



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.15523 of 2021

and

W.M.P(MD)Nos.12447 & 12448 of 2021

S.Muthukumar

... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
MRC Nagar,
Raja Annamalaipuram,
Chennai - 600 028.

2.The Commissioner,
Madurai Corporation,
Madurai - 625 020.

3.The District Collector,
Madurai District,
Madurai - 625 020.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned notifications issued by the second respondent in Ma. Va4 / 000600 / 2021-1, Ma.Va4 / 000600 / 2021-2, Ma.Va4 / 000600 / 2021-3, Ma.Va4/000600/2021-4 for which tenders/auctions are scheduled to be conducted on 27.08.2021 and quash the same as illegal and consequently direct the second respondent to conduct the tenders/auctions as per the original conditions stipulated by the second respondent council vide resolution No.1032, dated 28.05.2021.

For Petitioner : Mr.A.Kannan

For RR 1 & 3 : Mr.B.Saravanan
Government Advocate

For R - 2 : Mr.P.Athimoola Pandian

ORDER

(Order of the Court was made by **M.DURAI SWAMY, J.**)

The petitioner has filed the above Writ Petition as a Public Interest Litigation to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notification issued



by the second respondent for which the tenders/auctions are scheduled to be conducted on 27.08.2021 and to quash the same and consequently directing the second respondent to conduct the tenders/auctions as per the original conditions stipulated by the second respondent council vide resolution No.1032, dated 28.05.2021.

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2.It is the case of the petitioner that in the impugned tender notification, the second respondent Corporation had omitted to include a condition with regard to the production of solvency certificate by the prospective bidders.

3.Mr.A.Kannan, learned counsel appearing for the petitioner submitted that in the earlier notification, the said condition was incorporated, however, the second respondent Corporation omitted the said condition in the impugned notification.

4.The petitioner, who is an Advocate by profession, has filed the Writ Petition as a Public Interest Litigation questioning the imposition of the conditions in the tender notification. According to the petitioner, by omitting to call upon the prospective bidders to produce the solvency certificate, the second respondent Corporation would incur heavy monetary loss.

5.Mr.P.Athimoola Pandian, learned counsel taking notice for the second respondent, submitted that the tender/auction was conducted at 11.30 a.m., today and the same has got over and therefore, the prayer sought for in the Writ Petition has become infructuous.

6.When the bidders had participated in the tender held at 11.30 a.m., today, they submitted their tenders based on the conditions imposed in the tender notification. The bidders have not questioned the tender notification in any manner whatsoever. So far as the conditions mentioned in the notification is concerned, it is for the Corporation to decide whether to include or exclude a particular condition. A particular condition cannot be included or excluded at the instance of a private party.

7.Mr.P.Athimoola Pandian, learned counsel appearing for the second respondent relied upon a Judgment of the Division Bench of this Court reported in **(2005) 1 MLJ 394 [S.Selvarani Vs. The Commissioner, Karaikudi Municipality and another]**, wherein the Division Bench of this Court held as follows:

"13. Apart from what is stated above, we are of the opinion that The Tamil Nadu Transparency in Tenders Act, 1998, may not be applicable to the facts of the present case, because the word "Procurement" in the aforesaid Act has been defined in Section 2(d) as follows:



""Procurement' means acquisition by any means by purchase of goods or services and also of construction."

We are at a loss to understand as to how the right to collect rent from the road-side vendors can be said to be a 'procurement' as defined in aforesaid Act. The said right is neither purchase of goods nor of services.

14. Even at the cost of repetition, we reiterate that the award of Government contracts through public auction/public tender is the rule and award of such contracts through 'private negotiations', except under certain contingencies mentioned above, must be frowned upon as it will give rise to speculations in the minds of the general public of some surreptitious, illegal or corrupt practices in collusion with the authorities concerned. Now a days, the Government contracts or contracts awarded by instrumentalities of the State are often worth crores and crores of rupees and unless there is transparency in awarding of such contracts, there is bound to be great dis-satisfaction and speculation in the minds of the general public of some underhand dealing. This would also be violative of Article 14 of the Constitution."

8.The ratio laid down by the Division Bench of this Court in the Judgment cited supra applies to the facts and circumstances of the present case. That apart, since the tender/auction scheduled to be held today ie., on 27.08.2021 at 11.30 a.m., had already got over, the prayer sought for in the Writ Petition cannot be granted. In these circumstances, the Writ Petition is liable to be dismissed, accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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 Commissioner of Municipal Administration,
MRC Nagar,
Raja Annamalaipuram,
Chennai - 600 028.

2.The Commissioner,
Madurai Corporation,
Madurai - 625 020.

3.The District Collector,
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+1 CC to M/s.GP (SR-27630[F] dated 31/08/2021)

W.P (MD) No.15523 of 2021
27.08.2021

RK(6.09.2021) 4P 5C