



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR

W.P. [MD] Nos. 925 to 928 of 2022

and

W.M.P (MD) Nos. 755, 763, 765, 769, 764, 756, 766, 770 of 2022

WEB COPY

M. Mohamed Hakkim

: Petitioner
(in all W.Ps)

Vs.

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

: Respondent
(in all W.Ps)

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus by calling for the entire records pertaining to the impugned tender notice issued by the respondent vide Tender Notice No.19/2021-22/HDO, dated 03.01.2022 in non-plan 2021-22 insofar as the Work No.IV,III,I and II, referred to in the said notice is concerned and quash the same and consequently direct the respondent to proceed with tender process on the basis of the Tender summary report prepared in pursuance to the tender notice No.7/2021-22/HDO, dated 26.11.2021 by awarding the said work in favour of the petitioner.

For Petitioner : Mr.R.Anand (in all 4 W.Ps)

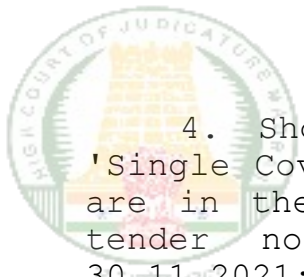
For Respondents : Mr.M.Lingadurai,
Special Government Pleader
(in all 4 W.Ps)

COMMON ORDER

This common order will govern the captioned four main writ petitions and the captioned writ miscellaneous petitions (W.M.Ps) thereat.

2. Mr.R.Anand, learned counsel on record for writ petitioner and Mr.M.Lingadurai, learned Special Government Pleader, who has accepted notice for the lone respondent are before this virtual Court.

3. Owing to the short point on which the captioned matters turn, main writ petitions were taken up and heard out with the consent of both sides.



4. Short facts are that the respondent invited bids under 'Single Cover System' through online for four different works which are in the nature of repairs to District roads; that these four tender notices were dated 26.11.2021, 29.11.2021 (two) and 30.11.2021; that these 'four tender notices' shall be referred to as 'first tender notices'; that writ petitioner responded (bid) qua the first tender notice but stood rejected; that writ petitioner assailed such rejection which is by way of a corrigendum to '03.01.2022 tender notices' ('present tender notices' for convenience and clarity); that such challenge was by way of four writ petitions namely, W.P(MD) Nos.599, 600 to 602 of 2022 all of which came to be dismissed by a common order made by another Hon'ble Single Judge on 19.01.2022 albeit preserving the rights of the writ petitioner to file an appeal under Section 11 of 'the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998)' (hereinafter 'Tender Transparency Act' for the sake of convenience and clarity); that writ petitioner accepted this common order dated 19.01.2022 and filed an appeal under Section 11 of Tender Transparency Act before the Government; that the four appeals were filed on 21.01.2022 and the same were received by the Appellate Authority on 22.01.2022; that writ petitioner has sought for an interim order vide Subsection (4) of Section 11 of Tender Transparency Act before the Appellate Authority and that is also pending; that obviously the four main statutory appeals are also pending with Appellate Authority (Government); that the appeals have to be decided within fifteen days vide Subsection (1) of Section 11 of Tender Transparency Act and the fifteen days will elapse on 06.02.2022; that in the interregnum, present tender notices were issued by the lone respondent fixing 28.01.2022/14:00 hours as the last date for uploading the EMD/tender documents and also fixing 31.01.2022/15:30 hours as the time for opening the tender documents in the Office of the lone respondent; that under such circumstances, writ petitioner came up with captioned writ petitions saying the pending four appeals will be neutralized and the appeal remedy under Tender Transparency Act itself will become illusory if the present tender notices are carried to its logical end by opening the same on 31.01.2022.

5. Learned counsel for writ petitioner submits that the writ petitioner verily believes that he has a good case in the four appeals before the Appellate Authority under Tender Transparency Act. Saying so, learned counsel for writ petitioner on instructions, submitted that it will serve the purpose if the date for opening the tender covers alone is shifted from 31.01.2022 by a week as by then his appeals would be decided by the Appellate Authority.

