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W.P.No. 30072 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.01.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 30072 of 2022

M/s. Consolidated Construction Consortium Limited,
Represented by its Resolution Professional
Mr. Krishnasamy Vasudevan,
#8/33, Padmavathiyar Road, Jeypore Colony,
Gopalapuram, Chennai 600086.

... Petitioner

Vs

Tamilnadu Water Supply and Drainage Board (TWAD)
Represented by its Superintending Engineer,
Kancheepuram – Thiruvallur Circle,
Alandur, Chennai.

.... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 26.10.2022 passed by the respondent in Lr. No.1010/F.1876/DO/DB/KTC/2022 and to quash the same and consequently direct the respondent to grant renewal of registration of Civil Contractor for the year 2022-2023.

For Petitioner : Mr. S. Karthikei Balan

For Respondent : Ms. Y. Kavitha,
Standing Counsel



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ORDER

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The writ petition has been filed in the nature of certiorarified mandamus seeking interference with an order dated 26.10.2022 passed by the respondent, Superintending Engineer, Tamilnadu Water Supply and Drainage Board (TWAD), Kancheepuram – Thiruvallur Circle in Lr. No.1010/F.1876/DO/DB/KTC/2022 and consequently, grant renewal of registration of Civil Contractor of the petitioner for the year 2022-2023.

2. In the affidavit filed in support of the writ petition, the Resolution Professional of the petitioner company, had stated that he had been appointed as Interim Resolution Professional by an order dated 20.04.2021 passed by the National Company Law Tribunal at Chennai in IBA No. 483 of 2020. He had taken charge as Resolution Professional on 21.05.2021. The petitioner company is a public limited company incorporated under the provisions of Companies Act, 1956. They are in the business of construction sector. They had been awarded a contract by the Tamil Nadu Water Supply and Drainage Board. They are registered as licensed contractors before the respondent. The license had been awarded by letter No.



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680/KO1876/VA/VAB/2021 dated 04.08.2021 for the period between 01.04.2021 to 31.03.2022 as a Class I contractor.

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3. The petitioner had submitted relevant documents to be continued as Class I contractor by a letter dated 21.03.2022. They had also participated in various tenders floated by the respondent. The letter now impugned in the present writ petition dated 26.10.2022 had been received, wherein it had been noted that the renewal had been rejected consequent to the fact that the petitioner, according to the respondent, had been declared as insolvent.

4. The facts are otherwise.

5. As on date, the process is underway. There has been no declaration by any Court or Tribunal that the petitioner is insolvent or suffers from such disadvantage.

6. Let me not venture into that particular aspect and would rather give that privilege to the petitioner to explain those facts to the respondent when a show cause notice is issued.



7. In the instant case, the letter now impugned had been issued without issuing a show cause notice. The rules stipulates that show cause notice is mandatory.

8. My attention had been drawn to Rule No. 5.2 of Standardised Code for Works Contractors. The letter now issued had been issued under Rule 5.1 (iv) . The Rule now relied on by both the learned counsel is Rule 5.2, which is as follows:

"5.2. The decision regarding removal from registration suspension of business/removal from the approved list taken after the issue of a Show Cause Notice and consideration of representation, if any, in reply thereto should be communicated to the firm concerned."

9. It is quite clear that a show cause notice has to be issued prior to any communication in the nature of the notice now impugned is issued by the respondent. It is fairly admitted that a show cause has not been issued. A glance at Appendix I which is the form of the show cause notice, shows that a candidate should be granted 30 days' time to reply to the show cause notice. This is the procedure which has to be followed. Therefore, the letter now issued by the respondent is interfered with and is set aside.



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10. The respondent, if the petitioner otherwise satisfies the conditions, may proceed to renew the contract. If the respondent is of the view that certain explanations are required, then the respondent may issue a show cause notice under Rule 5.2 and proceed in manner known to law. The petitioner may reply to the show cause notice and I am confident that procedure therein would be followed by both the parties.

11. The respondent may even take a decision to renew the Class I contractor licence since it is evident that the petitioner has not been declared as insolvent.

12. The writ petition is allowed, since the impugned show cause notice is set aside. No costs. Consequently, W.M.P.No. 29487 of 2022, is closed.

03.01.2023

Index: Yes/no
mrn



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To
The Superintending Engineer,
The Tamilnadu Water Supply and Drainage Board (TWAD)
Kancheepuram – Thiruvallur Circle,
Alandur, Chennai.



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C.V.KARTHIKEYAN, J.

(mrn)

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