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W.P. No. 31150 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 31150 of 2023
and
W.M.P. Nos. 30780 and 30781 of 2023**

K.Singaravel

... Petitioner

-VS-

The Executive Authority
A/m. Mullachi Mariyamman Temple
Thiruthuraipoondi Town & Taluk
Tiruvarur District.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the Respondent pertaining to the impugned rejection dated 10.10.2023 in respect of Ref. No. 02-L-2023-ttp and tender ID. 2023-HRCE_372832_1 and to quash the same and consequently to make the re-tender in view of the Tamil Nadu Transparency in Tenders Act, 1998.

For Petitioner : Mr. P.Vijendran

For Respondent : Mr. N.R.R.Arun Natarajan,
Special Government Pleader



W.P. No. 31150 of 2023

WEB COPY

ORDER

Heard Mr. P.Vijendran, Learned Counsel for the Petitioner and Mr. N.R.R.Arun Natarajan, Learned Special Government Pleader, who takes notice for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that he had participated in e-tender for construction of Mini Marriage Hall in Arulmigu Mullachi Mariyamman Temple in Thiruthuraipoondi Taluk, Thiruvarur District in furtherance to Notice No. 1 of 2023 dated 16.09.2023 published by the Respondent. It has been informed to the Petitioner through the e-portal of the Government of Tamil Nadu on 10.10.2023 that his tender has been rejected during financial evaluation without disclosing the reasons, which is assailed in this Writ Petition.

3. In response, Learned Counsel appearing for the Respondent, on instructions, states that the Petitioner did not produce the requisite site visit certificate as stipulated in the special condition added to the terms and conditions of the tender, which reads as follows:-



W.P. No. 31150 of 2023

WEB COPY

The Tenderer before offering their rates, should visit the site of work before Tendering. The Tenderer should also obtain and produce a certificate from the concerned that the Tenderer has visited the site personally and upload the same along with the Tender Document.

The print out of the Bid Opening Summary in the e-Procurement System of the Government of Tamil Nadu published on 10.10.2023 at 1.27 p.m. showing that Bid No. 861534 of the Petitioner was not admitted due to lack of document (Site Visit Certificate) has been produced in support of the said contention. A memo dated 02.11.2023 has also been filed to that effect, which has been placed on record.

4. At this juncture, reference must be made to the decision of the Hon'ble Supreme Court of India in *Maa Binda Express Carrier -vs- North-East Frontier Railway* [(2014) 3 SCC 760], where the legal position on the extent of interference of the Writ Court in the exercise of discretionary powers of judicial review of the decision-making process in respect of tenders has been explicated as follows:-

8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the



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Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. **It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers.** So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

(emphasis supplied)

Tested on the anvil of the said principles, the requirement in the special condition that a participant in the tender has to visit the site of work and obtain a certificate from the concerned Executive Engineer in proof of it and upload the same along with the tender document would ensure that only diligent persons participate in the tender and encourage transparency in the process, which is certainly in public interest.



W.P. No. 31150 of 2023

5. Viewed from that perspective, this Court does not find any acceptable reason to interfere with the impugned action of the Respondent in not considering the bid submitted by the Petitioner without production of the Site Inspection Certificate, which is an essential requirement for participating in the tender.

In the result, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

02.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

Maya

To

The Executive Authority
A/m. Mullachi Mariyamman Temple
Thiruthuraipoondi Town & Taluk
Tiruvarur District.



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W.P. No. 31150 of 2023

P.D. AUDIKESAVALU, J.

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W.P. No. 31150 of 2023

02.11.2023