



WEB COPY



W.P.No.23694 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2022

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.23694 of 2022

and

W.M.P.Nos.22633, 22635 and 22636 of 2022

N.K.Gunasekaran

... Petitioner

-VS-

- 1.The Commissioner,
Oulgaret Municipality,
Puducherry.
- 2.The Superintending Engineer (OM),
Local Administration Department,
Puducherry.
- 3.The Chief Financial Officer,
CITIIS,
Puducherry Smart City Development Limited,
Puducherry.
- 4.The Executive Engineer,
Oulgaret Municipality,
Pondicherry.
- 5.The Assistant Engineer (Planning),
Oulgaret Municipality,
Pondicherry.

... Respondents



W.P.No.23694 of 2022

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the memorandum F.No.25.03/AE-1/Engg(4)/O.M/2022-23 dated 23.08.2022 of the 1st respondent herein and quash the same and consequently direct the 1st respondent herein to issue a work allotment order in pursuance to the acceptance of the petitioner's tender in tender ID:2022_DLA_10379_1 by the tender evaluation committee i.e., the respondents herein for the work of Development and improvement of community infrastructures at low income settlements in Oulgaret Municipality in Pondicherry.

For Petitioner : Mr.C.Santhosh Kumar

For Respondents : Mr.S.Ravee Kumar
Government Pleader (Pondicherry)
assisted by
Mr.J.Kumaran
Additional Government Pleader
(Pondicherry)

ORDER

This Writ Petitioner has been filed for quashing the memorandum F.No.25.03/AE-1/Engg(4)/O.M/2022-23 dated 23.08.2022 and consequently direct the 1st respondent herein to issue a work allotment order in pursuance to the acceptance of the petitioner's tender in tender ID:2022_DLA_10379_1 by the tender evaluation committee i.e., the respondents herein for the work of



W.P.No.23694 of 2022

Development and improvement of community infrastructures at low income settlements in Oulgaret Municipality in Pondicherry.

2. It is the case of the Writ Petitioner that a notice inviting E-Tender dated 30.05.2022 for the work of Development and improvement of community infrastructures at low income settlements in Oulgaret Municipality in Pondicherry was issued by the 1st respondent. The petitioner and two other contractors had applied for the tender, and submitted documents along with EMD account. Despite confirmation, the committee had rejected M/s.Muthusamy Construction and M/s.Economic Construction, as they have not submitted the mandatory documents and accepted the tender quoted by the petitioner. The petitioner's technical bid was open, however financial bid was not processed. Thereafter, all of a sudden, the 1st respondent vide his memorandum dated 23.08.2022 rejected the tender of the petitioner without any reason, simply stating that the same is rejected as per the decision of the Puducherry Smart City Development Limited (PSCDL) Board. Hence, the rejection of the petitioner's tender was challenged, mainly on the ground that the rejection has been passed ignoring the fact that the petitioner's tender has already been accepted, as he was found eligible as a single tenderer for the said work. The petitioner has also made an estimation for the said work of



W.P.No.23694 of 2022

Development and Improvement of Community Infrastructures at Low Income Settlements in Oulgaret Municipality. Hence, the same is arbitrary and cannot be sustained by way of law.

3. In the counter, it is the submission of the respondents that the tender was approved for an amount of Rs.12,26,67,186/- for the work Development and improvement of Community infrastructure at low-income settlements in Oulgaret Municipality under City Investments to Innovate, Integrate and Sustain (CITIIS) of Smart City Mission.

4. The learned counsel for the petitioner submitted that once the tender has been accepted, without any reason, the same cannot be rejected, merely because the respondents can accept the tender without any reason does not mean that they can reject it without any reason and when other two tenderers have not submitted the documents required as per the conditions, the respondents have rightly rejected their tenders. Petitioner being a successful tenderer, the 1st respondent has rejected without any reason and the memorandum rejecting the tender also did not contain any reason. Hence, such decision adopted by the respondents cannot be sustained by way of law.



W.P.No.23694 of 2022

WEB COPY

5. The learned counsel for the respondents submitted that there is a specific condition in the tender document, wherein the respondents have reserved the right to reject the tender at any time without assigning any reason. Whereas the petitioner has participated in tender on the above condition, now cannot question the directions of the respondents. Further contended that the petitioner has no vested right, since the contract has not been awarded. Merely on the basis of acceptance of tender, same will not create any vested right in favour of the petitioner. It is further contented that since the project is of the public importance, the Board has decided to invite open tenders from various competitors by giving a proper advertisement. Board has also felt that rejection of other two tenderer is not proper. Taking note of the above fact, Board has decided to call for open tenders instead of single tender. In such view of the matter, the order impugned cannot be interfered.

6. Heard the learned counsel for both sides and perused the materials placed on records.

7. The Judgment of the Hon'ble Apex Court in the case of “*State of Punjab*



W.P.No.23694 of 2022

& others Vrs. Mehar Din” reported in **2022 LiveLaw (SC) 235** and the Judgment of the Hon'ble Division Bench in the case of “**Sivaprakasam Nadessan & Others Vrs. The Government of Puducherry**” reported in **CDJ 2019 MHC 5238** were relied.

8. It is not in dispute that the notice dated 30.05.2022 was issued inviting the tenders for the work of Development and improvement of community infrastructures at low income settlements in Oulgaret Municipality in Pondicherry. Apart from the petitioner, two other tenderers have also participated. However, remaining two tenderers documents have been rejected, on the ground that they have not submitted sufficient details and the petitioner's tender was accepted as a successful tender. In the meanwhile, despite the technical bid has been open, the financial bid has not been proceeded. Thereafter, the impugned order came to be passed on 23.08.2022.

