



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.6772 OF 2022

WMP.NOS.6854 & 6853 OF 2022

S.Sundararaj

...Petitioner

Vs.

1. The Superintending Engineer,
(Highways) Construction & Maintenance,
Salem Circle, Salem.

2. The Divisional Engineer,
Quality Control,
Opposite National Hotel,
Near Four Roads, Salem.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus calling for the records relating to the e-mail communication dated 17.03.2022 of the 1st respondent herein in respect of work No.5 under Short Tender Notice No.24/2021-2022/HDO dated 28.02.2022, quash the same and consequently direct the respondents to consider the tender submitted by the petitioner on 09.03.2022 in respect of the said work without insisting for the quality control certificate.

For Petitioner : Mrs.AL Gandhimathi

For Respondents : Mr.D.Ravichander
Special Government Pleader

ORDER

This writ petition seeks quash of communication dated 16.03.2022, in respect of Work No.5 under Short Tender Notice No.24/2021-2022/HDO dated 28.02.2022 issued by the Superintendent Engineer/R1 for various works, rejecting the bid of the petitioner.



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2. Heard Mrs.AL Gandhimathi, learned counsel for the petitioner and Mr.D.Ravichander, learned Special Government Pleader, who has accepted notice for the respondents and is armed with sufficient instructions, enabling final disposal of the matter, even at the stage of admission.

3. Admittedly, the tender document contains a stipulation that bids must be accompanied by the proof of deposit of the EMD in original as well as the working condition certificate from the concerned Divisional Engineer, (H), C&M as specified in the document itself. The requirement of the latter is to verify and ascertain the working condition of the plants and machineries in the premises of the petitioner to ensure that the work will be completed in time and qualitatively.

4. The petitioner would contend that though the document is dated 28.02.2022, the same was uploaded on 04.03.2022 and the last date for submission of bids was 11.03.2022. This is objected to by learned Special Government Pleader, who would state that the tender document had been uploaded on 26.02.2022 itself.

5. This assumes relevance as it is the case of the petitioner that he had very limited time to comply with the requirements in the tender documents and submit the same. Thus, according to him, since the tender document was uploaded on 04.03.2022, he filed an application on 07.03.2022 seeking issuance of the Divisional Engineer's Certificate.

6. Learned SGP draws attention to the reply given by the respondent asking the petitioner to stipulate one location, where all the machineries would be available to enable ease of inspection. The petitioner does not appear to have responded effectively to this communication, merely sending an e-mail reiterating the submission of the bid. Thus, it is the case of the respondent, that since no location was specified by the petitioner, they were unable to undertake the inspection.

7. Be that as it may, the impugned communication rejects the bid of the petitioner, since the original EMD and working condition certificates for the machineries obtained after date of tender notice, were not received. To be noted that since there was no certificate issued by the Divisional Engineer, in response to the request of the petitioner dated 07.03.2022, the petitioner appears to have enclosed a copy of an earlier certificate in his possession that was dated prior to the date of tender document being 02.02.2022. Hence this writ petition.



8. As can be seen from the narration aforesaid, the resolution of the lis would depend upon the ascertainment of various factual issues such as the exact date of uploading of the tender document. This is best left to the appellate authority to look into after hearing the grievances of the petitioner.

9. In fact, the Tamil Nadu Transparency in Tenders Act, 1998 ('Act') provides for an appellate mechanism in terms of Section 11 thereof envisaging situations as this and for their resolution. The impugned order is passed in terms of Section 10 (7) of the Act, to challenge which, an appeal may be filed before the Government within 10 days from the receipt of the same. Such appeal must be disposed within 15 days from the date of receipt thereof.

10. Section 11 provides for a complete and self-contained mechanism for redressal of grievances of a bidder to a bid and also provides in sub-Section 4 thereof for the Government to pass interlocutory orders as it may deem fit even pending the appeal.

11. In light of the efficacious remedy that is provided under Section 11 of the Act, the petitioner is relegated to appellate remedy under Section 11 and such appeal, if filed shall be heard and disposed by the Government within the time as stipulated under the Act.

12. Since the petitioner indicates that appropriate interim relief would also be sought, a further direction is issued to the Government to the effect that application for interim relief, if filed by the petitioner, will be disposed within a period of one week from the date of receipt thereof, after hearing the petitioner.

13. Though no conclusive findings have been rendered in regard to any of the grievances expressed by the petitioner in this order, in order to assuage the apprehensions of the petitioner, it is made clear that nothing stated in this order shall stand in the way of an independent application of mind by the Government in disposing the appeal/application for interim relief of the petitioner, if and when filed.



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14. This writ petition is dismissed in light of the discussion above. Consequently connected writ miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

nst/ska

To

1. The Superintending Engineer,
(Highways) Construction & Maintenance,
Salem Circle, Salem
2. The Divisional Engineer,
Quality Control,
Opposite National Hotel,
Near Four Roads, Salem.

+1cc to M/s.AL Gandhimathi, Advocate, S.R.No.19825

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SSI (CO)
RLP (24/03/2022)