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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2022
CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.27197 & 27204 of 2021 and
W.M.P.Nos.28694, 28695, 28696, 28697,
28699, 28701, 28702 and 28703 of 2021

M/s.P.Rayin Constructions Company (P) Ltd.,
Rep. By its Managing Director P. Rahim
Having Office at
278A, Cherambadi Bazar,
Cherambadi - 643 205
The Nilgiris District.

...Petitioner in W.P.No.27197 of 2021

M/s.P.Rayin
Contractor

...Petitioner in W.P.No.27204 of 2021

Vs

The Executive Officer,
Devarsholai (Theervunilai) Town Panchayat,
Devarsholai, Gudalur Taluk,
The Nilgiris District.

...Respondent in both WPs

COMMON PRAYER : Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of impugned Notice in Na.Ka.No.993/2021-A1 dated 08.12.2021 issued by the respondent to consider the petitioner company's bids in the tender called for vide notification in Na.Ka.No.993/2021-A1 dated 17.11.2021 in accordance with law within a time frame to be fixed by this Court.

In both WPs

For Petitioners : Mr.P.Wilson
Senior Counsel
for **Mr.P.Wilson Associate**
For Respondent : Mr.K.V.Sajeev Kumar
Special Government Pleader

COMMON ORDER

Since the issue raised in both the writ petitions is common or one and the same, with the consent of the learned counsel appearing for the parties, these two writ petitions were heard together and are being disposed of by this common order.



2. The respondent who is a Town Panchayat viz., Devarsholai Town Panchayat in Nilgiris District called for a tender for execution of certain works under the respondent by tender notification dated 17.11.2021. The petitioners also submitted their tender form. After having scrutinised the same, the tenders were opened i.e. both technical as well as price bid, where, there were four participants, including these two petitioners. Insofar as the other two participants other than the petitioners, their tenders were rejected outrightly as they have not fulfilled various tender conditions. However, insofar as the petitioners are concerned, though they have fulfilled the tender conditions, their tenders also have been rejected on the ground that, already by the proceedings of the respondent dated 11.01.2021, both the petitioners have been blacklisted. As against the said blacklisting order dated 11.01.2021, though these petitioners filed writ petitions in W.P.Nos.1064 & 1070 of 2021 since those writ petitions are still pending before this Court, because of the pendency of those cases, the respondent has taken a decision that, these two petitioners are not entitled to be awarded any work even though they fulfilled other tender conditions. Therefore, on the only ground that, based on 11.01.2021 proceedings, since the petitioners have been blacklisted and the said issue is pending in those said two writ petitions before this Court, their tenders were also rejected through the impugned order dated 08.12.2021 of the respondent.

3. Since similar impugned order has been passed in respect of both the cases, those orders are under challenge by the respective petitioners.

4. When these writ petitions came up for hearing on 21.12.2021, Mr.P.Wilson, learned Senior Counsel appearing for the petitioners had made submissions stating that, though the 11.01.2021 blacklisting order against the petitioners having been challenged before this Court in the said two writ petitions, where, interim order of stay was granted by this Court, by order dated 19.01.2021 and the said stay order still persists, unmindful of the same, the respondent has rejected the tenders of the petitioners, therefore, the impugned orders are liable to be set aside.

5. The learned Senior Counsel, at that juncture, would also contend that, subsequent to the filing of the writ petitions or subsequent to the passing of the impugned orders dated 08.12.2021, the respondent has decided to cancel the very tender dated 17.11.2021 and decided to issue a fresh tender dated 15.12.2021, for which, last date for submission of tender form was fixed and to open the tender form was also fixed as 30.12.2021 for the technical bid and 31.12.2021 for the price bid.



6. Therefore, at that juncture, it was the contention of the learned Senior Counsel for the petitioners that, since already the respondent has rejected the tender of the petitioners on the ground that, under the 11.01.2021 order, the petitioners were blacklisted, unmindful of the stay order granted by this Court dated 19.01.2021 as referred to above, this time also, even if the petitioners also participated in the re-tender dated 15.12.2021, the petitioners would face the same fate as the tenders of the petitioners would be rejected by the respondent by citing the very same reason that, the petitioners have already been blacklisted.

7. Only at that juncture, this Court, by order dated 21.12.2021, has passed the following interim order:

"Heard Mr.P.Wilson, learned Senior counsel appearing for the petitioners and Mr.K.V.Sanjeev Kumar, learned Special Government Pleader who takes notice for the respondent.

