



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. [MD]No.20805 of 2021

and

W.M.P. [MD]No.17421 of 2021

P.K.R.Ravindrakumar

... Petitioner

Vs.

The Commissioner,
Madurai Municipal Corporation,
Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to impugned tender notification dated 11.11.2021 in No.82/2021 of the respondent and quash the same.

For Petitioner : Mr.AR.L.Sundaresan

Senior Counsel for Mr.J.Anandkumar

For Respondent : Mr.Veera Kathiravan

Additional Advocate General

Assisted by Mr.B.Saravanan

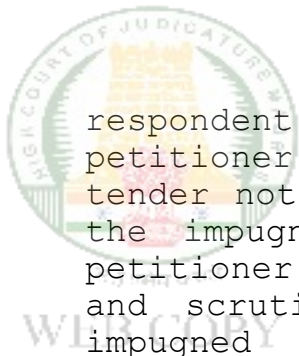
Standing Counsel

O R D E R

This writ petition has been filed challenging the tender notification dated 11.11.2021 issued by the respondent.

2.It is the case of the petitioner that the respondent has earlier issued a tender notification on 30.01.2021, inviting tenders for the very same road project. The petitioner participated in the tender and according to the petitioner he was the successful bidder. He has also paid the security deposit in terms of the tender on 20.02.2021. Thereafter, the bid security was requested to be extended by the respondent by its communication dated 20.05.2021. Accordingly, the petitioner had also extended the bid security acting upon the request of the respondent. However, it is the case of the petitioner that to his shock and surprise, a fresh tender notification dated 11.11.2021 has been issued for the very same road project for which the respondent had earlier issued tender notification on 30.01.2021.

3.The petitioner has challenged the impugned tender notification on the ground that arbitrarily and illegally, the



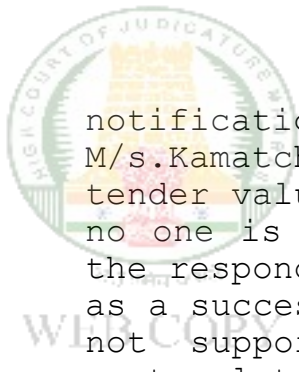
respondent has withdrawn from the earlier tender in which the petitioner was a successful bidder and has issued the impugned tender notification dated 11.11.2021. The petitioner has challenged the impugned tender notification on the ground that though the petitioner was a successful bidder after opening of the valuation and scrutiny of earlier tender, the respondent has issued the impugned tender notification dated 11.11.2021 arbitrarily and illegally and therefore this Court will have to exercise the power of judicial review with regard to the impugned tender and strike it down.

4.A counter affidavit has been filed by the respondent denying the allegations of the petitioner. According to them, the packages for which the earlier tender notification dated 30.01.2021 was called for are different from the packages for which the impugned tender notification dated 11.11.2021 has been issued. It is also their case that as per the terms and conditions of the earlier tender, the bid was valid only for 90 days. Since the impugned tender notification has been issued only after the expiry of the 90 days period, it is a valid tender notification.

5.The respondents have also relied upon Clause 38.1 of the bid document pertaining to the earlier tender notification dated 30.01.2021 and as per the said clause, the employer has reserved the right to accept or reject any bid and to annul the bidding process and reject all bids at any time prior to awarding contract without thereby incurring any liability to bidders. Therefore, according to the respondent, the respondent has every right to accept or reject any bid before awarding any contract in favour of the successful bidder.

6.The respondent has also relied upon Clause 40.1 of the terms and conditions of the auction under the earlier tender notification which states that 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 his 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. Clause 40.2 has also been relied upon which reads that until formal contract is prepared and executed, the notification of award shall constitute of binding contract. According to the respondent, the petitioner was never intimated that he was the successful bidder and no letter of acceptance was issued by the respondent or no contract form signed and therefore, the respondent has every right to issue a fresh tender notification which is the subject matter of this writ petition.

