



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.03.2021

DELIVERED ON : 24.03.2021

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CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. [MD]Nos.3865 & 3867 of 2021

and

W.M.P. [MD]Nos.3101, 3102, 3105 & 3106 of 2021

M/s.Sankaranand Infra  
B-303, Alpine Towers,  
No.3, Palaniappa North Street,  
Sengunthapuram,  
Karur.

... Petitioner in both Writ Petitions

Vs.

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Kumbakonam Limited,  
Kumbakonam,  
Thanjavur District.

... Respondent in both Writ Petitions

**COMMON PRAYER:** Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writs of Certiorari, calling for the records pertaining to the impugned tender notifications issued by the respondent vide Ref.No.TNSTC/KUM/CIVIL-CORP/621-2/2021 and Ref.No.2/2021-2022 dated 25.01.2021 and 29.01.2021, respectively and quash the same in so far as the condition in

*'Chapter II(2) - General conditions / instructions to the tenderer - clause 'f' - the applicant should have on going or completed project for atleast one Bus Stand Work of similar nature with value (90% of project value) not less than Rs.35 crores under a single agreement in any one of the proceeding 5 years (including the Goods and service tax (GST) amount) '*

*and*

*in the chapter II(4) - clause 'a'*

*'the contractor may have the option to present the tender directly or to send registered post acknowledgment due on or before the last date for receipt of tenders' as ultravires.*

*and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.*



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For Petitioner :Mr.Isaac Mohanlal  
Senior Counsel  
for Mr.R.Maheswaran  
For Respondent :Mr.Sricharan Rengarajan  
Additional Advocate General  
Assisted by Mr.J.Senthil Kumariah  
[In both Writ Petitions]

**COMMON ORDER**

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The above writ petitions raise common issues and grounds and also filed by the same entity and hence, they are taken up together for common disposal as under.

2.The facts as stated in W.P.[MD]No.3865 of 2021 are stated hereunder for the disposal of both the writ petitions:

2.1.The petitioner is a registered partnership firm engaged in civil works. The firm is also registered as contractor under various departments like National Highways, Public Works Department, Municipality etc., According to the petitioner firm, it had participated in several tenders floated by various Government departments like National Highways, Public Works Department, Municipality etc. The firm claims to have executed the works entrusted to it within the time frame stipulated in the contract and also without any complaints by the tender issuing authorities.

2.2.The grievance of the petitioner herein is that the respondent in both the writ petitions issued two tender publications one on 25.01.2021 and another on 29.01.2021, inviting tenders from Class I contractors for construction of bus stand cum passenger refreshment centre at Pungambadi Melpham Village, Aravakurichi at the estimated cost of Rs.4.20 Crores and another tender notification dated 29.01.2021 in respect of construction of additional mofussil bus stand with buildings for commercial complex at and infrastructure facilities Thoranakalpatty Village, Karur, at the estimated cost of Rs.40 Crores.

2.3.According to the petitioner, when the tender document was downloaded, he came to know certain onerous conditions had been stipulated as per which, he was not eligible to apply and participate in the tender, though he was otherwise a registered Class I Contractor of Government Department. According to the petitioner, the conditions were tailor-made to suit the contractors of the respondent's choice. Challenging certain stipulations in the tender notifications dated 25.01.2021 and 29.01.2021 both writ petitions have been filed by the petitioner firm.

3.The learned Senior Counsel Mr.Isaac Mohanlal appearing for the petitioner firm would submit that the impugned tender notice



contains irrational, unreasonable and onerous conditions with a view to exclude the participation of the contractors like the petitioner and to award the same to the chosen few by the respondent. He would particularly refer to tender condition No.2, which reads as follows:

**"2.Conditions for Pre-Qualification/ Eligibility Criteria:**

*Qualification hereunder is invited in accordance with TNSTC Kumbakonam procedure for qualification of tenderers.*

*a.Only the contractors registered with Tamil Nadu State Public Works Department, Municipality and other Govt. Departments under Class.I (STATE LEVEL) (as per revised classification) with monetary limit of above Rs.35.00 Crores (Rupees Thirty Five Crores only)."*

4.He would also refer to tender condition 'f', that reads as follows:

**"f.** *The Applicants should have ongoing or completed project for at least one "BUS STAND" work of similar nature with value (90% of project value) not less than Rs.35.00 Crores (Rupees Thirty Five Crores only) under a single agreement in any one of the proceeding "Five Years". (Including the Goods and Service Tax (GST) Amount)."*

5.According to the learned Senior Counsel, the above condition would mean that the contractors who had already been entrusted with the similar work alone would be again and again considered for award of contract. The result of such stipulation mean that there will be total exclusion of any new contractors competing for the award of tender. Therefore, the *malafide* is writ large on the tender conditions provided in the tender notices.

