



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.01.2021
CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 18639 of 2020 and

W.M.P. (MD) Nos. 15600, 15601 & 15603 of 2020 and

W.M.P. (MD) No. 273 of 2021

WEB COPY

Hydro Electrical Systems,

Rep. By its Proprietor,

Asha Raghavan,

W/o. Raghavan, No. 1, Masthan Ghor Street,

Adambakkam, Chennai - 600 088.

... Petitioner

Vs.

1. Tamil Nadu Water Supply and Drainage Board (TWAD),

Represented by the Managing Director,

No. 31, Kamarajar Salai,

Chepauk, Chennai - 600 005.

2. The Chief Engineer,

Tamil Nadu Water Supply and Drainage Board (TWAD),

1/1, Sambakulam,

Opp. To Mattuthavani Bus Stand,

Madurai - 625 007.

3. The Regional Technical Evaluation Committee,

Represented by the Chairman,

Tamil Nadu Water Supply and Drainage Board (TWAD),

1/1, Sambakulam,

Opp. To Mattuthavani Bus Stand,

Madurai - 625 007.

4. R. Velumani

... Respondents

Prayer: Writ petition is filed under Article 226 of the

Constitution of India, to issue a Writ of Certiorari and Mandamus,
<https://hcservices.ecourts.gov.in/hcservices/>



to call for the records pertaining to the impugned order passed by the third respondent dated 09.12.2020 and quash the same as illegal and consequently direct respondents 1 to 3 to allow the petitioner to participate in the Financial Bid which is scheduled to be held on 14.12.2020 or other subsequent date as fixed by the third respondent office.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel,
for Mr.R.Karunanidhi.

For R-1 to R-3 : Ms. Porkodi Karnan,
Standing counsel.

For R-4 : Mr.Veera Kathiravan,
Senior Counsel,
for M/s.Veera Associates.

O R D E R

Heard the learned Senior counsel appearing for the petitioner and the learned Standing counsel appearing for respondents 1 to 3 and the learned Senior counsel appearing for the fourth respondent.

2. Tamil Nadu Water Supply and Drainage Board issued a tender notification on 06.11.2020 inviting tenders for carrying out the work of " Rejuvenation and improvement of existing combined water supply scheme to Andipatti-Sedapatti in Madurai and Theni District ". The writ petitioner as well as the fourth respondent were among the participants who responded to the tender notification. By the impugned communication, the petitioner has been disqualified at the technical bid stage itself and the fourth respondent has been selected for the award of the contract.

3. The learned Senior counsel reiterated all the contentions set out in the affidavit filed in support of this writ petition and he wanted this Court to set aside the impugned order and allow this writ petition. His pointed contention is that the offer made by the petitioner was considerably lower to that of the fourth respondent and if the impugned order is sustained, the public exchequer would lose to the tune of more than Rs.70,00,000/-.

4. The learned Standing counsel as well as the learned Senior counsel appearing for the respondents wanted this Court to sustain the impugned order and dismiss this writ petition.

5. I carefully considered the rival contentions and also the materials on record.

<https://hcservices.ecourts.gov.in/hcservices/>



6. Like any other tender process, the case on hand also involved two stages. One is technical bid stage and the other is price bid stage. The writ petitioner was required to furnish evidence of access to lines of credit and availability of other financial resources. In that regard, credit line certificates from financial institutions should be enclosed along with the tender documents. It has been categorically mentioned that the credit line certificate should be in the prescribed form as set out in Annexure-VIII. Annexure-VIII reads as follows:-

55
Andi - Sedapatti CWSS Rejuvenation 55

ANNEXURE VIII

**SAMPLE FORMAT FOR EVIDENCE OF ACCESS TO OR AVAILABILITY OF
CREDIT FACILITIES - CLAUSE 7.1.9**

BANK CERTIFICATE

This is to certify that M/s..... is a
reputed company with a good financial standing.

If the contract for the work, namely..... is awarded
to the above firm, we shall be able to provide overdraft/ credit facilities to the
extent of Rs..... to meet their working capital requirements for executing
the above contract.