9. It is relevant to point out Clause VI of the tender condition, which reads as follows,

“ VI. The Oulgaret Municipal Council reserves all rights to accept or reject any bid, and to cancel and reschedule the



WEB COPY



W.P.No.23694 of 2022

bidding process, at any time prior to opening and award of the Contract, without assigning any reason thereof. Any liability to the participated bidders due to rescheduled/cancellation of tender, the Oulgaret Municipal Council is not responsible for the same.”

Admitting the above conditions, the petitioner had participated in the tender.

After rejecting the other two contractors, the petitioner was declared as a successful tenderer. However, the approval authority, the Board felt something fishy and found that the rejection of other two tenderers is not as per the new manual provisions and held that mere non-submission of certain documents are historical, would not have affected the tender process and the evaluation committee could have considered it as a non-submitted documents are historical documents, as per new manual provisions, which could have resulted in a competitive tender and beneficial in the financial interest of the State. Having held that the Board had decided to reject the single tender and to go for re-tender, so as to get competitive tenders and increase the possibility of resulting in less expenditure to the State. Therefore, the approval authorities have taken a decision considering the fact that rejection of other two tenderers is not good for the interest of the State and decided to go for re-tender.

10. This Court is of the view that merely because the petitioner became a



successful tenderer, on the ground of rejection of other two tenderers, he will not get any vested right to claim that work has to be allotted to him alone and when the tender condition specifically state that the rights to accept or reject any bid is always the discretion of the Board.

11. In such view of the matter, when the Board has taken a decision to reject single tender for the purpose of inviting a competitive tenders, to ensure less cost implication on the State. Merely on the basis of the acceptance of the single tender, the petitioner cannot, as a matter of right claim that the work to be allotted only to him.

12. The Hon'ble Apex Court in the Judgment “***State of Punjab & others Vrs. Mehar Din***” reported in **2022 LiveLaw (SC) 235** holds that,

“State or authority is not bound to accept the highest tender of bid. The acceptance of the highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions in which the auction has been held.”

13. In the above case, when the proceedings of auction were placed for confirmation before the competent authority, the competent authority after



perusing the record of auction observed that the provisional bid is quite on the lower side and looking to the location of the property in question, it needs a good publicity to fetch the better sale price of the subject land and while cancelling the auction sale, directed to initiate the process of re-auction.

14. Therefore, the Hon'ble Apex Court held that acceptance of highest bid or highest bidder is always subject to the conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions.

15. The relevant portion of the Judgment of Hon'ble Division Bench of this Court in the case of “***Sivaprakasam Nadessan & Others Vrs. The Government of Puducherry***” reported in **CDJ 2019 MHC 5238** is reads as follows,

“17.....

18. Thus, in terms of condition No.9, the Deputy Commissioner (Excise) is entitled to reject any bid or offer for any reason to be recorded in writing. In the case of Sivaprakasam Nadessan, the Deputy Commissioner (Excise) opined that the offer made by the appellant was provisionally confirmed on 22.06.2018.



WEB COPY

However, in the other two cases, no such provisional order of confirmation was issued. When the matter was placed before the Government, which is the Competent Authority either to confirm or reject or refuse to conform, a decision has been taken not to confirm/accept the offer made by the appellant, as the amount offered was very minimal.

19. It may be true that twice, re-auction was conducted and that there was a reduction of the upset price of 10% as notified in the Notification dated 22.06.2018. Merely because there has been a reduction in the upset price, it cannot be stated that the Government cannot take a decision in the interests of Revenue. It has not been disputed by the appellant that no vested right accrues in his favour merely on account of a participation in the auction. Furthermore, the provisional confirmation order issued in favour of the appellant does not confer any right, as the provisional confirmation order has to be confirmed by the Government. Therefore, to state that there is arbitrariness in the decision and that the decision is sought to be sustained by the respondents on other grounds are all arguments only to be rejected.”

16. Though Judgment of the Delhi High Court is relied by the learned counsel, on the ground that merely the power retained by the authorities not to assign any reason, does not mean that no reasons to be assigned. Though this



W.P.No.23694 of 2022

Court is of the view that while taking decision, reasons must be assigned. On perusing the counter-affiavit, proper reasons have been assigned. Therefore, when the right of rejection is indicated in the conditions and decision is taken for the interest of public and to protect the interest of the State to invite a competitive bidders to implement the huge work for the benefit of the State, the action of the authorities cannot be questioned. There are the experts in certain matters. Therefore, merely on the basis of acceptance of the tender, particularly after rejection of other two tenderers, the same will not enumerate the petitioner to get a vested right. Accordingly, I do not find any merit in this Writ Petition.

17. Therefore, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

23.12.2022

gd

Index: Yes



WEB COPY



W.P.No.23694 of 2022

N. SATHISH KUMAR, J.

gd

To

- 1.The Commissioner,
Oulgaret Municipality,
Puducherry.
- 2.The Superintending Engineer (OM),
Local Administration Department,
Puducherry.
- 3.The Chief Financial Officer,
CITIIS,
Puducherry Smart City Development Limited,
Puducherry.
- 4.The Executive Engineer,
Oulgaret Municipality,
Pondicherry.
- 5.The Assistant Engineer (Planning),
Oulgaret Municipality,
Pondicherry.

W.P.No.23694 of 2022

and

W.M.P.Nos.22633, 22635 and 22636 of 2022