



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2023

Pronounced on : 01.03.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 29185 of 2022

And

W.M.P.Nos. 28479, 33480 & 34559 of 2022

M/s. Sumathi Constructions

Represented by its Proprietor Mr.R.Chandrakannan

“Thangaramaiya Building”

No.17/1, Adam Sahib Street,

Royapuram, Chennai – 600 013.

... Petitioner

..Vs..

1. The Government of Tamil Nadu
Represented by Principal Secretary to Government
Industries Department
Secretariat, Fort St. George, Chennai – 600 009.
2. The Chairman & Additional Chief Secretary to Government
Industries Department, SIPCOT Limited
Secretariat, Fort St. George, Chennai – 600 009.
3. The Managing Director
SIPCOT Ltd.,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.



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4. The Superintending Engineer
Civil Wing, SIPCOT Ltd.,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.
 5. The Executive Engineer
Civil Wing, SIPCOT Ltd.,
19-A Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.
 6. The Director of Vigilance and Anti-Corruption
No.293, MKN Road, Alandur,
Chennai – 600 016.
 7. Thiru. S.Devairakkam
Working as Superintendent Engineer
Civil Wing, SIPCOT Ltd.,
19-A Rukmani Lakshmipathy Road,
Egmore, Chennai – 600008.
 8. The General Manager (Finance)
SIPCOT Ltd.,
19-A Rukmani Lakshmipathy Road
Egmore, Chennai – 600 008.
 9. M/s. Ramu & Co.,
No.20A, Corporation Road
Devakottai,
Sivagangai District. ... Respondents
- (impleaded by order in W.M.P.No. 34554/2022
dated .03.2023)

PRAYER: Petition under Article 226 of the Constitution of India, praying
for the issue of a Writ of Certiorarified Mandamus calling for the records



relating to impugned proceedings in CW/NIT.No.21/T.No.21/2022-23 dated 06.10.2022 in cancelling the Tender Notice NIT No. 21/CW/T.No. 21/2022-23 dated 18.07.2022 of the fourth respondent and quash the same and consequently, direct the respondents to proceed with the said Tender in accordance with law.

For Petitioner :: Mr. N.Nithianandam

For 1st Respondent :: Ms. P.Rajarajeswari
Government Advocate

For RR 3,4, 5 & 8 :: Ms. Sudharshana Sundar

For 9th Respondent :: Mr. C.K.Chandrasekar

ORDER

The Writ Petition had been filed in the nature of a Certiorarified Mandamus seeking records relating to the tender proceedings in CW/NIT.No.21/T.No.21/2022-23 dated 06.10.2022 by cancelling the Tender Notice NIT No. 21/CW/T.No. 21/2022-23 dated 18.07.2022 of the fourth respondent / Superintendent Engineer, Civil Wing, SIPCOT Ltd., Chennai and quash the same and consequently, direct the respondents to proceed with the said Tender.



2. The writ petitioner M/s. Sumathi Construction is a sole proprietorship concern and registered as Class-I contractor with Public Works Department of Tamil Nadu and other entities of Government of Tamil Nadu including SIPCOT. They also do private contract works. They claimed that they have experience in executing contract works and also possess required equipments. They had also executed works for SIPCOT and some works are also on going. It was stated that the second respondent / Chairman and Additional Chief Secretary to Government, Industries Department, SIPCOT limited, Chennai, had floated a tender notice NIT No.21/CW/T.No.21/2022-23 dated 18.07.2022 for the work of formation of approach Road from Km 143/4 of NH-44 to SIPCOT Industrial Park, Dharmapuri. The last date for submission of the bids was 23.08.2022 till 03.00 p.m. The earnest money deposit payable was Rs.7,07,300/-. It was a two cover tender and tenders must be submitted in sealed covers to the fourth respondent, the Superintendent Engineer, Civil Wind, SIPCOT Ltd., Chennai. The total value of the contract was Rs.1394.6 lakhs. The bid documents were sold till 22.08.2022 till 05.00 p.m. A pre-bid meeting was scheduled on 03.08.2022 at about 11.30 a.m. It was stated that the petitioner along with four other tenderers had submitted their bids. The



petitioner claimed that they had satisfied all the terms and conditions of the tender. The bids were opened at 23.08.2022 at 03.30 p.m., by the fourth respondent.

