IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P Nos.11315 & 11320 of 2023
and W.M.P. Nos.11201, 11203, 11208 & 11211 of 2023

S.Mahadevan ... Petitioner in both W.Ps

vs.

1.The Superintending Engineer,
Bus Routes and Roads Department,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

2.Technical Evaluation Committee (Tender),
O/o. The Superintending Engineer,
Bus Routes and Roads Department,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003. ... Respondents in both W.Ps

Prayer in W.P.No.11315 of 2023: 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 order of rejection of tender of the petitioner by the 2nd respondent dated 10.04.2023 in respect of works in S. Nos.1 and 3 viz., 1)BRR. C. No. B4 / 0940 / 2023-1, Zone-2, No of Roads 13 and 2)BRR. C. No. B4 / 0940 / 2023-3, Zone-4, No of

Roads 10 in tender notice in BRR. C. No. B4 / 0940 / 2023 which was uploaded on 07.03.2023 issued by the 1st respondent quash the same and direct the respondents to process the tender of the petitioners in accordance with law.

Prayer in W.P.No.11320 of 2023: 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 order of rejection of tender of the petitioner by the 2nd respondent dated 10.04.2023 in respect of works in S.No.1, BRR. C. No. B4 / 0739 / 2023-1, in tender notice in BRR. C. No. B4 / 0739 / 2023 which was uploaded on 08.03.2023 issued by the 1st respondent quash the same and direct the respondents to process the tender of the petitioner in accordance with law.

For Petitioner in both W.Ps	: Mr.S.Doraiswamy
For Respondents in both W.Ps	: Ms.K.Aswini Devi Standing Counsel

COMMON ORDER

Considering the limited issue involved in these writ petitions, the main writ petitions are taken up for hearing and disposed of through this common order. Yet another factor which impelled this Court to take up these writ petitions for final hearing is that the matter involves tender that has been called for to lay BT Roads and the pendency of these writ petitions should not delay the commencement of the work.

2.The petitioner has challenged the impugned communication dated 10.04.2023 issued by the 2nd respondent, wherein, the bids submitted by the petitioner was rejected during technical evaluation by the Committee on the ground that the petitioner is not qualified.

3.Heard Mr.S.Doraiswamy, learned counsel appearing on behalf of the petitioner and Mr.K.Aswini Devi, learned Standing Counsel appearing on behalf of the respondents.

4.The 1st respondent issued a tender notice which was uploaded on 07.03.2023 calling for bids for laying BT Roads in certain zones. As per the notification, the last date for submission of the bids is on 14.03.2023 up to 3.00 p.m. The 1st respondent thereafter issued a corrigendum and the last date for the submission of the tender was extended to 20.03.2023 and the tender opening was fixed on 21.03.2023.

5.The petitioner is a Class-I Contractor and he participated in the tender for two packages mentioned in S.No.1 and S.No.3 in the tender notification. The petitioner also uploaded the bids for these two packages on 19.03.2023. The technical bids were opened on 21.03.2023 and it was scrutinized. The petitioner was present at the time of scrutiny on 03.04.2023. He was informed that he had uploaded only the latest GST Return and insofar as the Annual GST Return is concerned, it is only available for the year 2021-2022. The petitioner after reading the relevant clause, understood that insofar as the Annual GST Return is concerned, there was no insistence for uploading the latest one. Hence, the petitioner had uploaded the Annual GST Return of the year 2021-2022. When it was insisted that the petitioner must give the latest Annual GST Return, the petitioner immediately furnished the latest Annual GST Return for the year 2022-2023.

6.The grievance of the petitioner is that the 2nd respondent through the impugned communication dated 10.04.2023, rejected the bids of the petitioner on the ground that he is not qualified. Aggrieved by the same, the present writ petitions have been filed before this Court.

7.The learned counsel for the petitioner submitted that while rejecting the bids of the petitioner during the technical evaluation, the 2nd respondent ought to have assigned reasons and whereas, no reason has been assigned in the impugned communication. The other submission that was made by the learned counsel for the petitioner is that the relevant clause in the notification did not insist for the latest Annual GST Return and immediately after the Assistant Executive Engineer insisted for the same, it was also furnished and therefore, there was no reason to disqualify the petitioner during the technical evaluation.

8.Per contra, the learned Standing Counsel appearing on behalf of the respondents submitted that the last date for uploading all the relevant documents was fixed on 20.03.2023. Therefore it was contended that any document that was given after the due date cannot be accepted and hence, the rejection of the bids submitted by the petitioner for non-fulfillment of the condition is perfectly justified and therefore, sought for the dismissal of these writ petitions.