6.The learned Senior Counsel would submit that option is provided for presenting the tenders directly to the authority. Such option provided in the tender notification runs contrary to the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 [hereinafter referred to as 'Act, 1998']. According to the learned Senior Counsel, if the tender documents are allowed to be presented directly it will certainly lead to corrupt practices.

7.In regard to the above contention, learned Senior Counsel referred to Rule 18 of the Tamil Nadu Transparency in Tenders Rules, 2000. He would particularly rely on Sub Clauses 1, 2 & 3 of Rule 18, which reads as under:



**"18.Place and time for receipt of tenders - (1)**

The Tender Inviting Authority shall ensure that adequate arrangements are made for the proper receipt and safe custody of the tenders at the place indicated for the receipt of tenders. Such of the tenders that are received through electronic mail shall be kept electronically locked.]

(2) The Tender Inviting Authority shall take all measures to ensure that no intending tenderer is hindered in submitting his tender.

(3) The Tender Inviting Authority shall permit the submission of tenders by post or courier or by electronic submission through the designated website, wherever applicable, provided that the Tender Inviting Authority shall not be responsible for any delay in transit in such cases.]"

8.The Rule does not provide for presentation of the tender document directly and hence, on this ground alone, the present notification is liable to be set aside.

9.Learned Senior Counsel would submit that the calling of tenders with the kind of conditions that are incorporated in the impugned notices, the tender process would not be carried through fairly and reasonably and therefore, the intervention of this Court is called for to prevent miscarriage of justice.

10.Per contra, learned Additional Advocate General would submit that these writ petitions have to be dismissed *in limine* for the simple reason that the petitioner has not even submitted his bid in response to the tender notice and the question of challenging the conditions in the notice did not arise at all. The learned Additional Advocate General on merits would draw reference to the conditions of tender notices under Chapter II Clause 2. In one of the conditions that is prescribed in Sub Clause 'b' to Clause 2 that the applicant should have been in the construction field at least for the past 5 years in the same name and style in the civil engineering construction. The said clause 'b' reads as under:

**"b. The Applicants should have been minimum in the same name and style in the Civil Engineering Construction field at least for the past FIVE years."**

11.He would also refer to Sub-Clause 'c', which is again extracted hereunder:

**"c. Audited Balance sheet with Chartered Accountant's Certificate for the post 'FIVE' years in the case of individual Contractors, Partnership Firms, Private / Public Limited Companies."**



12. With reference to the above, the learned Additional Advocate General would draw the attention of this Court to an application submitted by the petitioner partnership firm for change of name in 2020 and the same was registered thereafter on 2020 and 2021. In that view of the matter, the first part of the requirement namely Sub Clause 'b' was not fulfilled at all by the petitioner namely five years experience in the field, with the same name and style. If Sub Clause 'b' is not satisfied, the same would also apply for Sub Clause 'c' also.

13. Learned Additional Advocate General would submit that in regard to the adherence to the provisions of the Act, 1998, he would refer to Section 15 which provide for specification of evaluation criteria.