3. It was claimed by the petitioner that the results of the evaluation of the tender were not notified by the fourth respondent to the petitioner inspite of several visits and requests. The petitioner then gave a representation on 03.10.2022. Thereafter, the petitioner raised several allegations against the fourth to seventh respondents. As a matter of fact, the fourth respondent was also impleaded in his personal capacity as the seventh respondent. The petitioner claimed that they had quoted the lowest tender. The petitioner then received the proceedings impugned in the present Writ Petition on 06.10.2022 in CW/NIT.No.21/T.No.21/2022-23 whereby the bid submitted by the petitioner was declared unsuccessful. It is claimed that reasons were not given. Questioning that particular proceedings, the Writ Petition had been filed.

4. When the matter came up for first hearing on 04.11.2022, a learned Single Judge of this Court had ordered as follows:-



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“Mr.M.Karthikeyan, learned Standing

Counsel takes notice for respondents 2 to 5, 7 and 8.

He needs two weeks time to respond.

2. In the meanwhile, in respect of the work, for which the tender in question was called for by the respondents, such work should not be entrusted to any third party for a period of three weeks.

3. Post the matter after two weeks.”

5. Thereafter, counter affidavits were filed by the fourth respondent and also by the second respondent. A reply was also filed by the petitioner. The 7th respondent in view of the specific allegations raised against him had also filed a counter affidavit. Since it came to be noted that the tender had been awarded to M/s. Ramu and Company, Sivagangai, the petitioner also filed W.M.P.No. 34554 of 2022 to implead the said M/s. Ramu and Company as the 9th respondent. Notice had been directed in the said petition.



stated that the Writ Petition had therefore been filed only to avert such action being taken.

8. It was also stated that the petitioner did not qualify in the technical bid. It was also stated that the process of tender evaluation should be confidential. It was stated that the petitioner had made sweeping allegations against the officials. It was stated that the seventh respondent does not have any personal interest and therefore, it was urged that the tender process should be permitted to continue and the successful bidder should be permitted to execute the work entrusted to him.

9. A reply was filed by the petitioner reiterating the facts stated in the affidavit filed in support of the Writ Petition. It was further stated that the work was entrusted to the proposed ninth respondent inspite of restraint order passed by the Court. An application to vacate the interim order referred above was also filed in W.M.P.No. 33480 of 2022.

10. Heard arguments advanced by Mr.N.Nithianandam, learned counsel for the petitioner, Ms.P.Rajarajeswari, learned Government



Advocate appearing for the first respondent, Ms.Sudharshana Sundar, learned counsel appearing for the respondents 3, 4, 5 and 8 and Mr.C.K.Chandrasekhar, learned counsel appearing for the 9th respondent, who was sought to be impleaded.

11. Mr.N.Nithianandam, learned counsel, during the course of his arguments pointed out that the petitioner had a valid license as PWD Class-I contractor which was issued on 16.08.2021 and was valid for a period of one year from that particular date. The tender was issued on 18.07.2022. There was a pre-bid meeting on 03.08.2022. The work experience certificate was issued by the SIPCOT on 04.08.2022. Learned counsel stated that the petitioner had sent a representation on 03.10.2022. However, a communication was received on 06.10.2022, that the bid of the petitioner was unsuccessful. Thereafter, on 08.10.2022, the PWD had actually issued a letter to SIPCOT seeking verification of the renewal certificate of the petitioner herein. There was another communication on 21.11.2022 and finally, the renewal certificate had been issued by the PWD classifying the petitioner as Class-I contractor from 08.12.2022. A work experience certificate was also issued by SIPCOT to the petitioner on 03.12.2022. It



was stated that on 04.11.2022, a learned Single Judge of this Court had granted an interim order that the work should not be entrusted to any third party for a period of three weeks.

