



W.A(MD)No.742 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2022

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CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.742 of 2022

P.K.R.Ravindrakumar

... Appellant/Writ Petitioner

Vs.

The Commissioner,
Madurai Municipal Corporation,
Madurai.

... Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 24.02.2022 in W.P(MD)No.20805 of 2021 and allow the Writ Appeal.

For Appellant	: Mr.AR.L.Sundaresan Senior Counsel for M/s.J.Anandkumar
For Respondent	: Mr.B.Saravanan Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by S.S.SUNDAR,J.)

The writ appeal is directed against the order of learned Single Judge, dated 24.02.2022, dismissing the Writ Petition filed by the petitioner in W.P(MD)No.20805 of 2021.



2. Heard Mr.AR.L.Sundaresan, learned Senior Counsel for the appellant and Mr.B.Saravanan, learned Standing Counsel appearing for the respondent.

3. The respondent issued a tender notification on 30.01.2021, inviting tenders for a road project. The appellant participated in the tender and he was the successful bidder when the price tender was opened. It is the case of the appellant that the appellant was required to extend the bid security by communication dated 20.05.2021 and the appellant has also extended the bid secured upon the request of the respondent. However, the respondent without accepting the tender has floated a fresh tender notification on 11.11.2021. The appellant challenged the said notification by filing the writ petition, mainly on the ground that it is arbitrary and illegal. Learned Single Judge of this Court dismissed the writ petition after considering the facts and the arguments put forth by the appellant side. Aggrieved by the same, the above appeal has been preferred by the writ petitioner.

4. Learned Senior Counsel appearing for the appellant submitted that the appellant, who is the lowest bidder, would have been awarded the work but for the intervening election. It was only in this context, the appellant extended the bid security at the request of the respondent for a



period upto 31.08.2021. It is argued that the learned Single Judge failed to consider the importance of re-validation of bid security. Learned Senior Counsel then submitted that being the lowest bidder, the appellant is entitled to get the contract, unless there are sufficient reasons for going for fresh tender. Since the respondent has now issued a fresh notification without assigning any reason, it should be inferred that the re-tender notification suffers from malafides.

5. Learned Senior Counsel appearing for the appellant further submitted that the appellant has participated in the tender by quoting the lowest price. By virtue of re-tender notification, the respondent has permitted many persons, who have not even participated or eligible as per the previous tender, to participate in the re-tender and hence, the re-tender notification is against the principles of law governing Government contracts. It is also submitted that the petitioner's bid amount is revealed and hence, the petitioner is put to serious prejudice. Stating that the re-tender notification is without rejecting the petitioner's tender assigning reasons, it is argued that the impugned notification is liable to be quashed for arbitrary exercise of power.

6. In support of his submissions, learned Senior Counsel relied on the the judgment of Hon'ble Supreme Court in the case of ***The Vice***



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Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Another v. Shishir Realty Private Limited & Others in CIVIL APPEAL NOS. 3956 - 3957 OF 2017 dated 29.11.2021, wherein the Hon'ble Supreme Court has observed as follows:

“65. It is admitted as per record that the respondent - M/s. Metropolis Hotel was the highest bidder. Moreover, the appellants failed to bring anything on record to prove that the state exchequer has suffered losses pursuant to the said allotment. Nothing has been produced on record, the public interest that will be prejudiced if the respondents - lessees are allowed to go ahead with the said project. On the contrary, the respondents - lessees acting in furtherance of the assurances given by the authorities, obtained huge financial assistance. Equity demands that when the State failed to produce an iota of evidence of either financial loss or any other public interest that has been affected, it should be compelled to fulfill its promises. In fact, it is respondents - lessees who shall be gravely prejudiced if the order of cancellation is upheld by this Court after investing a significant amount and facing prolonged litigation.”



7. Considering the said judgment, this Court finds that said judgment and principles laid therein cannot be applied in the present case as the facts in the judgment of Hon'ble Supreme Court are entirely different and it is a case relates to cancellation of lease, which was granted earlier and there was a concluded contract. It is also noticed that the lessees had mobilized huge funds in furtherance of contract. It is true that the concluded contract can be rescinded only after assigning reasons that too if it is in public interest. In the present case, the appellant has participated in the tender and was the successful bidder. However, merely because the person has quoted the lesser amount and happens to be the successful bidder, he has no vested right. The tender inviting authority has a discretion and the petitioner having no vested right cannot challenge the impugned notice merely on the ground that he was the successful bidder pursuant to the earlier notification.

8. Clause 38.1 and 40.1 of the tender conditions are relevant and they are extracted hereunder for convenience:-

“ 38.1 The Employer reserves the right to accept or reject any bid and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all documents submitted and specifically, bid securities, shall be promptly returned to the



Bidders.

* * *

40.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, via the Letter of Acceptance included in the Contract Forms, that its bid has been accepted. The Letter of Acceptance shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works. (hereinafter and in the Conditions of the Contract and Contractor Forms called "The Contract Price")."

From the tender conditions, it is evident that the appellant cannot have any grievance if fresh notification is issued for the same work. In this case, the respondent has decided to go for a fresh tender and so long as there is no concluded contract, this Court does not find any procedural violation.

9. The scope of judicial review is limited, as held in several decisions of the Hon'ble Supreme Court particularly with reference to cases relating to tender. Unless there is a serious irregularity in the decision making process, the decision as such cannot be interfered with merely because the tender is floated by the instrumentality of the State. Though there is an allegation of malafide, it is seen that the appellant has



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alleged malafide only for the reason that the respondent has issued fresh tender notification without assigning any reason. A counter affidavit has been filed in the writ petition denying the allegations and justifying the decision to go for re-tender. This Court is unable to spot any extraneous factor which prompted the respondent to go for fresh tender. It has been held repeatedly by this Court and the Hon'ble Supreme Court that in contractual matters, this Court will not interfere with the decision of the instrumentality of the State unless there is an element of public interest. Hence, this Court is unable to find any merit in any of the grounds raised by the appellants to interfere with the order of the learned Single Judge.

10. Accordingly, the Writ Appeal is dismissed. No costs.

11. It is surprise to note that the respondent has not disbursed the amount that was originally paid by the appellant by way of EMD. The said amount shall be disbursed to the respondent within one week from the date of receipt of a copy of this order.

[S.S.S.R.,J] [S.S.Y.,J.]
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