



WEB COPY

WP(MD)No.11721 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) No.11721 of 2022

and

WMP (MD) No.8547 of 2022

Dhana.Vimal

... Petitioner

vs.

1.The Assistant Director of
Town Panchayat,
Thiruchirappalli.

2.The Assistant Engineer,
3rd Floor, Collectorate,
Thiruchirappalli.

3.The Executive Officer,
Keeramangalam Town Panchayat,
Keeramangalam,
Pudhukottai District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the third respondent to open the tender bids received pursuant to the tender notification dated 09.03.2022 in Na.Ka.No.130 of 2021 on a specified date that may be fixed by this Court and to conclude the tender process in accordance with the Tamil Nadu Transparency in Tenders Act, 1998.

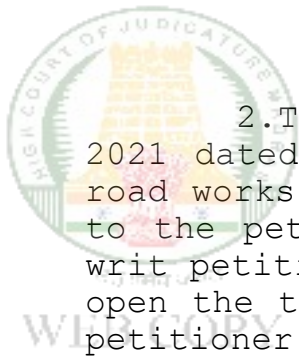
For Petitioner : Mr.M.Rajarajan

For Respondents : Mr.K.Balasubramani,
Special Government Pleader
for R1 and R2

Mr.R.Baskaran,
Additional Advocate General
assisted by Mr.N.G.A.Nataraj
for R3

O R D E R

Heard the learned counsel for the petitioner, the learned Special Government Pleader for the respondents 1 and 2 and the learned Additional Advocate General appearing for the third respondent.



2.The third respondent issued notification bearing No.130 of 2021 dated 09.03.2022 calling for tenders for carrying out certain road works. The tenders were to be opened on 25.03.2022. According to the petitioner, the tenders were not been opened. Hence, this writ petition came to be filed for directing the third respondent to open the tenders received pursuant to the tender notification. The petitioner had also sent representations in this regard.

3.When the matter was taken up for hearing on the earlier occasion, it was submitted by the respondents that the tenders were opened on 28.03.2022. The petitioner's tender was rejected at the technical scrutiny stage itself. Contract was awarded in favour of one Sampath on 30.03.2022. The order awarding the work was issued on 20.05.2022. Works commenced on 11.06.2022. Of course, only a negligible quantum of work had been carried out. In such circumstances, I passed an interim order on 15.06.2022.

4.When the matter was taken up for final hearing, the learned Additional Advocate General submitted that there is no requirement that the tenderer should be informed immediately if his technical bid is rejected. He submitted that under Section 11 of the Tamil Nadu Tender Transparency in Tenders Act, 1998 the writ petitioner can file an appeal before the Government. He wanted the writ petition to be dismissed on the ground of failure to avail the alternative remedy. He relied on the decision reported in **(2020) 2 CWC 704 (Ganapathy v. Commissioner of Municipal Administration)** in this regard.

5.After carefully considering the rival contentions and going through the materials on record, I am satisfied that the right of the petitioner to avail the alternative remedy of appeal under Section 11 of the Act has been frustrated. It is true that in the tender notification, there is no stipulation that within a particular time frame, the unsuccessful tenderer must be informed about the reasons for rejection of his tender. But the tender notification must be read along with the provisions of the Tamil Nadu Transparency in Tenders Act, 1998. As per Section 10(7) of the Act, the Tender Accepting Authority shall intimate the information regarding the name and address of the tenderer whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate Tender Bulletin Officers. This requirement has been laid down so that the aggrieved tenderer can avail the appellate remedy under Section 11 of the Act. Section 11 of the Act read as under :

"Appeal.- (1) Any tenderer aggrieved by the order passed by the Tender Accepting Authority under section 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.



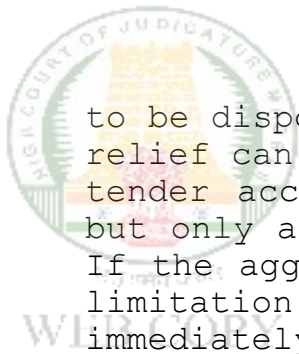
(2) In disposing of an appeal under sub-section (1), the Government may, after giving the party an opportunity of making his representations, pass such order thereon as they may deem fit.