6. Before this Court proceeds further, it is necessary to extract and reproduce the present tender notices and the same as follows:



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GOVERNMENT OF TAMILNADU
HIGHWAYS DEPARTMENT
OFFICE OF THE SUPERINTENDING ENGINEER (HIGHWAYS),
CONSTRUCTION & MAINTENANCE, TIRUNELVELI CIRCLE,

TENDER NOTICE No.19 /2021-22/HDO, dated : 03.01.2022
(Online only)

For and on behalf of the Governor of Tamil Nadu, the Superintending Engineer (H),
C&M, Tirunelveli Circle invites percentage bids under Single cover system through Online only for
the work as detailed below in the table.

Sl No	Name of work	Approximate Value of work In Lakhs.	Bid security (in Rupees)	Concerned Division	Period of Completion
NON - PLAN 2021-22					
TIRUNELVELI (H) C&M DIVISION					
1	Special Repairs to Other District Roads of Palayamkottai (H)C&M Sub-Division	Rs.130.32	Rs. 75,500/-	Tirunelveli (H) C&M, Division	3 Months
2	Special Repairs to Other District Roads of Palayamkottai (H)C&M Sub-Division	Rs.145.32	Rs. 83,000/-	Tirunelveli (H) C&M, Division	3 Months
3	Special Repairs to Other District Roads of Nanguneri (H)C&M Sub-Division	Rs.59.71	Rs.40,000/-	Tirunelveli (H) C&M, Division	2 Months
4	Special Repairs to Other District Roads of Palayamkottai (H)C&M Sub-Division	Rs.152.27	Rs. 86,500/-	Tirunelveli (H) C&M, Division	3 Months
NAGERCOIL (H) C&M DIVISION					
5	Special Repairs to Major District Roads of Thuckalay (H)C&M Sub-Division	Rs.114.70	Rs.67,500/-	Nagercoil (H) C&M, Division	3 Months



Notes:

1. Tender documents are available in Online in the Government website <https://tntenders.gov.in> and it can be downloaded at free of cost upto 28.01.2022 at 14.00 Hrs(as per server system clock).
2. The bidder should be a registered Class – I contractor in S.No : 1 to 4 and Class – II & above contractor in S.No: 5 to 6 the Tamil Nadu Highways Department with Digital Signature Certificate.
3. Bids must be submitted through Online upto 28.01.2022 at 14.00 Hrs(as per server system clock).
4. Bids must be accompanied with scanned copy of EMD (Bid security) pertaining to the works as per the above table in the prescribed form drawn in favour of the Divisional Engineer (H), C & M, Tirunelveli Division.
5. The original EMD and all other Original / attested Tender documents as uploaded shall be received by the Superintending Engineer (H), C&M, Tirunelveli Circle on or before 28.01.2022 At 14.00 Hrs failing which, the bid shall be summarily rejected.
6. The tender cover containing EMD and Tender documents received through "Online" shall be opened at 15.30 Hrs on 31.01.2022 in the office of the Superintending Engineer (H), C&M, Tirunelveli Circle.
7. Corrigendum if any, it will be available only in the above website.
8. The contractor should produce the documents for own possession of sufficient Plants & Machineries and obtain certificate from the competent authorities as specified in the tender documents for working condition of the Plants & Machineries to complete the work in time with quality.
9. Further details can be seen on Government website <https://tntenders.gov.in>

Superintending Engineer (H), C&M,
Tirunelveli Circle

7. Learned State counsel submits on instructions, that there has been delay in completion of works on the part of writ petitioner with regard to earlier work. Learned State counsel adverted to Tamil Nadu Highway Manual and submitted that such delay is unacceptable. Learned State counsel also drew the attention of this Court to Section 12 of Tender Transparency Act and more particularly, Subsection (2) of Section 12 of Tender Transparency Act and submitted that the rights of the tender accepting authority to reject a tender is plenary and writ petitioner cannot make a complaint qua the same.

