



W.P. (MD) No.11148 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 15.07.2022

PRONOUNCED ON : 11.10.2022

CORAM :

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

W.P. (MD) No.11148 of 2022

and

W.M.P. (MD) No.7983 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,
Azhagiyapandiyapuram Town Panchayat,
Main Road, Kurathiyarai,
Azhagiyapandiyapuram Post – 629 851,
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.55/2022 dated 26.05.2022 on the file of the 3rd 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.55/2022/A1 dated 13.04.2022 on the file of the 3rd respondent.



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

ORDER

Thiru.Chellappan Pillai, President of a Self-Help Group, is the petitioner in this writ petition. The Azhagiyapandiyapuram Town Panchayat issued tender notification for supply of manpower to carry out public help 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, by the impugned order dated 26.05.2022. 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.



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3.The 3rd respondent filed counter affidavit stating that, when the tenders were opened on 29.04.2022, it was found that the writ petitioner's tender suffered from the following two defects :

“a) The Annual Turnover of past 3-years, for more than 50 Lakhs, it is found that during the financial year 2019-20, the turnover is less than 50 Lakhs.

b) did not furnish the documents to the proof of payment of ESI, EPF amounts and deposited the same in the respective heads of accounts for the past three years.”

The other tenderers also did not fulfill the eligibility conditions and the entire tender process was cancelled and the 3rd respondent had issued a fresh tender notice dated 01.06.2022.

4.The writ petitioner filed a rejoinder. The learned counsel on either side reiterated all the contentions set out in their respective pleadings.

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



6.The stand of the local body is that the petitioner did not furnish documents indicating proof of having made contributions to ESI Corporation and Employees' Provident Fund Organisation. I went through the contents of the notification dated 13.04.2022. I do not find any condition that the applicant must have already been assessed under the Employees' State Insurance Act, 1948 or the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or that proof of having made contributions therein must have been enclosed. A tenderer's application can be rejected only on the grounds mentioned in the tender notification. I, therefore, sustain the contention of the petitioner's counsel that such documents were not really required to be annexed.

7.Rule 15 of the Tamil Nadu Transparency in Tenders Rules, 2000, mandates that the tender document shall clearly indicate the criteria which are to be adopted for evaluating the tenders and how such criteria will be quantified or evaluated. The tender notification only reads that the tender applicant's annual turnover during the preceding three years must be above Rs.50 Lakhs. It does not state that the annual turnover for each year must be above Rs.50 Lakhs. I, therefore, hold that the petitioner had fulfilled all the tender eligibility norms and rejection of his tender application was clearly improper. The tender inviting authority ought to have acted in a proper manner. The contentions of



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the petitioner stand vindicated by the subsequent developments. In the subsequent notification, a condition regarding ESI and EPF contributions has been specifically incorporated. The petitioner's counsel would allege that incorporation in the subsequent notification is only to prevent the petitioner at the threshold stage itself. Considering the nature of contract, when the petitioner has fulfilled all the norms, it is unfair and violative of Article 14 of the Constitution of India to reject his tender. The impugned rejection order is set aside.

8.The writ petition is allowed. The 3rd respondent shall accept the writ petitioner's technical bid. No costs. Consequently, connected miscellaneous petition is closed.

11.10.2022
(2/2)

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

To



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G.R. SWAMINATHAN, J.

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