(3) The order of the Government on such appeal shall be final.

(4) The Government may, pending the exercise of their powers under this section pass such interlocutory orders as they may deem fit."

6. These two provisions were considered by the Madras High Court in quite a few decisions. In **Chennai Metropolitan Water Supply and Sewerage Board v. Khrunichev State Research and Production Space Centre (AIR 2005 Mad 149)**, it was observed that a conspectus reading of Section 10 and 11 makes it clear that an order accepting the tenders as well as rejection of other tenders are to be communicated to all concerned. In **Consolidated Construction Consortium Ltd. v. Tidel Park Coimbatore Ltd. (2009 - 5 - L.W - 858)**, it was noted that the TTIT Act was enacted to prevent executive interference and also to prevent recurrence of irregularities by the procuring entity. It presupposes that the appeal that is contemplated under Section 11 of the TTIT Act can be filed by the tenderer aggrieved by the order passed by the tender accepting authority favoring one tenderer. It impliedly means that any internecine dispute between various tenderers can be referred to the Government by way of an appeal and the Government can decide the matter it being the controlling authority of all the schedule mentioned organizations. In **Smart Chip v. Secretary to the Government (WP No.16971 of 2013)**, the Hon'ble Division Bench held that failure to adhere to the mandate under Section 10(7) of the Act will mean that the aggrieved tenderer has been prevented from pursuing the remedy of appeal. In such an event, the court will be justified in entertaining a challenge under Article 226 of the Constitution of India.

7. It is true that Section 10(7) of the Act is silent as to when the information must be furnished. As per Rule 27 of the Tamil Nadu Transparency in Tenders Rules, 2000, the process of tender evaluation should be confidential until orders on the tenders are passed. When the statute has prescribed an appeal remedy to the aggrieved tenderer, it cannot be rendered futile or meaningless by not furnishing the information in time. Subsequent developments ought not to render any remedy infructuous. Any statutory scheme should be meaningfully construed. A balance has to be struck so that no provision becomes a dead letter. After the award of contract is notified, work order has to be issued in favour of the successful tenderer after which alone the implementation stage will begin. Section 11 gives ten days to file an appeal. The appeal has



to be disposed of within 15 days after the appeal is filed. Interim relief can also be granted. It would be reasonable to hold that the tender accepting authority should issue work order not immediately but only after ten days after the orders are passed on the tenders. If the aggrieved party is really serious, he will not wait for the limitation period of ten days to file the appeal. He would immediately file the appeal and also pray for interim order. If the appeal is filed within six days after receipt of information under Section 10(7) of the Act, the Government must dispose of the interim application within three days thereafter. Such a construction will ensure that the statutory scheme is not subverted. In the case on hand, the information under Section 10(7) of the Act was not at all furnished to the petitioner. No publication has been made in the tender bulletin also.

8. In view of the foregoing discussion, the writ petition is disposed of in the following manner :

1. The third respondent is directed to furnish the information as contemplated under Section 10(7) of the Act forthwith. The same shall also be published in the meanwhile. A copy of such publication shall be sent to the petitioner also.

2. It is open to the petitioner to avail the alternative remedy before the Government. The petitioner is directed to avail the statutory remedy within a period of six days after receipt of such communication.

3. The government shall dispose of the petitioner's appeal within a period of two weeks thereafter. The petitioner shall be heard in person. Till final order is passed under Section 11 of the Act, the position that obtains as on date shall continue.

No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/06/2022

Sub Assistant Registrar (CS)

skm

To:

1. The Assistant Director of
Town Panchayat,
Thiruchirappalli.



2.The Assistant Engineer,
3rd Floor, Collectorate,
Thiruchirappalli.

3.The Executive Officer,
Keeramangalam Town Panchayat,
Keeramangalam,
Pudhukottai District.

+1 CC to M/s.M. RAJARAJAN, Advocate (SR-26647[F] dated 20/06/2022)

+1 CC to M/s.SPL.GP (SR-27181[F] dated 21/06/2022)

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