



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	01.07.2021
DELIVERED ON:	05.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) No.7885 of 2021

and W.M.P. (MD) No.6019 of 2021

(Through Video Conference)

N.Yanose

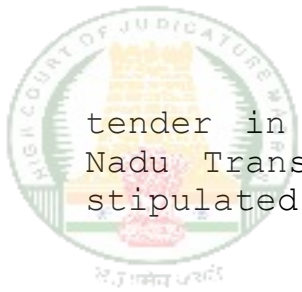
... Petitioner

Vs

- 1) The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Municipal
Administration and Water Supply ,
Fort St.George,
Chennai 600 009
- 2) The Director of Town Panchayat,
O/o the Director of Town Panchayat,
Kuralagam, Kanyakumari.
- 3) The District Collector,
O/o the District Collector,
Kanyakumari District, Kanyakumari.
- 4) The Assistant Director of Town Panchayats,
O/o the Assistant Director of Town Panchayats,
Nagercoil, Kanyakumari District.
- 5) Thiruparapu Selection Grade Panchayat,
Rep. by its Executive Officer,
Thiruparapu,
Kanyakumari District.
- 6) Mrs.Rama Devi
The Executive Officer,
Kulasekaram Town Panchayat,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order impugned Tender Notification Na.Ka. No.454/20/A1 dated 09.02.2021 on the file of the Respondent No.5 and quash the same as illegal and consequently for a direction to direct the respondent No.5 to conduct the



tender in accordance with procedure established under the Tamil Nadu Transparency in Tenders Rules, 2000 within the time frame stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.Veerakathiravan, Senior
Standing Counsel for State.
Assisted by Mr.M.Lingadurai,
Government Advocate.

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O R D E R

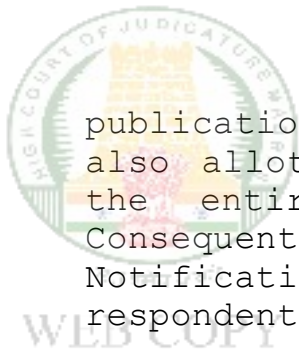
The subject matter of challenge in the present Writ Petition is the Tender Notification issued by the fifth respondent dated 09.02.2021 and for a consequential direction to conduct the Tender process in accordance with the procedure under the Tamil Nadu Transparency in Tenders Rules, 2000 (hereinafter referred to as the 'Rules').

2. The case of the petitioner is that he is a I-Class Contractor registered with the Public Works Department (P.W.D.) and other local bodies. The petitioner had submitted his application for renewal of his Registration before the P.W.D. and all the local bodies for the year 2020-2021 along with Solvency Certificate. According to the petitioner, the fifth respondent alone returned his application on the ground that the genuineness of the Solvency Certificate must be ascertained. It is alleged that this process was not undertaken by any other Authority, except the fifth respondent.

3. The petitioner alleges that the fifth respondent had intentionally delayed the renewal of the Registration in order to keep away the petitioner from participating in the Tender. This, according to the petitioner, was due to the malafide intention of the fifth respondent against the petitioner, in view of the petitioner making complaints against the fifth respondent. To substantiate this stand taken by the petitioner, an incident that had taken place in the year 2017 was also cited at paragraph no.12 of the affidavit.

4. In view of the fact that the Registration of the petitioner was not renewed, the petitioner was not able to participate in the Tender. After ensuring that the petitioner did not participate in the Tender, the fifth respondent renewed the Registration of the petitioner on 23.02.2021. This according to the petitioner will prove that the fifth respondent had intentionally kept the renewal application pending on some frivolous ground and subsequently renewed after preventing the petitioner from participating in the Tender.

<https://hcservices.courts.gov.in/hcservices> 5. The petitioner has also alleged that there was no proper



publication of the Tender in the newspapers and the Tender was also allotted through private negotiations to known persons and the entire process was held in violation of the Rules. Consequently, the petitioner has chosen to challenge the Tender Notification and has sought for a direction to the fifth respondent to conduct fresh Tender in accordance with the Rules.

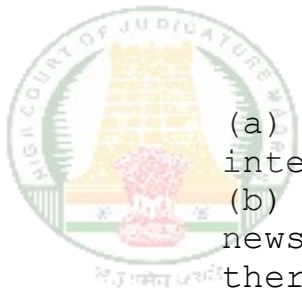
6. The fifth respondent has filed a counter affidavit in this case. The fifth respondent has taken a stand that, a complaint was received on the genuineness of the Solvency Certificate produced by the petitioner and therefore, his application was kept pending seeking for a report from the concerned Tahsildar. Immediately, after the report was received, the Registration was renewed. It is also stated in the counter that the allegations made by the petitioner to the effect that the Tender process was made in violation of the Rules, is unsustainable.

7. According to the fifth respondent, the sanctioned limit for the fifth respondent Panchayat is Rs.8,00,000/- (Rupees Eight Lakhs) for an individual Work. As per the norms fixed by G.O.Ms.No.243, Finance [Salaries] Department dated 21.08.2017, the Works taken up by the fifth respondent did not qualify for a paper publication and it was enough if the publication is made in the notice Board of the fifth respondent office. This procedure has been followed by the fifth respondent.