12. The learned counsel stated that the petitioner had qualified in the technical evaluation. He also alleged mala fide against the fourth respondent in his personal capacity and stated that several other Writ Petitions have been filed questioning the earlier tender processes also and it was therefore stated that the bid of the petitioner was declared unsuccessful only owing to malice. The learned counsel was insistent that the Writ Petition should be allowed.

13. In this connection, the learned counsel also relied on a Judgment of the Hon'ble Supreme Court reported in **(2016) 1 SCC 724 [State of Punjab Vs. Banddeep Singh and Others]**. The Hon'ble Supreme Court in that case had held as follows:-

“4. There can be no gainsaying that every decision of an administrative or



*executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled **Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]** of which the following paragraph deserves extraction: (SCC p. 417, para 8)*

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of **Bose, J. in Gordhandas Bhanji [Commr. of Police v. Gordhandas***



**Bhanji, 1951 SCC 1088 : AIR 1952 SC 16 :
1952 SCR 135] : (AIR p. 18, para 9)**

‘9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.’

Orders are not like old wine becoming better as they grow older.””

14. The learned counsel pointed out the impugned order and stated that reasons had not been given in the impugned order and therefore urged that the reasons given in the counter should not be taken into consideration by this Court.



15. Ms. Sudharshana Sundar, learned counsel for the third, fourth, fifth and eighth respondents however seriously disputed these contentions.

The learned counsel pointed out that the petitioner, on the date of submitting the tender bid, did not have the requisite certificate as a Class-I contractor under PWD. The learned counsel also stated that it was found that documents produced for ownership of equipments were found to be false. It was stated that in view of the two particular facts, the bid of the petitioner was declared unsuccessful.

16. The learned counsel stated that even earlier on 27.09.2022 the contract had been awarded to the 9th respondent. The learned counsel also stated that the entire records are available and could be perused by the Court. She stated that since the petitioner had not qualified there was no question of the financial bid of the petitioner being opened to find out the amount quoted. The learned counsel further stated that the petitioner had moved this Court only on 04.11.2022 by which time, the contract had been awarded to the 9th respondent and work and the site had also been entrusted. It was therefore stated that the Writ Petition should be dismissed.



17. The learned counsel appearing for the proposed 9th respondent Mr. C.K.Chandrasekar was also equally insistent and stated that the 9th respondent had qualified since the documents produced were in order and also since the 9th respondent was a class-I contractor and that work had also commenced. He stated that the petitioner had come to Court after the bid had been offered to the 9th respondent. He therefore stated that the Writ Petition should be dismissed.

W.M.P.No. 34554 of 2022:

18. This petition has been filed by the petitioner to implead as 9th respondent, M/s. Ramu and Company, who had been awarded the bid consequent to the tender process.

19. A perusal of the records show that the proposed 9th respondent had been issued with the work order on 27.09.2022 itself. The site was also handed over on 07.10.2022. In view of these facts since any order passed in the Writ Petition would directly affect the proposed 9th respondent, the said petition is allowed.



20. Registry is directed to carry out necessary amendment in the cause title before the order is issued by impleading the 9th respondent, M/s. Ramu & Company, No. 20A, Corporation Road, Devakottai, Sivagangai District. W.M.P.No. 34554 of 2022 is allowed.

