

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE
AND
The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.1151 of 2020
and C.M.P.Nos.14194 and 14195 of 2020

Sri Masadachi Amman Construction,
Rep. by its Managing Partner R.Sundaram,
3/1-F, Santhaipettai, Singalanthapuram Post,
Rasipuram Taluk, Namakkal District.

.. Appellant

-vs-

- 1.The Chief Engineer in Chief (General),
Public Works Department (Buildings),
Chepauk, Chennai 600 005.
- 2.The Chief Engineer,
Public Works Department (Buildings),
Chengulam Colony, Circuit House,
Trichy-20.
- 3.The Superintending Engineer,
Public Works Department,
Building (Construction & Maintenance) Circle,
P.B.No.724, Kumarasamipatti Post,
Salem 636 007.

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against
the order dated 06.11.2020 passed in W.P.No.16008 of 2020 on the
file of this Court.

Prayer in WP.No.16008 of 2020: Writ petition filed under Article
226 of the constitution of India to issue a writ of Mandamus to
direct the third respondent to receive the petitioners tender
application in respect of Short Term Tender Notice No.14/2020-
2021/SE/B(C&M) C/SiM dated 15.09.2020 and to permit the
petitioner to participate in the above tender process.

For Appellant : Mr.A.M.Esakkiappan

For Respondents : Mr.V.Jayaprakash Narayanan
State Government Pleader

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The appeal is directed against an order of November 6, 2020, passed on the appellant's writ petition. By such order, the writ petition, challenging a tender process on the ground that the petitioner's bid had been arbitrarily refused, was rejected.

2. The short case of the appellant-writ petitioner is that the time to receive the tender papers was originally fixed till October 10, 2020, but later extended till 3 pm of October 22, 2020. At paragraph 7 of the writ petition, it has been averred that the writ petitioner's tender application along with earnest money deposit were sent to the third respondent to the petition by post on October 21, 2020. The further case made out is that on October 22, 2020, the third respondent refused to receive the cover and returned the same. The copy envelope relied upon in course of the proceedings also reveals the endorsement "Refused" and bears the date of October 22, 2020.

3. The Writ Court wondered why the writ petitioner had waited till the last moment before posting the application. The Writ Court also noticed that the time of receipt of tender forms was extended till 3 pm of October 22, 2020 and observed that the writ petitioner had been unable to establish that his papers were delivered to the third respondent by 3 pm on October 22, 2020.

4. While it is open to any tenderer to choose the very last minute to deposit his bid - just as when the issue of limitation is raised, the Court cannot question why the person approached the forum at the last minute - but the second ground indicated in the impugned order is unimpeachable. For the petitioner to have succeeded in demonstrating that the petitioner's tender papers were arbitrarily refused or wrongfully not received by the third respondent to the writ petition, the appellant ought to have asserted and established that the delivery was effected prior to 3 pm of October 22, 2020. There is no assertion to such effect in the writ petition, far less any attempt to establish the same.

5. In the light of the material that was before the Writ Court, the Writ Court could not have arrived at any conclusion other than the writ petitioner's failure to establish that the writ petitioner had caused the tender papers to be delivered to the appropriate office of the third respondent within the time permitted.

6. It appears that better sense dawned on the appellant after the horse had bolted. An RTI application has subsequently been made and the answer furnished to the query is sought to be relied upon at this stage. Such a procedure would be clearly unacceptable since the writ petition had made no attempt to obtain the necessary information and rely thereon before the Court of the first instance. It is elementary that for an Appellate Court to receive additional evidence, the appellant must establish that the evidence was not available to the appellant despite exercise of due diligence at the relevant point of time. In this case, the appellant had made no attempt to contact the postal authorities or obtain any information from them as to the time of delivery of the postal cover. Indeed, as noticed above, paragraph 7 of the writ petition did not even assert the time of delivery of the relevant postal article. In such circumstances, particularly when the tender process has been completed and even the work order issued, little can be done for the petitioner at this stage.

7. For the reasons aforesaid, W.A.No.1151 of 2020 is dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.14194 and 14195 of 2020 are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

1.The Chief Engineer in Chief (General),
Public Works Department (Buildings),
Chepauk, Chennai 600 005.

2.The Chief Engineer,
Public Works Department (Buildings),
Chengulam Colony, Circuit House,
Trichy-20.

3.The Superintending Engineer,
Public Works Department,
Building (Construction & Maintenance) Circle,
P.B.No.724, Kumarasamipatti Post,
Salem 636 007.

+1cc to the Government Pleader SR.7336

W.A.No.1151 of 2020

SR II(CO)
CB(22/02/2021)



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