



W.P.(MD)No.11164 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11164 of 2022

and

W.M.P(MD)No.8828 of 2022

B.Subramanian

... Petitioner

Vs

1.The Director of Town Panchayat,
Kuralagam,
Chennai – 108.

2.The Assistant Director of Town Panchayat,
Sivagangai Zone,
Sivagangai.

3.The Assistant Executive Engineer,
Thondi Town Panchayat,
Sivagangai Zone,
Sivagangai.

4.The Executive Officer / Tender Inviting Authority,
Thondi Town Panchayat,
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to call for the records relating to the proceedings of the fourth respondent in memorandum in Na.KA.No.155/2022 dated 03.06.2022 and to quash the same as illegal by allowing the above writ



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petition and consequently, direct the respondents 1 to 4 to declare the petitioner as successful bidder for the tender in Na.Ka.No.155/2021 dated 14.03.2022 under NABARD RIDF - XXVII 2021-22.

For Petitioner : Mr.A.Mohan

For Respondents : Mr.G.Sivaraja
Government Advocate for R.1 to R.3

Mr.G.V.Vairam Santhosh
Additional Government Pleader for R.4

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is a registered class I contractor. The fourth respondent issued tender notification on 14.03.2022, calling for application from eligible contractors for re-laying of the BT Road in Thondi Town Panchayat. The petitioner was one of the tenderers. The fourth respondent stated that they would follow the two cover system. The technical bid was opened on 22.03.2022 at 03.30 p.m. The petitioner was under the impression that even though the tenders have been submitted, they have not been opened. He, therefore, filed this writ petition in the nature of Writ of Mandamus for directing the respondents 2 to 4 to declare the tender results. Notice was ordered. When the respondents took the stand that the petitioner's bid has been



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rejected, he amended the writ prayer and wanted the rejection order to be quashed.

3. The learned counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition as well as the materials enclosed in the typed set of papers. He called upon to this Court to allow this writ petition as prayed for.

4. Per contra, the learned counsel appearing for the local body submitted that the petitioner failed to produce the Bank Solvency Certificate in original and that is why, his technical bid came to be rejected. According to him, no case has been made out for interference. He pressed for dismissal of this writ petition.

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

6. From a reading of the tender notification, one can note that the tenderer must have the annual minimum financial turn over of not less than 50% of the value put to tender in a financial year for the preceding three years. The tender value in this case is said to be around Rs.1,10,00,000/- (Rupees One Crore and Ten Lakhs only). The petitioner is having solvency to the tune of Rs.2.50



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Crores. This is evident from the copy of the certificate dated 19.03.2022 issued by the Canara Bank, Devakottai Branch, which has been enclosed in the typed set of papers. It is not the case of the respondents that the Certificate is a forged one. Their case is that the original certificate was not produced.

7. The learned counsel appearing for the petitioner draws my attention to the fact that the clause 17.4 of the tender notification provides for acceptance of e-submission of tender also. In e-submission of tender, the original certificates cannot be produced. The petitioner would, of course, assert that he submitted the application both through online mode as well as manually. He would also assert that he had enclosed the original certificate and that the stand taken by the respondents is not correct. The petitioner is not a novice and he is a class I contractor who has been in the field for 17 long years. Therefore, it is very difficult to believe the stand of the respondents that the original certificate was not produced. In any event, when the tender notification provided for e-submission of tenders, the production of the original certificate loses its significance. The world has moved into the digital age. The tender inviting authority could have sent an e-mail to the Bank which issued the Solvency Certificate and based on their response could have taken their call.



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8. It is admitted by the respondents that the tenders were opened only on 01.06.2022. This is clearly running contrary to the statutory mandate set out in the Rule 21. Of course, in the counter, the respondents have given some explanation for non-opening of the tenders. When the statutory rule categorically states that the tenders must be opened at the time specified in the notification, delay in opening the tenders cannot be accepted. In this case, the tenders were not opened in the presence of the petitioner. Possibility of tampering cannot be ruled out. The impugned proceedings are quashed. The petitioner shall be considered as a person who has technically qualified. His bid / tender will be assessed along with the other technically qualified tenders and bids and thereafter, the authority will take a final call in the matter. The price bids will have to be opened immediately after due notice to all the parties.

9. This writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

15.07.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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