It is seen that the petitioner instead of filing a certificate in the aforesaid format, had furnished Solvency Certificate from the South Indian Bank Ltd., Pallavaram Branch, Chennai. The Solvency Certificate issued by the petitioner's banker is as follows:-



WEB COPY



BR/GEN/16/2020-21

Branch Pallavaram, Chennai

Date: 01-12-2020

SOLVENCY CERTIFICATE

To
The Chief Engineer,
TWAD Board,
Madurai – 625007

Name of Work: Rejuvenation and improvements of existing Combined Water Supply Scheme to Andipatti – Sedapatti in Madurai and Theni District (Period of completion – 6 months)" of Tender Ref No: F. Andi - Sedapatti Reju/SDO I/CW/2020/Dt.29.10.2020

This is to certify that in our opinion and to the best of our knowledge and information available on records of the Bank as on 01-12-2020 M/s Hydro Electrical Systems having registered address at No.1, Opel Apartments, Masthan Gori Street, Adambakkam, Chennai -600088 has the financial capability to undertake works up to the extent of Rs 3,00,00,000/- (Rupees Three Crore Only).

This certificate is issued without any guarantee or responsibility or commitment on the part of the Bank or any of its officers/employees.

This certificate issued at the specific request of customer

For The South Indian Bank Ltd

For THE SOUTH INDIAN BANK LTD

[Signature]
6726
Manager
Pallavaram Branch



For THE SOUTH INDIAN BANK LTD

[Signature]
6794
Manager
Pallavaram Branch

The South Indian Bank Ltd, Pallavaram Branch
DOOR NO.7, WARD NO.1, PAMMAL MAIN ROAD, PALLAVARAM P.O.
KANCHEEPURAM DIST, CHENNAI 600043
Regd. Office: SIB House, T. B. Road, Mission Quarters, Thrissur, Kerala-680 001
Phone: +91-44-22641109., +91-487-2420020 Fax Number: +91-487-2442021
E-mail : br0620@sib.co.in, sibcorporate@sib.co.in.
Website: www.southindianbank.com
Corporate Identity Number : L65191K1.1929PLC001017



7. On a perusal of the aforesaid certificate issued by the petitioner's bank, one can see that the certificate furnished by the petitioner is not in consonance with the format prescribed by the tender inviting authority. Of course the format cannot be determinative of the issue. The Courts will have to go by the substance of the matter. If there is a correspondence in the matter of content, this Court would have accepted the contention of the petitioner. But it is not so. In fact the certificate issued by the South Indian Bank Ltd., itself is without any guarantee or responsibility or commitment on the part of the Bank or any of its officers/employees and it is issued at the specific request of the customer. Such a certificate is clearly not contemplated by the tender inviting authority. In fact the tender inviting authority wanted a commitment from the financial institutions issuing credit line certificate to the tenderer. Therefore, on this sole ground I sustain the stand of the authority in showing the door to the petitioner at the technical bid stage itself.

8. Of course the learned Senior counsel appearing for the petitioner eloquently contended that this Court should adopt a broader approach in this case. He drew my attention to the fact that the fourth respondent has not fulfilled the tender requirements. Clause VI(5) reads as follows:-

"VI. Pumpsets and Accessories

General

1) ..

2) ..

3) ..

4) ..

5) The bidder should enclose the performance curve duly indicating the duty point for the size of the impeller selected(family curve should not be furnished.). The performance curve should furnish complete range of operation and the curve should be authenticated by the manufacturer or his authorized dealer. In the event of non compliance the offer shall be summarily rejected. "

According to him, the fourth respondent has not fulfilled this condition.

9. I refrain from going into the correctness of the said contention. The moment disqualification of the petitioner at the technical bid stage is sustained, the petitioner will not have any locus standi to question the award of contract issued in favour of the fourth respondent before the Single Bench. Therefore, leaving open the said issue raised by the learned Senior counsel appearing for the petitioner, this writ petition stands dismissed. No costs.



Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

WEB COPY

/ /2021

Sub Assistant Registrar(CS)

pmu

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. Tamil Nadu Water Supply and Drainage Board(TWAD),
Represented by the Managing Director,
No.31, Kamarajar Salai, Chepauk, Chennai - 600 005.
2. The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board(TWAD),
1/1, Sambakulam,
Opp. To Mattuthavani Bus Stand, Madurai - 625 007.
3. The Regional Technical Evaluation Committee,
Represented by the Chairman,
Tamil Nadu Water Supply and Drainage Board(TWAD),
1/1, Sambakulam, Opp. To Mattuthavani Bus Stand,
Madurai - 625 007.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-1994[F] dated 25/01/2021)

+1 CC to M/s.PORKODI KARNAN, Advocate (SR-2062[F] dated 25/01/2021)

W.P. (MD) No.18639 of 2020
22.01.2021

(MJ) CO

AP/KK(25/01/2021) 6P 6C