9.For proper appreciation, the relevant clause in the notification is extracted hereunder:

Compliance criteria as per clause	**Details**	**Check**
3.2 (f)		
b	Whether the latest GST return and Annual GST Return (FORM 9A) enclosed	YES/NO

10.A cursory reading of the above clause would show that the insistence was only on submitting the latest GST Return and when it came to the Annual GST Return (Form 9-A), there was no specificity that it should be the latest. Hence, the petitioner had understood that insofar as the GST Return is concerned it should be the latest and for the Annual GST Return, even the one pertaining to the previous year can be submitted. However, when it was brought to the notice of the petitioner by the Assistant Executive Engineer when the documents were scrutinized, the petitioner had immediately produced the latest Annual GST Return for the year 2022-2023.

11.There was certainly some vagueness in the above clause with regard to the submission of the Annual GST Return. If it had been mentioned that the latest Annual GST Return must be submitted and the petitioner had not submitted the same, then there is every justification for rejecting the bids submitted by the petitioner during the technical evaluation. However, in the absence of any clarity, this Court must see if the petitioner must be shown the door even during the technical evaluation.

12.This Court had an occasion to deal with a tender which had such a vagueness in prescribing the tender qualification in ***Everest Instruments Pvt. Ltd vs. Tamil Nadu Cooperative Milk Producer's Federation Limited*** reported in ***2022 4 CTC 475*** and this Court held as follows:

> *19.The second ground pertains to the turnover criteria of the Original Equipment Manufacturer. In the present case, the Original Equipment Manufacturer is PerkinElmer Singapore. Instead of furnishing details of turnover pertaining to this company, the Petitioner has furnished the details of turnover pertaining to PerkinElmer India. This company is nothing but the subsidiary of the Singapore company and it is not as if it is a completely different company altogether. When this was pointed out to the Petitioner, the Petitioner immediately furnished the turnover details of the Singapore company and the same is evident from the impugned rejection comment. While dealing with this issue, this*

court has to take into consideration the fact as to whether it can be classified as an essential condition by virtue of not being fulfilled by the Petitioner, will result in the rejection of his bid.

20. The Hon'ble Supreme Court in ***Poddar Steel Corporation*** *and* ***Pace Digitek Infra Pvt. Ltd****., referred supra, has categorically held that a tender can be classified to contain the essential and ancillary conditions. If it is an essential condition, it must be enforced with rigidity without any scope for deviation. If it is an ancillary condition, there is a scope for deviation/relaxation since it will not cause prejudice or injustice to the other bidders. In the present case, the second reason assigned in the impugned rejection comment will fall under the ancillary condition since no prejudice will be caused to the other bidders,if ultimately the Petitioner is able to provide the details of the turnover of the Singapore company. A close look at the turnover of the Singapore company which is the Original Equipment Manufacturer shows that it is way ahead of the requirements with huge turnover during the last three years. Therefore, the second ground on which the petitioner was technically disqualified is also not sustainable.*

13.It is clear from the above that where there is vagueness in the clause, this Court must see if the same pertains to an essential condition or an ancillary condition. If it is an ancillary condition, there is scope for deviation/relaxation, since it will not cause prejudice or injustice to the other bidders. In the present case, the submission of the Annual GST Return is an ancillary condition and since there was no clarity that the latest Annual GST Return must be given, the petitioner understood it in that manner and accordingly, submitted the Annual GST Return of the year 2021-2022, immediately after he was informed about the same, the petitioner submitted the Annual GST Return of the year 2022-23. By permitting the petitioner to fulfill this condition, it will not cause any prejudice or injustice to the other bidders. Accordingly, this Court is satisfied that there was no need for rejecting the bids of the petitioner in the technical evaluation and the bids submitted by the petitioner can be processed and it can be taken to the next stage of price bid. The learned Standing Counsel appearing on behalf of the respondents submitted that presently the scrutiny of the bids is at the stage of technical evaluation only. Hence, if the petitioner has satisfied all the other requirements, the bids submitted by the petitioner can be taken to the next stage.

14.In the light of the above discussion, the impugned rejection letter issued by the 2nd respondent dated 10.04.2023, is hereby set aside and there shall be a direction to the respondents to process the bid submitted by the petitioner and take it to the next stage of price bid, if the petitioner has satisfied all the other requirements in the technical evaluation.

15.In the result, both the writ petitions stand allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

12.04.2023

(2/2)

Index : Yes
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes
ssr

Note: Issue Order Copy on 13.04.2023

To

1.The Superintending Engineer,
Bus Routes and Roads Department,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

2.Technical Evaluation Committee (Tender),
O/o. The Superintending Engineer,
Bus Routes and Roads Department,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

N. ANAND VENKATESH, J.

ssr

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