2. Under the impugned notice, the tender submitted by the petitioners separately had been rejected on the ground that, these petitioners have already been blacklisted by the proceedings of the respondent dated 11.01.2021.

3. However, the learned Senior counsel would point out that, as against the said order blacklisting the petitioners, the petitioners already moved this Court by filing Writ Petitions in W.P. Nos. 1064 and 1070 of 2021, where after having considered the prima facie case, the learned Judge of this Court by order dated 19.01.2021 granted an interim order of stay and the said order of stay is still subsisting and the Writ Petitions are also pending.

4. Therefore, the learned Senior counsel point out that, the very order dated 11.01.2021 blacklisting the petitioners having been stayed by the order of this Court dated 19.01.2021, whether the said reason can once again be cited for the rejection of the tender form submitted by the petitioners through the impugned order is a question. Therefore, challenging the impugned communication dated 08.12.2021, these Writ Petitions have been moved.

5. The learned Senior counsel would also point out that, subsequent to the impugned order, thereby rejecting all the four tenderers including the petitioners, the respondent has proceeded to issue a fresh tender notice dated 15.12.2021, under which, tenders are called for and the last date is fixed on 29.12.2021 at 3.00 p.m. to submit.



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6. In this regard, the apprehension of the petitioners is that, since the petitioners have already been rejected through the impugned communication, the same reason once again be shown by the respondent, even if the petitioners participated in the present re-tender dated 15.12.2021. Therefore, in order to save the interest of the petitioners, a suitable interim arrangement can be made, he contended.

7. Heard Mr.K.V.Sanjeev Kumar, learned Special Government Pleader appearing for the respondent who would submit that, if sometime is given, written instructions would be obtained, in respect of the second tender notification dated 15.12.2021 is concerned, the last date has been fixed as on 29.12.2021, hence let it not be hindered by passing any interim order by this Court, he contended.

8. I have considered the said submissions made by the learned counsel appearing for both sides.

9. Insofar as the blacklisting of the petitioners by proceedings dated 11.01.2021, it has been stayed by this Court by order dated 19.01.2021, therefore, the said order dated 11.01.2021 blacklisting the petitioners cannot be put against the petitioners as a reason for rejecting the tender through the impugned communication dated 08.12.2021. Therefore, this Court prima facie feels that, that rejection may not be justifiable.

10. Be that as it may, after having passed the impugned order dated 08.12.2021, now the respondent proceeded to go for fresh tender notification dated 15.12.2021, where also there is an apprehension on the part of the petitioners, as projected by the learned Senior counsel, which is appealing, because, the very same fate the petitioners have to meet, if they are participated in the tender pursuant to the 15.12.2021 tender notification.

11. In that view of the matter, this Court, in order to balance the interest of both sides, is inclined to pass the following interim orders:

"(i) that the petitioners shall be permitted to participate in the tender as per the fresh tender notification dated 15.12.2021. Instead of 31.12.2021, where it has already been fixed to open the price bid and on 30.12.2021 to open the technical bid, this Court feels that, the opening of the technical bid and price bid fixed on 30.12.2021 and 31.12.2021 respectively can be deferred till 05.01.2022, before which, if these



Writ Petitions along with the earlier Writ Petitions are decided, a quietus can be given to the issue raised in these Writ Petitions.

(ii) Therefore, there shall be a direction to the respondent to permit the petitioners to participate in the tender in tender notification dated 15.12.2021. However, the opening of the technical bid and the price bid as fixed on 30.12.2021 and 31.12.2021 shall be deferred till 05.01.2022."

12. Post these Writ Petitions along with W.P. Nos. 1064 and 1070 of 2021 for hearing on 03.01.2022. On that day, the written instructions / counter affidavit shall be filed by the respondent in all these Writ Petitions."

8. Pursuant to the said order passed by this Court, the petitioners also participated in the tender dated 15.12.2021. However, both the technical bid as well as price bid have not been opened by virtue of the order dated 21.12.2021, which has been subsequently extended as of now.