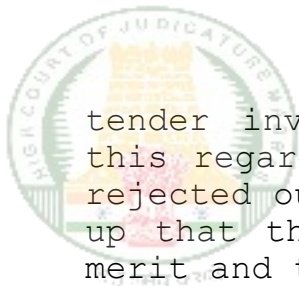
14. Section 15 of the Act, 1998 reads as under:

**"15. Tender documents to clearly specify evaluation criteria** - (1) *The tender documents shall clearly indicate the criteria [including financial bid] which are to be adopted for evaluating the tenders and how such criteria will be quantified or evaluated; and*

*(2) The qualification criteria in terms of the registration of contractors in the cases where the Procuring Entity has a system of registration of contractors, the required experience, available manufacturing and construction capacity, technical and other manpower and financial status shall be clearly stated in the tender documents.]"*

15. The tender issuing authority has the power to specify any eligibility criteria and the same cannot be questioned by the petitioner herein at all. Likewise, Section 14 of the Act provides for imposing commercial conditions as they deem fit in the circumstances of the calling of the tender. Therefore, the Act and the provisions thereto have been followed and the petitioner has no valid objections questioning the impugned order. As regards the objection as to the presentation of the tender document directly, the learned Additional Advocate General would refer to Section 18 which has been extracted supra, which clearly provide for such option. According to the learned Additional Advocate General, that apart from presentation of documents directly, permission may also be granted for submission of tenders by post or by electronic submission.

16. In fact, he would refer to Section 16 of the Act which provide for receiving the tender documents from the office of the



tender inviting authority directly. Therefore, the objection in this regard is absolutely without any basis and the same has to be rejected outright. The learned Additional Advocate General would sum up that the challenge by the petitioner is absolutely without any merit and therefore, has to be dismissed with cost.

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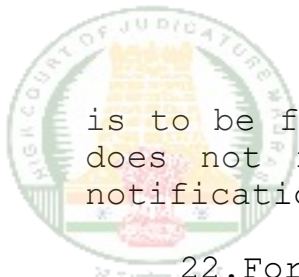
17.This Court has considered the submissions of the learned Senior Counsel Mr.Isaac Mohanlal, for the petitioner and Mr.Sricharan Rengarajan, learned Additional Advocate General for the respondent.

18.In regard to the submissions made on behalf of the petitioner that the conditions were tailor-made to exclude the persons like the petitioner and to favour certain chosen ones for award of contract, no concrete material has been placed before this Court in support of such contentions. The allegations of this nature can be easily made to bring any tender process under a cloud, but, proving the same is a difficult job. At the same time, it is not open to the petitioner to come up with baseless objections in order to malign the tender process.

19.As demonstrated by the learned Additional Advocate General, the petitioner has no *locus standi* in the first place to challenge the tender notifications, as admittedly he has not chosen to submit his bid in response to the notification. No doubt, it was argued that the conditions were so onerous and unreasonable and the contractors like the petitioners were excluded. But, it is up to the tender issuing authority to prescribe as many conditions as they deem fit in terms of the provisions of the Act, 1998.

20.The two conditions which were pointed out on behalf of the petitioner contending that the same have been included in the tender which is for achieving a collateral purpose does not merit serious consideration of this Court, in the circumstances of the case. On the other hand, it was well demonstrated on behalf of the respondent by the learned Additional Advocate General that the petitioner firm is not even qualified to parttake in the tender process and therefore, he has no *locus standi* to question the tender notification. In fact, the way in which the objections were raised on behalf of the petitioner show that he wants the tender issuing authority to incorporate conditions tailor-made to suit the qualifications of the petitioner and not otherwise.

21.The objection regarding the presentation of the document directly which might give rise to corrupt practices is a general statement which is not supported by any legal material. On the other hand, presentation of document directly is well within the frame work of the Act. On the whole, this Court finds that there is absolutely no merit and substance in the challenge and the petitioner's attempt to sully the tender process into a controversy



is to be frowned upon and also to be rejected outright. This Court does not find anything seriously wrong or amiss with the tender notification and the conditions imposed therein.

22.For the above stated reasons, both the writ petitions stand dismissed as being completely devoid of merits and substance. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

MR

To

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Kumbakonam Limited,  
Kumbakonam,  
Thanjavur District.

+1 CC to Mr.D.SIVARAMAN, Advocate ( SR-13413[F] dated 24/03/2021 )  
+2 CC to Mr.R.MAHESWARAN, Advocate ( SR-13492,13491[F] dated  
25/03/2021 )

**ORDER MADE IN**  
**W.P. [MD]Nos.3865 & 3867 of 2021**  
**and**  
**W.M.P. [MD]Nos.3101, 3102, 3105 & 3106 of 2021**  
**24.03.2021**

VB (07.04.2021) 7P 5C