<https://hcservices.ecourts.gov.in/hcservices/>



8. This Court carefully considered the rival submissions.

9. It may not be necessary to go into merits of the rejection as the rejection of first tender notice has been challenged by the writ petitioner and the writ petitioner has been relegated to the appeal remedy under Tender Transparency Act. Appeals have been preferred and the same are pending. Prayer for interim orders under Subsection (4) of Section 11 of Tender Transparency Act are also pending before the Appellate Authority. Therefore, it is completely the domain of the Appellate Authority to decide about the rejection. In this view of the matter, submissions made by learned State counsel are left open for being considered by the Appellate Authority and this Court expresses no opinion or view on the same.

10. In the light of the limited prayer that is now being made by the writ petitioner i.e., the rescheduling of the date of opening of tender covers qua present tenders, it will suffice if the date for opening of the tender covers containing EMD/tender documents in the Office of the lone respondent (Superintendent Engineer (Highways), Construction and Maintenance, Tirunelveli) alone is rescheduled from 31.01.2022 to 07.02.2022. In other words, in the tender conditions extracted and reproduced supra elsewhere in this order, in Sl.No.6 the date '**31.01.2022**' alone will now stand rescheduled as '**07.02.2022**' (**Monday**) and there will be no other change in any other tender conditions. The only reason for adopting such approach is the Tender Transparency Act prescribes that the appeal shall be decided within fifteen days. This Court by judicial order vide 19.01.2022 has relegated the writ petitioner to the appeal remedy, the appeals (filed on 22.01.2022) are pending. The appeals have to be decided on or before 04.02.2022. The writ petitioner has also made interim prayer under Subsection (4) of Section 11 of Tender Transparency Act before the Appellate Authority regarding opening of the present tenders on 31.01.2022 and no orders have been passed on the same. Another important reason the last date for submission of tender forms/EMD has not elapsed and it is live till 14:00 hours tomorrow (28.01.2022). This Court also notices that such a course would balance the rights of both sides and it would not infract anybody's rights.

11. It is made clear that besides not expressing any opinion on the merits of the appeal before the Appellate Authority, this Court also makes it clear that no opinion or view has been expressed regarding the rights of writ petitioner and similarly placed persons to challenge tender notices as it is not necessary for disposal of the captioned matter owing to the stand taken by learned counsel for writ petitioner. In other words, this order will not serve as a precedent qua challenge to tender notices. To be noted, as far as participating in the present tender notices by submitting/uploading EMD/tender documents on or before 14:00 hours tomorrow (28.01.2022)



is a consent qua the writ petitioner as the writ petitioner by his own volition has limited his prayer to rescheduling the tender opening date from 31.01.2022 to 07.02.2022. Therefore, this is a consent order insofar as the writ petitioner is concerned.

12. The rescheduling of the date from 31.01.2022 to 07.02.2022 qua Sl.No.6 of the tender notice shall be uploaded by the lone respondent forthwith. When the tenders are opened, the same will be scrutinized in accordance with merits and in accordance with other procedures uninfluenced by this order. This Court also directs the lone respondent to upload the rescheduled date forthwith.

13. This Court notices that the Appellate Authority qua Section 11 of Tender Transparency Act is 'Government' and 'Government' is defined in Section 2(c) of Tender Transparency Act. The definition says Government is State Government. As the Appellate Authority is not a respondent here, learned State counsel shall communicate this order forthwith to the Appellate Authority i.e., Government vide Section 2(c) of Tender Transparency Act.

14. Captioned writ petitions are disposed of in the aforesaid manner. Consequently, captioned W.M.Ps are disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

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

2.The Special Government Pleader,
Madurai Bench of Madras High Court,
Madurai.