7.It is also the contention of the respondent that only two tenders were received for package No.II in the earlier tender



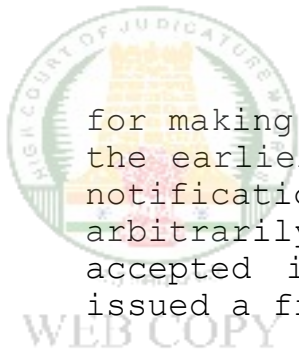
notification namely one from the petitioner and other from M/s.Kamatichi Engineering who quoted price much higher than the tender value. Therefore, it is the contention of the respondent that no one is declared as a successful bidder. Therefore, according to the respondent the claim of the writ petitioner that he was declared as a successful bidder is out of his own imagination and the same is not supported by any document corresponding to any procedure contemplated. It is also the contention of the respondent that they have identified the roads which need immediate attention as the same are not motorable though the same are heavy traffic and long main roads. Therefore, according to the respondent they had decided to abandon the road work pursuant to the earlier tender notification dated 30.01.2022.

8.It is also the contention of the respondent that the impugned tender notification has been issued in a transparent manner and the provisions of the Tamil Nadu Transparency in Tenders Act and Rules and the procurement policies suggested by the World Bank have been strictly followed. Wide publicity has already been given with regard to the impugned tender notification and if the petitioner desires to participate in the same, he can very well do so.

9.Heard Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.J.Anandkumar appearing for the writ petitioner and Mr.Veera Kathiravan, learned Additional Advocate General assisted by Mr.B.Saravanan, learned Standing Counsel appearing for the respondent.

10.Learned Senior Counsel for the petitioner drew the attention of this Court to the communication dated 20.05.2021 received by the writ petitioner from the respondent and would submit that even as late as 20.05.2021, the petitioner was asked to extend the bid security and keep it valid up to 31.08.2021, which according to him goes to show that the respondent had already accepted the bid of the petitioner. However, according to him, arbitrarily and illegally, for the very same road project the respondent has issued a fresh tender notification dated 11.11.2021 after a lapse of 10 months which is challenged in this writ petition. Learned Senior Counsel would also submit that the petitioner acceded to the request of the respondent to extend the bid security and accordingly he has re-validated the Demand Draft in favour of the respondent on 17.07.2021.

11.Learned Senior Counsel for the petitioner also drew the attention of this Court to the earlier tender notification and in particular he drew the attention of this Court to the nature of work for which the bid was submitted by the petitioner found in Package No.II and also drew the attention of this Court to the impugned tender notification dated 11.11.2021 and in particular he drew the attention of this Court to Sl.No.3 and would submit that excepting



for making certain cosmetic changes, the details of Package No.II in the earlier tender notification and Sl.No.3 found in the new tender notification are almost the same. Therefore, he would submit that arbitrarily and illegally when the petitioner's bid has already been accepted in the earlier tender notification, the respondent has issued a fresh tender notification for the very same road project.

12.With regard to the Clauses which the respondent has relied upon in the counter affidavit filed by them namely Clause Nos.38 and 40 are concerned, that cannot be relied upon by the respondent on the ground that the petitioner's bid has already been accepted and has been processed as seen from the communication issued by the respondent on 20.05.2021. According to learned Senior Counsel, arbitrarily and illegally shocking the conscience of one and all, the impugned auction notification has been issued even though the petitioner's bid was earlier accepted under the earlier tender notification dated 30.01.2021. Therefore, he would submit that the reasons given by the respondent for calling for a fresh tender in the counter affidavit are unacceptable as it is not in accordance with law.

13.Per contra, Mr.Veera Kathiravan, learned Additional Advocate General drew the attention of this Court to Clauses 38 and 40 of the bid document pertaining to the earlier tender notification dated 30.01.2021. Relying upon the same, he would submit that the respondent has made it clear in Clause 38 that they reserve their right to accept or reject any bid and to annul the bid process and reject all bids at any time prior to awarding of contract without thereby incurring any liability to bidders. He would submit that the petitioner's bid was never accepted by the respondent. He would also submit that there were two bidders namely M/s.Kamatchi Engineering and the petitioner herein. He would also submit that no one was declared as a successful bidder and the respondent had also not intimated any of the bidders as to who is successful. He would also submit that there was a reexamination by the respondent with regard to the earlier proposal for laying of roads and on re-examination there was a necessity to issue a fresh tender notification making necessary modifications for road projects and that is the reason for issuing the fresh tender notification.

14.Learned Additional Advocate General also drew the attention of this Court to package No.II of the earlier tender notification dated 30.01.2021 and Sl.No.2 in the impugned tender notification dated 11.11.2021 and would submit that the ward number mentioned in the earlier tender notification and the impugned tender notification are different. Therefore, according to him, the contention of the learned senior Counsel appearing for the petitioner that the impugned notification has been issued arbitrarily is incorrect.

