



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) Nos.599, 600, 601 and 602 of 2022

and

W.M.P. (MD)Nos.472, 474, 475 and 477 of 2022

WEB COPY

M.Mohamed Hakkim

... Petitioner in all petitions
vs.

1.The Superintendent Engineer,
(Highways),
Construction and Maintenance,
Tirunelveli.

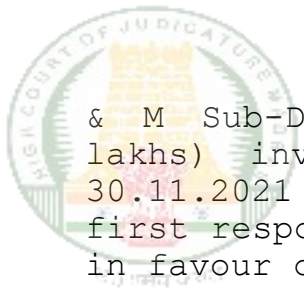
2.The Divisional Engineer,
(Highways),
Construction and Maintenance,
Tirunelveli.

... Respondents in all petitions

PRAYER in W.P. (MD)No.599 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned Corrigendum signed on 03.01.2022 and issued by the first respondent in connection with the work named as Non-plan 2021-22 "Special Repairs to Other District Roads of Palayamkottai, (H) C & M Sub-Division" (Approximate value of the contract Rs.145.32 lakhs) invited through a Tender Notice No.7/2021-22/HDO, dated 26.11.2021 by him and quash the same and consequently direct the first respondent to award the aforesaid work by issuing a work order in favour of the petitioner.

PRAYER in W.P. (MD)No.600 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned Corrigendum signed on 03.01.2022 and issued by the first respondent in connection with the work named as Non-plan 2021-22 "Special Repairs to Other District Roads of Nanguneri (H) C & M Sub-Division" (Approximate value of the contract Rs.59.71 lakhs) invited through a Tender Notice No.8/2021-22/HDO, dated 29.11.2021 by him and quash the same and consequently direct the first respondent to award the aforesaid work by issuing a work order in favour of the petitioner.

PRAYER in W.P. (MD)No.601 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned Corrigendum signed on 03.01.2022 and issued by the first respondent in connection with the work named as Non-plan 2021-22 "Special Repairs to Other District Roads of Palayamkottai, (H) C



& M Sub-Division" (Approximate value of the contract Rs.152.27 lakhs) invited through a Tender Notice No.9/2021-22/HDO, dated 30.11.2021 by him and quash the same and consequently direct the first respondent to award the aforesaid work by issuing a work order in favour of the petitioner.

PRAYER in W.P.(MD)No.602 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned Corrigendum signed on 03.01.2022 and issued by the first respondent in connection with the work named as Non-plan 2021-22 "Special Repairs to Other District Roads of Palayamkottai, (H) C & M Sub-Division" (Approximate value of the contract Rs.130.32 lakhs) invited through a Tender Notice No.8/2021-22/HDO, dated 29.11.2021 by him and quash the same and consequently direct the first respondent to award the aforesaid work by issuing a work order in favour of the petitioner.

In all petitions:-

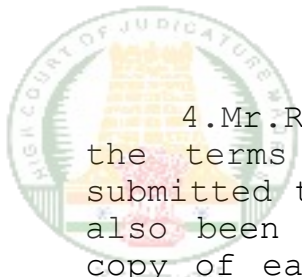
For Petitioner : Mr.R.Anand
For Respondents : Mr.D.Ghandiraj
Special Government Pleader

COMMON ORDER

Mr.D.Ghandiraj, learned Special Government Pleader, takes notice on behalf of both the respondents.

2.In all the four writ petitions, the petitioner questions four separate notifications issued on 26.11.2021, 29.11.2021 (2 notifications) and 30.11.2021 by the first respondent/The Superintendent Engineer, (Highways), Construction and Maintenance, Tirunelveli.

3.The writ petitioner in W.P.(MD)No.599 of 2022 questions further proceedings pursuant to the notification for the work named as "Special Repairs to Other District Roads of Palayamkottai". The writ petitioner in W.P.(MD)No.600 of 2022 questions the notification with respect to the work relating to "Special Repairs to Other District Roads of Nanguneri". The writ petitioner in W.P.(MD)No.601 of 2022, questions the subsequent corrigendum issued to the notification for the work named as "Special Repairs to Other District Roads of Palayamkottai". The writ petitioner in W.P.(MD)No.602 of 2022, questions the corrigendum issued pursuant to the notification for the work referred as "Special Repairs to Other District Roads of Palayamkottai". The writ petitioner had participated and placed an offer pursuant to the said notifications.



4.Mr.R.Anand, learned counsel for the petitioner pointed out the terms of the tender which indicated that the bid must be submitted through online on or before 23.12.2021/14.00 hours. It had also been stated that the bid should be accompanied by a scanned copy of earnest money deposit/bid security pertaining to the works in accordance with the stipulations in the notifications. It had also been stated that the original EMD and other original/attested tender documents should be uploaded and received by the first respondent on or before 23.12.2021 at 14.00 hours. It had also been stated that the tender covers shall be opened at 15.30 hours on 24.12.2021 in the office of the first respondent. As aforesaid, the writ petitioner had submitted his bid in accordance with the stipulations contained in the notification. The bids had been opened as stated, on 24.12.2021 by the first respondent.

5.My attention is also drawn to the extract summary of the first respondent relating to the bids submitted by all the participating tenderers.

6.The learned counsel for the petitioner stated that the bid of the petitioner had been accepted i.e. it had crossed the technical stage. Thereafter, the financial aspect will have to be examined. The petitioner having been accepted, had a legitimate expectation that the financial bid will also be subsequently opened and he would also be able to participate in the same and that the bid amount which he had given would be examined by the respondents without any prejudice. However, it appears that the first respondent had passed the corrigendum, which is now impugned on 03.01.2022. The said corrigendum is extracted below:-

"The lowest bidder has executed few works with delayed completion for the past three years. Also, one contract was entrusted to him to an amount of Rs.168.20 lakhs and commenced on 06.03.2019. It should be completed before 05.06.2019 as per agreement conditions. But the bidder has not been turned up to execute the work properly as per agreement conditions and executed this work with slow progress to a value of Rs.87.39 lakhs only as on date since there is no financial capabilities to do this work further.