W.P.No. 29185 of 2022 and W.M.P.No. 33480 of 2022:

21. I have carefully considered the arguments advanced and perused the materials available on records.

22. The writ petitioner, who was a class-I contractor had submitted their bid for Tender No. NIT No.21/CW/T.No. 21/2022-23 dated 18.07.2022 floated by the fourth respondent/ the Superintendent Engineer, Civil Wing, SIPCOT Ltd., Egmore, Chennai -600008. The nature of the work, was formation of approached Road from Km 143/4 of NH-44 to SIPCOT Industrial Park, Dharmapuri. The last date for submission of the bid documents was 23.08.2022 at 03.00 p.m. The earnest money deposit was Rs.7,07,300/-. Only a Class-I tenderer could apply for participation in the tender. The petitioner had been issued with a Class-I Contractor



certified by PWD on 16.08.2021. It was for a period of one year. It expired on 10.08.2022. On the date, when the tender was opened on 23.08.2022, to the knowledge of the petitioner, they had no existing license as Class-I contractor. They had applied for renewal but renewal was not granted automatically. Remarks had to be obtained from PWD and from SIPCOT Ltd. That process had taken time. It ended much later and a fresh certificate had been issued to the petitioner with effect from 08.12.2022. It did not date back to the date on which the earlier license had expired, namely, 06.08.2002. Therefore, on 23.08.2022 when the bids were opened and analysed, the petitioner did not have a subsisting license.

23. It was argued by the learned counsel for the petitioner that the date of renewal related back to the date of expiry of the earlier license. But, records reveal that a fresh license was issued. It was not renewal of earlier license. It was therefore effective only from 08.12.2022.

24. A copy of the tender documents had been filed in Court. It is seen that the petitioner had unfortunately, not produced, an existing certificate as Class-I contractor. More damagingly, it had also been noted



that some of the very crucial machineries, namely, Paver Finisher (9m wide) was found to mismatch the specifications with the invoice when compared with the other tender document. Further another machinery, Back Hoe Loader (or) Frontend loader 2 Nos., were found to be less than the actual requirement. It was also found that there was no owner name for the Tipper-4 Nos., when compared with the documents. There was a lease agreement for one tipper lorry TN87B5776 given by two owners. It was stated that the requirement was actually five such tipper lorries. It was also found that for the bitumen sprayer tank – 1 no., the name of the owner was not given.

25. It is trite in law to point out that unless the petitioner had qualified on all aspects, could he cross the technical evaluation stage.

26. The grievance of the learned counsel for the petitioner is that the impugned proceedings did not contain any of these reasons. The impugned proceedings is extracted in full:-



“CW/NIT.No. 21/T.No.21/2022-23

dated 06.10.2022

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*M/s.Sumathi Constructions
No. 171/1 Adam Sahib Street,
Royapuram,
Chennai -13.”
Gentlemen,*

(By RPAD/Email)

*Sub: Formation of Approach Road from Km143/4 of NH-44 to
SIPCOT Industrial Park, Dharmapuri – Evaluation of Tender
Unsuccessful-Reg.*

*Ref: 1. NIT.21/CW/T.No.21/2022-23, dated 18.07.2022.
2. Tender dated 23.08.2022*

*It is hereby informed that the tender for the above work was
unsuccessful.*

*You shall get back the EMD amount enclosed already along with the
above Tender duly producing the Original Receipt of SIPCOT and your
advance stamped receipt for refund.*

*Therefore, you are also instructed to send the Bank details to receive
your payment through RTGS.”*

Sd/-

27. A perusal of the above communication shows that it had been very clearly stated that the bid submitted by the petitioner has to be declared unsuccessful. The primary ground on which the petitioner therefore seeks to impinge the entire process is the lack of transparency in the rejection of the technical bid of the petitioner.



28. It is seen from the records that the petitioner did not have a valid certificate as on the date when the tender was opened. The learned counsel for the petitioner was insistent in stating that the certificate had been renewed. But the renewal was with effect only from 08.12.2022. The renewal certificate is reproduced below:-

“ *Dated: 20.01.2023*

With reference to your letter 2nd cited the Registration of Contractor in Tamilnadu Public Works Department issued to M/s. SUMATHI CONSTRUCTIONS, No.17/1, Adam Sahib Street, Royapuram, Chennai -13, vide T.O.Lr.HDO/A/015993-A/2022, dated 08.12.2022 cited is valid from the date of registration (ie. Dt: 08.12.2022) to three years (dated:07.12.2025).”

