

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 15.07.2022

PRONOUNCED ON : 11.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE **G.R. SWAMINATHAN**

**W.P. (MD) No.11147 of 2022**

**and**

**W.M.P. (MD) Nos.7981, 7982 & 9723 of 2022**

V.Chellappan Pillai

... Petitioner

Vs.

1.The District Collector,  
Kanyakumari District.

2.The Additional Director of Panchayat,  
Office of the District Collector,  
Kanyakumari District, Kanyakumari.

3.The Executive Officer,  
Aralvaimozhi Town Panchayat,  
8/51-Main Road, Aralvaimozhi – 629 301,  
Kanyakumari District.

... Respondents

**Prayer :** Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned Tender Notice in Na.Ka.No.110/2022/A1 dated 23.05.2022 and the consequential impugned Tender Notice in Na.Ka.No.110/2022/A1 dated 09.05.2022 on the file of the 3<sup>rd</sup> respondent and quash the same and further directing the respondents to accept the technical bid of the petitioner in pursuance of the tender Notice in Na.Ka.No.110/2022/A1 dated 31.03.2022 on

the file of the 3<sup>rd</sup> respondent.

|                |                                                     |
|----------------|-----------------------------------------------------|
| For Petitioner | : Mr.Prabhu Rajadurai G.                            |
| For R1 and R2  | : Mr.N.Ramesh Arumugam<br>Government Advocate       |
| For R3         | : Mr.M.Siddharthan<br>Additional Government Pleader |

### **ORDER**

Thiru.Chellappan Pillai, President of a Self-Help Group, is the petitioner in this writ petition. The Aralvaimozhi Town Panchayat issued tender notification for supply of manpower to carry out the petition-mentioned works on outsourcing basis to implement solid waste management and allied works for the year 2022-2023. The petitioner applied in response to the notification. On account of the conditions set out in the tender notification, the writ petitioner's tender came to be rejected at the technical bid stage itself. Challenging the rejection order, this writ petition has been filed.

2.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and contended that the rejection order must be set aside.

3.Per contra, the learned counsel appearing for the respondents submitted that, since the writ petitioner could not fulfill the technical conditions and was found to be ineligible, no interference is called for. The writ petitioner has filed additional affidavit as well as rejoinder.

4.I carefully considered the rival contentions and went through the materials on record.

5.One of the conditions is that the petitioner must have remitted EPF and ESI contributions for three preceding years from 2019-2020. Another condition is that the applicant must have an annual turnover of Rs.50 Lakhs for three years. The writ petitioner would contend that this must be understood to mean that the tenderer must be able to show total turnover of Rs.50 Lakhs for all the three years put together. If such an interpretation is accepted, the petitioner will fulfill such a condition. The respondents contend that this condition means that, for each year, the petitioner must have put in turnover of Rs.50 Lakhs.

6.*Prima facie* I feel that the writ petitioner's contention appears to be well founded. But, since the petitioner does not fulfill the 3<sup>rd</sup> condition and

since this Court will not be justified in testing its validity at this stage, I am not able to interfere with the order impugned in this writ petition. However, I grant liberty to the petitioner to file an appeal before the Government under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998 (Act 43 of 1998). Of course, the said provision states that the appeal must have been filed within 10 days. But, considering the fact that the petitioner has been knocking the doors of this Court, if such an appeal is filed within 10 days from the date of receipt of a copy of this order, it will be entertained without reference to limitation.

7. There is a saying that the proof of the pudding is in the eating. If on account of the conditions stipulated by the local body, the field of competition has been restricted, it is the duty of the Government to revisit the conditions. Tamil Nadu Act 43 of 1998 contains the following recitals :

*“An Act to provide for transparency in the public procurement and to regulate the procedure in inviting and accepting tenders and matters connected therewith or incidental thereto.*

*WHEREAS to maximise economy and efficiency in Government procurement;*

*AND WHEREAS to foster and encourage effective participation by tenderers in the process of tenders;*

*AND WHEREAS to promote healthy competition among tenderers;*

*AND WHEREAS to provide for fair and equitable treatment of all tenderers;*

*AND WHEREAS it is expedient to eliminate irregularities, interference and corrupt practices in the matters relating to tender processes by providing transparency in such matters;*

*AND WHEREAS to promote the integrity of the process of tenders and to promote fairness and public confidence in the processing of tenders by ensuring transparency in the procedure relating to procurement.”*

8.The petitioner has alleged that, only to exclude the tenderers like the petitioner, restrictive conditions have been incorporated in the tender notification. If only one or two persons clear the technical stage and go up to the price bid stage, the irresistible conclusion is that the tender conditions have been tailor-made to suit particular individuals and entities. Unless there is healthy competition among tenderers, the very object of conducting a tender is lost. I, therefore, permit the petitioner to raise all the contentions before the Government in his appeal. If the Government finds substance in the writ petitioner's arguments, it is open to the Government to pass appropriate orders as it deems fit. It can even restrict the contract period of the successful tenderer in the present case. The order to be passed by the Government on the petitioner's appeal will, of course, be subject to judicial review. The

Government shall dispose of the petitioner's appeal, if it is filed, within a period of four weeks. The local body is at liberty to finalise the tender process, and if it has already finalised the tender process, the same will abide by the orders to be passed by the Government in the appeal.

9. With this liberty to the writ petitioner and direction to the Government, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

**11.10.2022**  
(1/2)

Internet : Yes  
Index : Yes / No  
Speaking order / Nonspeaking order  
mkn

To

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Kanyakumari District.
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Office of the District Collector,  
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W.P. (MD) No.11147 of 2022

**G.R. SWAMINATHAN, J.**

mkn/skm

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