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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.11.2022**

CORAM :

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

W.P.No.28359 of 2022
and
W.M.P.No.27666 of 2022

M/s.Sri Cauvery Engineering Constructions,
Rep. by its Partner Mr.Madheswaran,
Koneripatty Post,
Poolampatti (via),
Edappadi Taluk,
Salem District – 637 107. ... Petitioner

-Vs-

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31 Kamarajar Salai,
Chepauk,
Chennai – 600 005.

2.The Chief Engineer,
TWAD Board,
Coimbatore.

3.M/s.VR Water Infra Company,
Cheyyur Road,
Avinashi,
Tiruppur. ... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records

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of the first respondent in B.P.Ms.No.85 (CoM Wing) dated 15.10.2022 and consequential letter dated 17.10.2022 issued by the first respondent and quash the same and further direct respondents 1 and 2 to re-consider the bid of the petitioner for evaluation in respect of work concerning Retrofitting of Existing CWSS to Sankari TP, Thevur TP and 245 Rural Habitations in Sankari Union of Salem District issued as per TWAD Board IFB No.14/F Retrofitting Existing CWSS to Sankagiri/DO(T5)/CE/CBE/2022 dated 09.06.2022.

For Petitioner : Mr.K.S.Viswanathan
For R1 & R2 : Mr.S.Silambanan
Additional Advocate General
Assisted by Ms.S.Mekhala
Senior Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records of the first respondent in B.P.Ms.No.85 (CoM Wing) dated 15.10.2022 and consequential letter dated 17.10.2022 issued by the first respondent and quash the same and further direct the respondents 1 and 2 to re-consider the bid of the petitioner for evaluation in respect of work concerning Retrofitting of Existing CWSS to Sankari TP, Thevur TP and 245 Rural Habitations in Sankari Union of Salem District issued as per TWAD Board IFB No.14/F Retrofitting Existing CWSS to Sankagiri/DO(T5)/CE/CBE/2022 dated 09.06.2022.

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2.That the petitioner is one of the bidder for the work called for by the respondent i.e., Tamil Nadu Water Supply and Drainage Board for the work called “Retrofitting of Existing CWSS to Sankari TP, Thevur TP and 245 Rural Habitations in Sankari Union of Salem District”, which was issued on 09.06.2022.

3.The petitioner also participated in the tender. Finally, there were three bidders including the petitioner, out of which, one has been disqualified at the time of evaluating the technical bid, therefore, there were only two bidders including the petitioner.

4.Only in that context, citing the reason that the petitioner has not fulfilled one of the tender conditions, the respondent has sent a communication stating that the petitioner would be rejected, thereby, the only remaining tenderer would be considered for awarding the contract. Only at that juncture, the petitioner has moved the present writ petition with the aforesaid prayer.

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5.When this case came up for hearing on 20.10.2022, after hearing the learned counsel appearing for the petitioner as well as the learned Additional Advocate General appearing for the respondents 1 and 2, this Court has passed the following interim order :

> *"The petitioner is one of the bidder for the work called for by the respondent i.e. Tamil Nadu Water supply and Drainage Board which is the work called "Retrofitting of Existing CWSS to Sankari T.P. and Thevur T.P., and 245 rural habitations in Sankari Union of Salem District", issued by the respondent Board dated 09.06.2022.*
>
> *2. Finally there were three bidders, one has been disqualified at the time of evaluating the technical bid, there were two more including the petitioner. While that being so, by impugned order dated 15.10.2022, the respondent stating the reasons that, the Technical bid Evaluation proposal was placed before the Head Office Technical Evaluation Committee in its meeting held on 14.09.2022 and it was brought to the notice of the Committee that, the bidder, M/s.Sri Cauvery Engineering Constructions, Salem District i.e. the petitioner, has furnished the experience certificate of Providing water supply improvement scheme to Sivagiri T.P. in Kodumudi Union in Erode District and only 98% of the work is completed till now. Hence the bidder, M/s.Sri Cauvery Engineering Constructions, Salem District is also found to*

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be not complied with the financial qualification criteria fixed by the department.

3. Thereby, out of the three bidders already one has been excluded, now by the present impugned order, the other one i.e. the petitioner if he is excluded, the remaining one bidder alone would be in the fray and whatever rate he has quoted would be acceptable or agreeable to the respondent TWAD Board for the reasons best known to them.

4. In this context, Mr.S.Silambanan, learned Additional Advocate General appearing for the respondents 1 and 2 has contended that, since there must be a 100% satisfactory work i.e. the previous experience gained by the bidder which is one of the criteria and admittedly the petitioner has completed only the 98% of the earlier work, hence the said criteria since has not been satisfied by the petitioner, the petitioner's bid has been rejected or excluded form the fray.

5. In this context, it is to be noted that, insofar as the conditions imposed by the respondents, the relevant condition is that, the bidder should have satisfactorily completed Water supply scheme of value not less than Rs.7.00 Crore either single agreement with 40% of BOQ value or Rs.10.50 Crore in Two agreements with 60% of BOQ value in last five financial years i.e. 2017-2018 to 2021-2022.

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6. In this context, it is the case of the petitioner that the petitioner already had undertaken the work with the worth of Rs.9,37,80,019/-.

7. Only in the said work 98% of the work has been completed by the petitioner that is the admitted fact, the 98% of the work is equal to roughly the estimatation of Rs.9,19,00,000/-. Therefore, Rs.7 Crore ceiling that has been fixed as one of the condition or criteria to be fulfilled by the petitioner prima facie since has been fulfilled by the petitioner, this Court feels that, the exclusion made against the petitioner through the impugned order is liable to be interfered with.

8. Therefore, there shall be a direction to the respondents to open the price bid, which exercise has been fixed today, of both the petitioner as well as another bidder and in the said bid, if the petitioner being the L1, then the tender document of both the parties shall be placed before this Court in a sealed cover, the further course of action would be taken thereafter. Till such time, no confirmation of tender in favour of any one shall be made by the respondents.

9. Post the matter on 27.10.2022."

Pursuant to which, this writ petition is coming up for hearing today.

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6.Mr.S.Silambanan, learned Additional Advocate General appearing for the respondents 1 and 2 has fairly submitted that, as against the interim order passed by this Court, intra Court appeal has been preferred in W.A.No.2392 of 2022, which was dismissed by the first Bench of this Court by order dated 27.10.2022 directing the parties to pursue the main Writ Petition before the Writ Court.

7.The learned Additional Advocate General would submit that, pursuant to the order of this Court dated 20.10.2022, the price bid of the tender was open and it was found that the petitioner was L1. Therefore, as per the direction of this Court, the tender document of both the L1 i.e., the petitioner and other tenderers have been put in a sealed cover and in fact the learned Additional Advocate General has produced the same.

8.In view of the fact that the petitioner has become L1 and this Court *prima facie* already found that the reasons cited for rejecting the tender document of the petitioner is not justifiable as the petitioner has completed the earlier work to the extent of 98%, which already crossed the limit of Rs.7,00,00,000/- (rupees seven crores), which has been fixed as one of the tender condition, therefore, this Court feels that, no further deliberation is required in this Writ Petition to come to the conclusion.

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9.In that view of the matter, by recording the aforesaid developments, this Court is inclined to dispose of this Writ Petition with the following order:

> That the petitioner's tender being the L1, as stated by the respondents can be considered for awarding the contract, subject to other conditions to be stipulated by the respondent Board as usual conditions.

10.With this direction, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

01.11.2022

Index : Yes/No
Internet: Yes/No
sp/drm

To

1.The Managing Director,
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31 Kamarajar Salai,
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2.The Chief Engineer,
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