29. The Tamil Nadu Transparency in Tenders Act, 1998 had been introduced to provide for transparency in public procurements and to regulate the procedure in inviting and accepting tenders.



30. The object is to maximize economy and efficiency in Government procurement. Since, the Act regulates the entire process, it also encourages effective participation by tenderers in the process of tenders. It therefore promotes healthy competition among the tenderers. It also provides a platform for fair and equitable treatment of all tenderers. It therefore aims to eliminate irregularities, interference and correct practices in matters relating to tender process by providing transparency.

31. Section 10 deals with evaluation and acceptance of tender.

Section 10 (1) is as follows:

“Section 10. Evaluation and acceptance of tender._

(1) The Tender Accepting Authority shall cause an objective evaluation of the tenders taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market rate for procurement and comparison of the tenders in accordance with the procedure and criteria specified in the tender document.”



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32. Section 11 is as follows:

“Section 11.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.”



33. To implement the provisions, the Tamil Nadu Government also brought into effect the Tamil Nadu Transparency in Tender Rules, 2000.

34. Let me also extract a few relevant rules which would be required for further discussion of the issues raised in the present Writ Petitions.

36. ***Rule 2(e) is as follows:***

Rule 2 (e) “two-cover system” means a procedure under which the tenderers are required to simultaneously submit two separate sealed covers, one containing the earnest money deposit and the details of their capability to undertake the tender which will be opened first and the second cover containing the financial quotation which will be opened only if the tenderer is found qualified to execute the tender.

35. Rule 24 is as follows:

“Rule 24. Tender Scrutiny Committee._



(1) A Tender Scrutiny Committee may be constituted to scrutinise the tender documents, supervise opening of tenders, to carry out the preliminary examination and detailed evaluation of the tenders received and to prepare an evaluation report for the consideration of the Tender Accepting Authority.

(2) The constitution of a Tender Scrutiny Committee will be obligatory in all cases where the value of the procurement exceeds limit as may be specified.”

36. Rule 27 is as follows:

Rule 27. Process of tender evaluation to be confidential until the award of the contract is notified._

(1) Subject to the provision of Sections 13 and 14 of the Act, the Tender Inviting Authority shall ensure the confidentiality of the process of tender evaluation until orders on the tenders are passed.

(2) The Tender Accepting Authority shall



cause the information on orders passed on the tenders published in the Tender Bulletin.

(3) Tenderers shall not make attempts to establish unsolicited and unauthorised contact with the Tender Accepting Authority, Tender Inviting Authority or Tender Scrutiny Committee after the opening of the tender and prior to the notification of the award and any attempt by any tenderer to bring to bear extraneous pressures on the Tender Accepting Authority shall be sufficient reason to disqualify the tenderer.

(4) Notwithstanding anything contained in sub-rule (3), the Tender Inviting Authority or the Tender Accepting Authority, may seek bonafide clarifications from tenderers relating to the tenders submitted by them during the evaluation of tenders.

37. A perusal of the above provisions, reveal that there is a Tender Accepting Authority which shall cause objective evaluation of the tenders. But when Section 10, which deals with evaluation and acceptance of tenders



is read in conjunction with Rule 24, it would be clear that it is also imperative that a Tender Scrutiny Committee is also formed.

38. The functions of the Tender Scrutiny Committee is to examine whether the documents produced along with the tender forms are proper and whether there has been complete and proper disclosure by the tenderer, in this case, the petitioner.

39. Under Rule 24, the Tender Scrutiny Committee, which is distinct from the Tender Accepting Authority, scrutinizes the tender documents, supervises the opening of the tenders and carries out a preliminary examination and detailed evaluation of the tenders received and thereafter, prepare an Evaluation Report for the consideration of the Tender Accepting Authority for technical evaluation of the bids submitted.

