioner was directed to commence the work within a period of seven days and complete the same within the stipulated time. The petitioner immediately on receipt of this reminder notice through communication dated 08.06.2021 informed the respondent that they are willing to commence the work, but, however, the petitioner Company is yet to receive the work order. Therefore, the petitioner Company requested for sending the work order to effectively commence the work. Thereafter the notice dated 11.06.2021 was issued to the petitioner. Along with this notice, the work order dated 29.06.2020 was also annexed and it was received by the petitioner Company on 24.06.2021.

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further to process the applications received after the issuance of the fresh tender notification.

6. This Court suggested to the learned Government counsel appearing on behalf of the respondent that the petitioner is willing to commence the work as per the tender notification and therefore, an opportunity can be given to the petitioner to complete the work within the stipulated time. This Court also suggested that if there is any increase in value because of the delay, that amount can also be directed to be paid by the petitioner so that there is no revenue loss for the respondent Panchayat. If necessary, this Court will also impose a condition to the petitioner to furnish bank guarantee in order to ensure that the work is completed within the time stipulated, failing which, the bank guarantee can also be invoked. By adopting this process, the interest of the petitioner as well as the revenue of the respondent Town Panchayat can be balanced. This will be a win-win situation for both the parties and the respondent need not unnecessarily undertake the process of a fresh notification. Rather the work can get completed with the petitioner.

7. The learned Government Counsel appearing on behalf of the respondent seeks for time to take instructions from the respondent. Post this case under the caption 'for orders' on 19.08.2021."

3. Pursuant to the above order, this Court directed the learned standing counsel appearing on behalf of the respondent to take instructions from the respondent and to report before this Court. Accordingly, when the matter was taken up for hearing today, the learned standing counsel submitted the written instructions received from the respondent. It is seen from the written instructions that there are totally two works that are covered under the tender and the first work pertains to improvements to BT Road and construction of Culverts at Deivamalai, which work carries a value of Rs.42 lakhs. The second work pertains to improvements to BT Road at Mettuchery and the value of this work is fixed at Rs.30 lakhs. It is further seen from the written instructions that there are no price variations due to any escalation and the original value continues to prevail. The respondent wants the petitioner to complete the first work within 55 days and the second work within 15 days.

4. The learned senior counsel appearing on behalf of the petitioner fairly submitted that the petitioner has been given an opportunity to complete the work and therefore, the



petitioner will comply with any conditions that may be imposed by this Court. The learned senior counsel further submitted that there are heavy rains in the Nilgris and therefore, the same has to be taken into consideration by the respondent, while directing the petitioner to commence the work.

5. This Court appreciates the attitude of the respondent Town Panchayat for having taken the suggestions given by this Court. This shows the genuineness on the part of the Town Panchayat to get the work completed rather than standing on technicalities. The learned standing counsel appearing on behalf of the respondent also tried his best to convince the Town Panchayat, which has resulted in arriving at a solution in the present case.

6. The offer that has been given by the respondent Town Panchayat looks very reasonable. The period within which the work has to be completed has to be complied with by the petitioner. However, it is left open to the respondent Town Panchayat to take into consideration the prevailing climatic conditions and accordingly direct the petitioner to commence the work. Accordingly, the first work should be completed within 55 days and the second work has to be completed within 15 days from the date of commencement of the work.

7. In order to ensure that the petitioner completes the work within the time frame and does not cause any further delay in completing the work, there shall be a direction to the petitioner to furnish a bank guarantee for a sum of Rs.72,00,000/- (Rupees seventy two lakhs only) to the respondent Town Panchayat before the work is commenced. This bank guarantee will ensure that the petitioner completes the work on time and on failure to do so, will entitle the respondent Town Panchayat to enforce the same. By adopting this process, this Court has attempted to strike a balance between the right of the petitioner and the interest of the respondent Town Panchayat.

8. This writ petition is disposed of accordingly. No costs. Consequently connected Miscellaneous Petitions are closed.

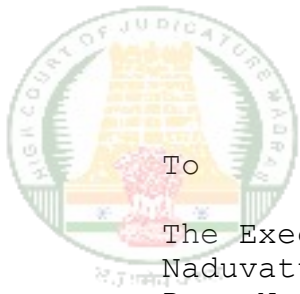
Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

RR



To

The Executive Officer
Naduvattam Town Panchayat
Door No.16/129 Naduvattam
Naduvattam Post
Nilgris District 643 224

+lcc to Mr.P.Wilson Associates, Advocate, S.R.No.42728

+lcc to Mr.T.Arun Kumar, Advocate, S.R.No.42882

W.P.No. 14355 of 2021

PA(CO)
CB(27/08/2021)