This tender work was taken up for Rs.145.32 lakhs, 152.27 lakhs, 59.71 lakhs and 130.32 lakhs, respectively, under non plan 2021-22 scheme and it should be completed during this financial year (2021-22) itself. As the bidder has no financial/Technical capabilities to execute this contract within the contract period, it is presumed that the bidder has not capabilities.

Since the lack of responsibilities as shown by past work for the department judged from the standpoint of workmanship and progress, the bidder is rejected as per



clause 103.16 and 103.18 of SSRB Vol-I and Part and recall ordered."

7.It is complained by the learned counsel for the petitioner that on the very same day, the corrigendum was issued, the first respondent had proceeded to issue a fresh notification calling for tenders. In effect, though the petitioner had been recognized as the lowest bidder by the corrigendum, his bid had been rejected and the order passed accepting his tender, had been recalled.

8.The Tamil Nadu Transparency of Tenders Act, 1998, is an inbuilt statute wherein, the steps to be taken at various stages from inviting bids to the opening the tenderer had been stipulated, providing also the manner in which reliefs can be sought by the parties.

9.In this case, the first respondent may be called the Tender Inviting Authority and also the Tender Accepting Authority.

10.Section 10 of the Act, provides for evaluation and acceptance of the tender. It had been stated that the Tender Accepting Authority should cause an objective evaluation of the tenders. On such evaluation and comparison of the tenders, the Tender Accepting Authority shall accept the lowest tender ascertained on the basis of objective and quantifiable factors. It is not necessary that the lowest tender alone should be taken into consideration and be granted. There must be an objective assessment of the Contractor, who so provides the lowest tender.

11.In the instant case, the first respondent had stated that the petitioner, though had executed a few works over the past three years, had delayed in the execution of works.

12.The learned counsel for the petitioner stated that extension of time had been granted by the respondents themselves. That fact itself shows that there has been a delay in the execution of works.

13.It is also seen that, in the impugned corrigendum, it had been stated that the petitioner has no financial or technical capabilities. The issues mentioned in the corrigendum are issues of fact, which can only be appreciated in an appeal filed and if at all, filed by the petitioner under Section 11 of the Act. A Writ Court exercising jurisdiction under Article 226 of the Constitution of India can never examine the nature of the orders passed. Judicial review does not lie on the order *per se*, but only on the procedure adopted. In the instance case, necessary reasons have been given.

14.The scope of the writ petitions itself are quite narrow and it cannot be called upon to be widened by the writ petitioner to



examine whether the reasons given by the first respondent can be scrutinized by this Court or whether this Court should sit as an Appellate Authority over the reasons given by the first respondent.

15. An appeal provision is provided in the Act, whereby a specific Appellate Authority can examine the reasons given by the first respondent. If the petitioner suspects the *bona fide* of the Appellate Authority, then, it is for him to work out its own remedy. The Writ Court is not one of the avenues.

16. The interference of Courts in matters relating to the tenders had been frowned upon by the Hon'ble Supreme Court in the case of **Uflex Limited Vs. The Government of Tamil Nadu and others [Civil Appeal Nos.4862-4863 of 2021, dated 17.09.2021]**. The Supreme Court in Paragraph No.40, had stated as follows:-

"..40. We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters there is obviously an aspect of commercial competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for downplaying the freedom which a tendering party has, merely because it is a State or public authority, making the said process even more cumbersome. We have already noted that element of transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examine are restricted as set out in **Tata Cellular Vs. Union of India** reported in **(1994) 6 SCC 651** and other cases. The objective is not to make the Court an appellate authority for scrutinizing as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them."

17. It had been very clearly stated that the Court should not sit as an Appellate Authority and scrutinize as to whom the tender should be awarded. It had also been stated that economics must be permitted to play its role, for which, the tendering authority knows best as to what is suited in terms of the technology and price for them. As a matter of fact, complaining of the interference in the matter, the Hon'ble Supreme Court, after examining the issues had imposed a cost of Rs.25,00,000/- for a challenge on a tender, which challenge had actually been upheld by a Division Bench of the Madras High Court. Therefore, I am not preferred to interfere with the impugned notification, but I would rather permit the petitioner to file an appeal before the Appellate Authority.



18.It is informed by the learned counsel for the petitioner that these petitions were put in the drop box of the High Court on 06.01.2022. They have been taken up for examination on 10.01.2022. Let me take the statement made across the bar, as being correct. The impugned orders had been passed on 03.01.2022. The petitioner had ten days time in accordance with Section 11, to file an appeal. The period from which, the writ petition had been presented before the Court (06.01.2022) till today (19.01.2022) may be excluded from the calculation of ten days and the option is given to the petitioner to file an appeal, if he is so advised. That is only an option given to him and the petitioner may take it up or may not take it up. But if he does, the Appellate Authority may consider the interregnum period between 06.01.2022 and 19.01.2022 and exclude that particular period from the period of ten days which is given for filing an appeal.

19.With the said observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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.The Superintendent Engineer,
(Highways),
Construction and Maintenance,
Tirunelveli.

2.The Divisional Engineer,
(Highways),
Construction and Maintenance,
Tirunelveli.

+1 CC to M/s.SPL GP (SR-1907[F] dated 20/01/2022)

W.P.(MD) Nos.599, 600, 601 and 602 of 2022
19.01.2022

AC(CO)

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