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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.1722 of 2023
and W.P No.1845 of 2023

D.P.Thangaraj

Petitioner

VS.

1.The State of Tamil Nadu
Rep by its Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai – 9.

2.The Director of Municipal Administration,
No.75, Santhome High Road,
Raja Annamalaipuram,
Chennai – 28.

3.The Commissioner,
Dharmapuri Municipality,
Dharmapuri.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the tender notification in Tender Reference No. 2342/2022/E1 dated 27.12.2022 on the file of the 3rd respondent quash the tender in respect of two cover system is concerned.



For Petitioner : Mr.S.Doraiswamy

For Respondents : Mr.C.Selvaraj
Additional Government Pleader
for R1 and R2

Mr.L.P.Maurya
Standing Counsel for R3

ORDER

This writ petition was filed challenging the tender notification issued by the 3rd respondent in Tender Ref.No.2342/2022/E1 dated 27.12.2022, on the ground that it violates G.O.Ms.No.156, Public Works (G2) Department, dated 29.10.2021.

2.The writ petition was entertained by this Court on 21.01.2023 and an interim order of stay was also granted until further orders. The last date for the submission of the bid as per the notification was 25.01.2023. It is therefore clear that the interim order was passed by this Court even before the last date for the submission of the bid. In view of the same, there was no occasion for the petitioner to submit any application under the impression that the tender process itself has been stayed by this Court on 21.01.2023.

3.When the matter was taken up for hearing today, the learned Standing

Counsel appearing on behalf of the 3rd respondent submitted that the 3rd respondent



came to know about the interim order passed by this Court only on 08.02.2023. In the meantime, the applications submitted were processed and the technical evaluation and the price evaluation were completed and the work order is yet to be issued. The learned counsel therefore submitted that since the 3rd respondent came to know of the interim order only on 08.02.2023, there was no willful disobedience of the interim order passed by this Court and now the entire process has been completed except the issuance of the work order.

4.The learned Standing Counsel appearing on behalf of the 3rd respondent further submitted that G.O.Ms.No.156, dated 29.10.2021 will not govern the tender notifications issued by the local bodies and the said Government Order pertains only to the Public Works Department. The learned counsel pointed out to the proceedings of the Director of Municipal Administration dated 03.01.2023 and submitted that only the Tender Transparency Act, 1998 and the Rules thereunder will govern the Corporation and Municipal Commissioners. In view of the same, the 3rd respondent has strictly complied with the Rule 4 of the Tamil Nadu Transparency in Tenders Rules and 3rd respondent has decided the method of tendering having regard to the type of work that is involved in the subject tender notification. Therefore, the learned Standing Counsel sought for the dismissal of this writ petition on the ground that there are no merits in the writ petition.



5. In the considered view of this Court, in the light of the interim order passed by this Court on 21.01.2023, any proceedings that had taken place subsequently should only be considered to be non est in the eye of law. If this Court permits/condones such non-compliance of interim orders and deals with the merits of the case in the main writ petition, no useful purpose will be served in passing interim orders and such interim orders will become waste papers without value. If such attitude is entertained, every authority can come before the Court and say that they came to know about the interim order at a later point of time and hence, they proceeded further and they can always ask the Court to deal with the merits of the main case. Such attitude should not be entertained and when the Court hears the main writ petition, the status as on the date when the interim order was passed must be maintained. If the interim order has been violated/not complied with, it will become a fait accompli and such practice is not good to the existing system.

6. In the light of the above discussion, the 3rd respondent proceeding further to open the bids and doing the technical evaluation and the price evaluation, must be construed to be non est in the eye of law, since all this had happened after the interim orders were passed by this Court on 21.01.2023. The effect of the interim order would be that the very submission of the tender application has been postponed by this Court and therefore, there is no question of entertaining the application and processing them and waiting for the issuance of the work order.



7. The upshot of the above discussion leads to the only conclusion that whatever steps were taken by the 3rd respondent after the interim order was passed must be held to be non est and cannot be given effect too. In view of the same, it is not necessary for this Court to deal with the merits of the writ petition. In any case, the learned counsel for the petitioner submitted that if the relevant Government Order in G.O.Ms.No.156, dated 29.10.2021 is not applicable to the Corporations and Municipalities, atleast the petitioner must be permitted to participate in the tender by accepting the terms of the notification. The petitioner had no occasion to submit the application, since the interim order was passed by this Court on 21.01.2023. Therefore, it was contended that even if the ground raised by the petitioner is not sustainable, atleast the petitioner should have had an opportunity to submit his application to participate in the tender process by accepting the terms of the tender. Such an opportunity was not available to the petitioner in view of the interim order passed by this Court on 21.01.2023 and the petitioner thought that the tender notification itself has been stayed and nothing further will happen after 25.01.2023. This Court is in agreement with the alternative submission made by the learned counsel for the petitioner.

8. In the result, the further process that was undertaken by the 3rd respondent pursuant to the interim order passed by this Court on 21.01.2023 is held to be non est in the eye of law. In view of the same, there shall be a direction to the 3rd respondent



N. ANAND VENKATESH, J.

SSR

to immediately issue a fresh tender notification for the very same works and the process shall be completed at the earliest.

9.This writ petition is disposed of accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

20.04.2023

Index : Yes/No

(2/2)

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

SSR

To

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