9. In this context, Mr.K.V.Sanjeev Kumar, learned Special Government Pleader appearing for the respondent, on instruction, would submit that, since the very tender, in which, the tender submitted by the petitioners have been rejected through the impugned order in these writ petitions on the ground that, they have already been blacklisted, itself has been cancelled, as further tender has been floated on 15.12.2021, where, the petitioners also have been permitted to participate, of course by the orders passed by this Court, the respondent may be permitted to open the technical bid as well as the price bid which include the tender documents submitted by the petitioners also. Therefore, on the ground that, since the petitioners tender form have been filed and based on the apprehension raised by the petitioners, the entire tender documents which otherwise ought to have been opened as early as on 30.12.2021 and 31.12.2021, since have been kept pending due to the interim order passed by this Court, number of works to be undertaken in the respondent Town Panchayat are hindered. Hence, the stay order may be vacated and the respondent may be permitted to open the technical as well as the price bid of the tender dated 15.12.2021.

10. However, Mr.P.Wilson, learned Senior Counsel appearing for the petitioners in this regard pointed out that, when the earlier writ petitions were filed challenging the order dated 11.01.2021 blacklisting the petitioners, a counter affidavit has been filed by the respondent taking a stand that, though the



petitioners were blacklisted, with regard to the subsequent tenders if any to be floated, in fact, in this regard subsequent tender also has been floated, there can be no impediment for the petitioners to participate in the subsequent tender and in that case, the blacklisting order already passed, which are impugned in the earlier writ petitions, may not stand in the way.

11. Despite the said stand taken by the respondent in the counter affidavit filed in those writ petitions, subsequently, even though the petitioners participated in that subsequent tender dated 17.11.2021, their tender forms have been rejected only on the ground that, they have been blacklisted by order dated 11.01.2021, through the impugned order dated 08.12.2021.

12. Therefore, the learned Senior Counsel submitted that, the very same modus operandi may be adopted by the respondent as it is the apprehension of the petitioners.

13. This Court have taken note of all those aspects and the submissions made by the learned counsel appearing for both sides.

14. Now it is the stand of the respondent that, they are ready to open the tender forms, pursuant to the tender dated 15.12.2021, including the tender form of the petitioners and those tender forms would not be rejected on the only ground that, the petitioners were blacklisted by the proceedings of the respondent dated 11.01.2021.

15. In that view of the stand taken by the respondent and by taking into account the facts, where, the 11.01.2021 blacklisting order since has been stayed by this Court in other two writ petitions referred to above and the said stay is still subsisting and the writ petitions are also pending before this Court, certainly, it is not open to the respondent to reject the tender form of the petitioners on the ground that, they have been blacklisted by order dated 11.01.2021.

16. In that view of the matter, this Court is inclined to dispose of these two writ petitions with the following orders:

(i) That there shall be a direction to the respondent to open the tender dated 15.12.2021 including the technical and price bid submitted by the petitioners. After opening the same, the tender form of the petitioners along with other tenderers shall be scrutinised and on merit, a final decision shall be taken to select any of the tenderer which may include the petitioners. However, under no circumstances, the tender form of the petitioners shall be rejected by the respondent on the only ground that, they have already been blacklisted by the proceedings issued by the respondent dated 11.01.2021.



(ii) The reason being that, the said 11.01.2021 proceedings blacklisting the petitioners itself have already been stayed by this Court by order dated 19.01.2021 in the afore-referred writ petitions, therefore, that reason should not be put against the petitioners.

(iii) In view of the aforesaid development where 15.12.2021 tender have been floated, where, the aforesaid directions have been given, the 17.11.2021 tender has no effect, as it is submitted by the learned Special Government Pleader appearing for the respondent that, it has been cancelled, therefore, insofar as the challenge made against the order impugned dated 08.12.2021 in these two writ petitions are concerned, that have become infructuous. Therefore, considering all these aspects, both the Writ Petitions are disposed of with the aforesaid directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)
31/01/2022

***(Petitioner's Counsel Appearance Corrected
as per letter dated 11/02/2022)**

Sd/-

Sub Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Executive Officer,
Devarsholai (Theervunilai) Town Panchayat,
Devarsholai, Gudalur Taluk,
The Nilgiris District.

**Corrected order the
be substituted as
as the order already
Despatched on
04/02/2022**

+2cc to Mr.P.Wilson Associates, Advocate,
S.R.No.2390, 2389
+2cc to Mr.K.V,Sajeev Kumar, Spl GP,
Advocate, S.R.No.2420, 2421

W.P.Nos.27197 & 27204 of 2021

PL(CO)
KKV/01/02/2022
KKV/03/02/2022
CT 11/03/2022