



WEB COPY

W.A.[MD]Nos.1239, 1241 & 1242 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. [MD]Nos.1239, 1241 & 1242 of 2021

and

C.M.P. [MD]Nos.5202, 5204 & 5205 of 2021

M/s.Vijay Durgambiga Construction,
Rep. by its Partner,
N.Manoj, S/o.E.Natarajan
D.No.4D, Ramalinga Street,
Vannarpettai, Tirunelveli. : Appellants in all Writ Appeals
Vs.

1.The Superintending Engineer (H),
NABARD and Rural Roads,
Tirunelveli - 2.

2.The Divisional Engineer (H),
NABARD and Rural Roads,
Tirunelveli - 2. : Respondents in all Writ Appeals

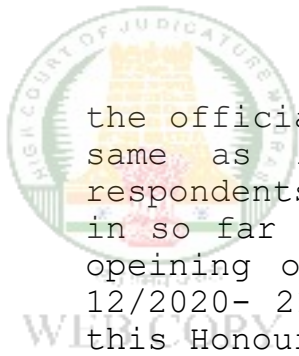
COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent, praying to set aside the common order dated 23.03.2021, in W.P.[MD]Nos.3237, 3241 & 3247 of 2021.

Prayer in WP(MD). 3237/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ or order or direction, in the nature of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned rejection of technical bid by the 1st respondent in reference to Tender Ref.No. TN No.11/2020-21/D1 33 which updated in the official website, Tamilnadu Tenders on 12.02.2021, and quash the same as illegal and unconstitutional, Consequently direct the respondents to accept the technical bid submitted by the petitioner in so far package 33, enabling the petitioner to participate in the opeining of Financial bid with reference to Tender Ref.No. TN.No. 12/2020- 21/D1 33 and pass such further or other suitable orders as this Honourable Court.

Prayer in WP(MD). 3241/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned rejection of technical bid by the 1st respondent in reference to Tender Ref.No. TN No.12/2020- 21/D1 36 which updated in



the official website, Tamilnadu Tenders on 12.02.2021, and quash the same as illegal and unconstitutional, Consequently direct the respondents to accept the technical bid submitted by the petitioner in so far package 36, enabling the petitioner to participate in the opening of Financial bid with reference to Tender Ref.No. TN.No. 12/2020- 21/D1 36 and pass such further or other suitable orders as this Honourable Court.

Prayer in WP(MD). 3247/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned rejection of technical bid by the 1st respondent in reference to Tender Ref.No. TN No.12/2020- 21/D1 37 which updated in the official website, Tamilnadu Tenders on 12.02.2021, and quash the same as illegal and unconstitutional, Consequently direct the respondents to accept the technical bid submitted by the petitioner in so far package 37, enabling the petitioner to participate in the opening of Financial bid with reference to Tender Ref.No. TN.No. 12/2020- 21/D1 37 and pass such further or other suitable orders as this Honourable Court.

For Appellant	: Mr.M.Saravanan for Mr.M.Maharaja
For Respondents	: Mr.A.K.Manickam, Standing Counsel for State Govt. [In all Writ Appeals]

COMMON JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.M.Saravanan, for Mr.M.Maharaja, learned Counsel appearing for the appellant and Mr.A.K.Manickam, learned Standing Counsel for Government appearing for the respondents.

2.With the consent on either side, these Writ Appeals are taken up for disposal.

3.These appeals by the writ petitioner are directed against the common order dated 23.03.2021, in W.P.[MD]Nos.3237, 3241 & 3247 of 2021.

4.The appellant challenged the rejection of their technical bids in respect of the tenders called for by the respondent department in which they had participated. The orders of rejection of the technical bids were on the ground that the appellant has not complied with the technical specifications.

5.Mr.M.Saravanan, learned Counsel appearing for Mr.M.Maharaja, learned Counsel for the appellant would submit that it is not as if the appellant has not submitted the required



certificate but the certificate was not on or after the date of publication of the tender, but just before the publication of the tender and in terms of the provisions of the Tamil Nadu Transparency in Tenders Act, 1998, the tender inviting authority was empowered to call for clarification from the appellant and without doing so, the appellant's technical bids have been rejected for the reason they are hyper technical. Further, it is submitted that the condition which has been imposed for production of the plant working condition certificate to be on or after the date of publication of the tender should be read down to mean it is only directory.

6.We have heard Mr.A.K.Manickam, learned Standing Counsel for Government on the above submissions. The law on the subject is well settled. Courts are to strictly interpret the terms of the tender notification, as it is the tender inviting authority who will decide as to what is the requirement to be fulfilled by the tenderers and seldom the Court should substitute the opinion of the experts. There may be several reasons as to why the authorities have imposed a condition that the plant working condition certificate for all the plants required for the work obtained from Divisional Engineer (Quality Control) should be on or after the date of publication of the tender. It is not for the Court to substitute the opinion of the experts who finalised the tender conditions. In any event, there was no challenge made by the appellant to the conditions of tenders, rather the appellant submitted to the jurisdictional authorities and placed their bids and it will be too late in the way for the appellant to turn around and contend that the conditions for production of certificate which should be on or after the tender notification to be read as directory. Thus, in our opinion, the learned Writ Court rightly dismissed the writ petitions and we find no grounds to interfere with the said order.

7.Accordingly, the Writ Appeals stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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 Superintending Engineer (H),
NABARD and Rural Roads,
Tirunelveli - 2.

2.The Divisional Engineer (H),
NABARD and Rural Roads,
Tirunelveli - 2.

+1 CC to M/s.M.MAHARAJA, Advocate (SR-20526[F] dated 29/06/2021)

+1 CC to M/s.SPL GP (SR-20767[F] dated 30/06/2021)

W.A.[MD]Nos.1239, 1241 & 1242 of 2021
29.06.2021

SSS(co)

TR(06.07.2021) 4P 5C