8. It is further stated in the counter affidavit that the Tender Notices were sent to all the registered Contractors through post and twenty Contractors participated in the Tender process. The allegation made by the petitioner that the Tender was allotted through private negotiation, is also stoutly denied in the counter affidavit. The fifth respondent has also taken a stand in the counter affidavit to the effect that the petitioner is in the habit of filing frivolous complaints and on one such occasion, when the petitioners had approached this Court, this Court had dismissed a writ petition in W.P.(MD) No.22529 of 2018 by imposing costs of Rs.10,000/- (Rupees Ten Thousand only) against the petitioner by order dated 24.01.2019. Therefore, the fifth respondent has sought for the dismissal of this writ petition.

9. Heard Mr.T.Lajapathi Roy, learned counsel for the petitioner and Mr.Veerakathiravan, learned Senior Standing Counsel for State, assisted by Mr.M.Lingadurai, learned Government Advocate for the respondents.

10. The main grounds that have been raised by the learned counsel for the petitioner while questioning the Tender notification issued by the fifth respondent are:



- (a) the fifth respondent has acted with a malafide intention against the petitioner;
- (b) the Tender notification was not published in the newspapers and they did not receive wide publicity and therefore, it is in violation of the Rules;
- (c) The Tender has been allotted through private negotiations to known Contractors and therefore, it is vitiated; and
- (d) The exercise undertaken by the fifth respondent will not fetch the maximum revenue due to violation of the Rules and hence, it will cause loss to the Ex-chequer.

11. Per contra, Mr.Veerakathiravan, learned Senior Standing Counsel for the State, submitted that the allegations made by the petitioner is unsustainable. The learned Senior Standing Counsel by bringing to the notice of this Court the fact that there were totally ten Works that were put into Tender and the value of each Work did not exceed Rs.8,00,000/- (Rupees Eight Lakhs) individually, submitted that the same did not require a paper publication as per the revised norms published under G.O.Ms.No.243, Finance [Salaries] Department dated 21.08.2017. It was submitted that the Tender Notification was published in the notice board of the fifth respondent office and also in the notice board of nearby local bodies and that sufficiently satisfied the requirements under the Government Order. It was also submitted that the tender notification was issued to thirty two (32) registered Contractors and as many as 20 Contractors participated in the Tender process. Therefore, it was submitted that the allegation made by the petitioner to the effect that Tender process took place through private negotiations, is completely unsubstantiated. The learned Senior Standing Counsel further submitted that the petitioner is in the habit of filing repeated complaints and writ petitions before this Court and thereby has attempted to stall the Tender process on numerous occasions in the past.

12. In the present case, the renewal of Registration of the petitioner was pending since the genuineness of the Solvency Certificate was questioned and ultimately, it was cleared only after receiving the report from the Tahsildar, Thiruvattar and thereafter, the Registration of the petitioner was renewed on 23.02.2021. It will be too difficult for this Court to arrive at a finding with regard to the allegation made by the petitioner that the fifth respondent intentionally had referred the Solvency Certificate to the Tahsildar and thereby prevented the petitioner from participating in the Tender. The materials placed before this Court shows that a complaint was received on the genuineness of the Solvency Certificate produced by the petitioner and therefore,



the fifth respondent had to refer it to the Tahsildar and get the clearance. Whether this whole exercise itself is attended with malafides is too difficult to answer in view of the disputed questions of fact. While rendering a finding on malafides, this Court cannot give its finding on a subjective satisfaction and it is important for this Court to have very strong materials to give a positive finding. This Court does not find such strong material to sustain the ground taken by the petitioner that the fifth respondent had an ill will against the petitioner.

13. The previous incident that has been cited in paragraph nos.12 and 13 of the affidavit, filed in support of the writ petition shows that there was some complaint given by the petitioner against the fifth respondent. But, it ultimately did not result in any action being initiated against the fifth respondent. Therefore, this Court is not in a position to render a positive finding on the issue of malafides.

14. Insofar as the ground raised by the petitioner that the Tender Notification was not in accordance with the Rules and it was not widely published, it is important to take note of the revised norms fixed under G.O.Ms.No.243 , Finance [Salaries] Department dated 21.08.2017. The norms clearly specify that paper publication would be required only where the value of the Work exceeds Rs.10,00,000/- In the present case, the fifth respondent has brought in totally ten(10) Works into Tender and none of the Work exceeds Rs.8,00,000/- individually. Therefore, under the Government Order, publishing the Tender Notification in the Notice Board of the office belonging to the fifth respondent as well as in the notice Board of the nearby local bodies, falling within Thakkalai Block, was sufficient compliance of the Government Order.

15. It is also made clear from the counter affidavit filed by the fifth respondent and the materials placed before this Court that, totally twenty (20) Contractors have participated in the Tender process and submitted their Tenders. Therefore, the allegation made by the petitioner that there were private negotiations between the fifth respondent and the Contractors may not hold water.

16. In view of the above discussion, this Court does not find any strong ground to interfere with the Tender Notification issued by the fifth respondent. Just because, the petitioner was not able to participate in the Tender, this Court cannot interfere in the Tender process, where several Works are involved and there was a large scale participation in the Tender process



17. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected W.M.P.(MD) No.6019 of 2021 is closed.

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Sd/-

Assistant Registrar (CS-I)

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

- 1) The Principal Secretary,
Department of Municipal
Administration and Water Supply,
Fort St.George, Chennai 600 009
- 2) The Director of Town Panchayat,
O/o the Director of Town Panchayat,
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- 3) The District Collector,
O/o the District Collector,
Kanyakumari District, Kanyakumari.

+1 CC to M/s.SPL GP (SR-21343[F] dated 06/07/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-21274[F] dated 06/07/2021)

Order made in
W.P. (MD) No.7885 of 2021

Dated:
05.07.2021

CN(13.07.2021) 6P 6C