40. This step is thus prior to actually examining whether the bidder is technically qualified to move on to the financial evaluation. Such scrutiny is a step in aid to examine the documents produced.

41. When the Tender Scrutiny Committee scrutinizes the tender



documents, they must keep in mind, the general conditions of the tender and the specific conditions and stipulations as given in the tender documents.

The relevant general conditions and stipulations have been extracted above.

42. In the instant case, the petitioner on the date of evaluation of the tender bid had not produced a subsisting license as Class-I contractor. The license which he had produced had expired much earlier on 06.10.2022 itself.

43. Even though it had been argued that the renewal process was underway still there was no guarantee that it would be certainly renewed. As a matter of fact, only a fresh certificate was issued. It did not indicate that it was a renewal of the earlier license but indicated that it was a fresh license with effect from 08.12.2022 for a period of three years. In the interregnum period between 06.08.2022 and 08.12.2022, the petitioner must accept the fact that they did not have the requisite license as Class-I contractor.

44. The license which had been subsequently issued cannot be said



to have been issued without application of mind. There was a process of evaluating the petitioner to determine whether a fresh license could be issued. On 23.08.2022, the position was nebulous. The petitioner could have been granted a license or the application for renewal could even have been rejected. Therefore, it is only proper that the respondents had taken a view that since the petitioner did not have a valid license as on 23.08.2022, the petitioners stood disqualified.

45. The other reason also seen from the tender documents is that the petitioner had not submitted proper documents for the crucial machineries claimed to have been possessed by them.

46. The reliance of the learned counsel on the Judgment referred ***(2016) 1 SCC 724 (State of Punjab Vs. Bandeep Singh and Others)*** is misplaced. The petitioner knew that on 23.08.2022, they did not have a valid license. The documents with respect to the machineries had been submitted only by the petitioner. The title leads or ownership details were known exclusively by the petitioner alone. If there was no proper lease or proper title or the number of machineries were less than what was required



then naturally the petitioner has to be declared as unsuccessful which was the term used. I would therefore not find any fault on the part of the respondents in this regard.

47. In *Uflex Limited vs. Government of Tamil Nadu and others* 2022 (1) SCC 165, the delay caused by Court orders and Court interferences in commercial contracts were examined by the Hon'ble Supreme Court. A tender was issued for the labeling of Tasmac bottles in the State of Tamil Nadu. Challenges to the tender were rejected by the learned Single Judge in the Writ Petition Writ Appeals were filed. Writ Appeals were allowed. Thereafter, the matter reached the portals of the Hon'ble Supreme Court. The Hon'ble Supreme Court had observed as follows:

“The enlarged role of the Government in economic activity and its corresponding ability to give economic “largesse” was the bedrock of creating what is commonly called the “tender jurisdiction”. The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the



jurisdiction of the High Court under Article 226 of the Constitution of India (hereinafter referred to as “the Constitution”), beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The public interest litigation (“PIL”) jurisdiction is also invoked towards the same objective, an aspect normally deterred by the Court because this causes proxy litigation in purely contractual matters.

2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of



commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.

3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, “attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted.”

48. The above observations squarely applies to the petitioner. The Hon’ble Supreme Court had stated about attempts by unsuccessful tenders with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills.

49. The Hon’ble Supreme Court in **Uflex Limited** referred supra



had set aside the order of the Hon'ble Division Bench and held as follows.

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“42. We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters there is obviously an aspect of commercial competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for downplaying the freedom which a tendering party has, merely because it is a State or a public authority, making the said process even more cumbersome. We have already noted that element of transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examined are restricted as set out in TATA Cellular and other cases. The objective is not to make the Court an appellate authority for scrutinizing as to whom the tender should be awarded.



Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them.”

50. In 2020 16 SCC 489 [Silppi Constructions Contractors vs. Union of India and another], the Hon’ble Supreme Court again examined the scope of judicial review and interference with a tender process and had held as follows:

“8. In (1999) 1 SCC 492 [Raunaq International Ltd. v. I.V.R. Construction Ltd.,] this Court held that the superior courts should not interfere in matters of tenders unless substantial public interest was involved or the transaction was mala fide.