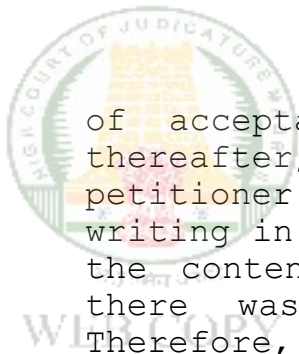


15. Learned Additional Advocate General also drew the attention of this Court to Clause 40.1 of the bid document under the earlier tender notification dated 30.01.2021 and would submit that the said clause makes it clear that successful bidder has to be notified in writing and a letter of acceptance and another contract form with regard to the acceptance of bids has to be made by the respondent. But according to him, in the instant case, no such notification was issued in writing to the petitioner as the bid of the petitioner was never accepted.

DISCUSSION:

16. Admittedly, the scope of interference in tender matters is very limited and the law is well settled by various decisions of this Court as well as the Hon'ble Supreme Court. Unless the decision of the respondent shocks the conscience of this Court, tenders cannot be interfered with. In the case on hand, the petitioner has challenged the impugned tender notification on the ground that he was a successful bidder in the earlier tender for the very same road project and the respondent has arbitrarily withdrawn the earlier tender and has issued the fresh tender notification. As seen from Clause 38 and Clause 40 of the bid document pertaining to the earlier tender notification dated 30.01.2021, the respondent has made it clear that they reserve their right to withdraw from auction and in case any person is declared as a successful bidder the same will have to be intimated by them in writing to the successful bidder and subsequently a contract will have to be entered into and work order issued. But in the case on hand, admittedly, no such intimation in terms of clause 40 of the bid document under the earlier tender notification was sent by the respondent to the petitioner. The petitioner only after having seen the terms and conditions with his open eyes has participated in the tender under the earlier tender notification dated 30.01.2021. In so far as tender matters are concerned, the petitioner as a bidder will have to satisfy all the tender conditions in letter and spirit.

17. Though in the affidavit filed in support of the writ petition, the petitioner has stated that after the change of Government, the respondent has changed its mind and has therefore issued the fresh tender notification, the same cannot be accepted by this Court in view of the fact that on 20.05.2021, that is after change of Government only the respondent has sent a communication to the petitioner requesting the petitioner to extend bid security for a further period. As seen from the documents placed on record before this Court, it cannot be inferred that there is arbitrariness on the part of the respondent to call for a fresh tender. The contention of the respondent is that only in public interest, a fresh tender notification has been issued. Clause 40 of the bid document of the earlier tender notification clearly stipulates that the petitioner will have to be intimated that he is a successful bidder and letter



of acceptance will have to be issued by the respondent and thereafter, contract signed. But in the case on hand, the petitioner was never intimated that he was a successful bidder in writing in accordance with Clause 40 of the bid document. It is also the contention of the respondent that apart from the petitioner there was one other bidder namely M/s.Kamatchi Engineering. Therefore, the respondent calling for a fresh tender notification cannot be considered to be arbitrary or unreasonable shocking the conscience of this Court.

18.The respondent has also reserved its right to withdraw from the auction as seen from Clause 38 of the bid document for the earlier tender notification. With open eyes, the petitioner has participated in the auction under the earlier tender notification knowing fully well that the respondent can exercise the power to withdraw from the auction as per Clause 38 of the bid document under the earlier notification. Even though learned senior Counsel for the petitioner referred to Sl.No.3 in the impugned tender notification and would submit that excepting for making cosmetic changes with regard to package No.II found in the earlier tender notification dated 30.01.2021, it is for the very same road project the respondent has issued the fresh tender notification is concerned, the said submission cannot be accepted by this Court as there are differences between the description mentioned in Package No.II of the earlier notification and Sl.No.3 in the impugned auction notification.

19.After giving due consideration to the aforementioned factors and in view of the fact that the reasons given by the petitioner seeking for judicial review does not shock the conscience of this Court and there is no arbitrariness on the part of the respondent, there is no merit in this writ petition.

20.Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Deputy Registrar(LA & MC)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MR

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presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Commissioner,
Madurai Municipal Corporation,
Madurai.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-8902[F] dated 25/02/2022)

+1 CC to M/s.K.VAIRAMUTHU, Advocate (SR-9087[F] dated 28/02/2022)

ORDER MADE IN
W.P.[MD]No.20805 of 2021
24.02.2022

nsn(CO)
TR(15.03.2022) 7P 4C