9. In (2000) 2 SCC 617 [Air India Ltd. v. Cochin International Airport Ltd.,] this Court once again stressed the need for overwhelming public interest to justify judicial intervention in contracts involving the State and its instrumentalities. It was held that the



courts must proceed with great caution while exercising their discretionary powers and should exercise these powers only if furtherance of public interest and not merely on making out a legal point.

10. In (2005) 4 SCC 456 [*Karnataka SHDC Ltd., v. Cavalet (India) Ltd.*,] it was held that while effective steps must be taken to realise the maximum amount, the High Court exercising its power under Article 226 of the Constitution is not competent to decide the correctness of the sale effected by the Corporation.”

51. In *N.G.Projects Limited vs. Vinod Kumar Jain and others* (2022) 6 SCC 127 it had been held by the Hon'ble Supreme Court as follows:

“17. Therefore, the position of law with regard to the interpretation of terms of the contract is that the question as to whether a term of the contract is essential or not is to be viewed from the perspective of the employer and by the employer.”



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52. The dictum laid down in the aforementioned Judgments are binding. It had been very specifically held that a petitioner cannot curtail any commercial bid. In the instant case, the petitioner did not have an existing license as Class -1 contractor and had not submitted full particulars of the machineries said to be possessed / leased out to them. The petitioner had also come to Court only on 04.11.2022 by which date, the work order had already been issued to the 9th respondent. The work had also commenced. The petitioner had also not taken recourse to the appeal provision under Section 11 of the Tamil Nadu Tender Transparency Act, 1998. No reason has been given as to why such appellate remedy was not resorted to by the petitioner. The writ Court is not an efficacious remedy and the claim of the petitioner will necessarily have to be rejected.

53. The Writ Petition stands dismissed. W.M.P.No. 33480 of 2022 filed to vacate the interim order is allowed.

54. In the result,

(i) W.P.No. 29185 of 2022 is dismissed;



(ii) W.M.P.No. 34554 of 2022 is allowed. Registry is directed to carry out amendment in the cause title impleading the 9th respondent, M/s. Ramu and Company;

(iii) W.M.P.No. 33480 of 2022 is allowed. The interim order granted in W.M.P.No. 28479 of 2022 is vacated;

(iv) W.M.P.No. 28479 of 2022 is dismissed; and

(v) no order as to costs.

01.03.2023

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

1. The Principal Secretary to Government
The Government of Tamil Nadu
Industries Department
Secretariat, Fort St. George, Chennai – 600 009.
2. The Chairman & Additional Chief Secretary to Government
Industries Department, SIPCOT Limited
Secretariat, Fort St. George, Chennai – 600 009.
3. The Managing Director
SIPCOT Ltd.,
19-A, Rukmani Lakshmipathy Road,



Egmore, Chennai – 600 008.

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4. The Superintending Engineer
Civil Wing, SIPCOT Ltd.,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.
5. The Executive Engineer
Civil Wing, SIPCOT Ltd.,
19-A Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.
6. The Director of Vigilance and Anti-Corruption
No.293, MKN Road, Alandur,
Chennai – 600 016.
7. Thiru. S.Devairakkam
Working as Superintendent Engineer
Civil Wing, SIPCOT Ltd.,
19-A Rukmani Lakshmipathy Road,
Egmore, Chennai – 600008.
8. The General Manager (Finance)
SIPCOT Ltd.,
19-A Rukmani Lakshmipathy Road
Egmore, Chennai – 600 008.
9. M/s. Ramu & Co.,
No.20A, Corporation Road
Devakottai,
Sivagangai District.

C.V.KARTHIKEYAN, J.,

vsg



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Pre-Delivery Order made in
W.P.No. 29185 of 2022
And
W.M.P.Nos. 28479, 33480 & 34559 of 2022

01.03.2023