



W.P(MD)Nos.3682, 3683, 3684, 3685, 3686 and 2644 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).Nos.3682, 3683, 3684, 3685, 3686 and 2644 of 2023
and WMP(MD)Nos.3451, 3452, 3457, 3459, 3453,
3454, 3460, 3462, 3456, 3458, 2414 and 2415 of 2023

In WP(MD)Nos.3682 of 2023:

Senthil Kumar

... Petitioner

Vs

The Superintending Engineer(H),
NABARD and Rural Roads Circle,
Trichy.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, direct the respondent to open the bid submitted by the petitioner in pursuance of the Tender Notice No. 26/2022-23/SDO, dated 16.12.2022 by taking into consideration the certificate issued by the Divisional Engineer (Quality Control), Highways, Trichy, with regard to working condition to plants and equipment, dated 28.01.2023.

In all writ petitions:

For Petitioner

: Mr. P.Ganapathi Subramanian

For Respondent

: Mr.R.Baskaran

Additional Advocate General



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COMMON ORDER

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All these writ petitions have been filed by the same petitioner, questioning the process of tender notice issued by the respondents. In view of the nature of arguments advanced by the learned counsel for the petitioner and by the learned Additional Advocate General for the respondent, it is only prudent that a common order is passed in all the writ petitions.

2.As a test case, let me state the facts in WP(MD)No.3682 of 2023.

3.The Writ Petition in WP(MD)No.3682 of 2023 had been filed in the nature of Mandamus, seeking a direction to the respondent/Superintending Engineer(H), NABARD and Rural Roads Circle, Trichy, to open the bid submitted by the petitioner, consequent to the Tender Notice No. 26/2022-23/SDO, dated 16.12.2022 by taking into consideration the certificate, dated 28.01.2023 issued by the Divisional Engineer (Quality Control), Highways, Trichy, relating to the working condition of plants and equipments.



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4. Even before proceeding further, it must be stated that all the

Writ Petitions were filed seeking the same relief, with respect to tender notices, which were issued for other works, but also relating to the certificates issued by the same official, with regard to the working conditions of plants and equipments.

5. In the affidavit filed in support of the writ petition, it had been stated that the petitioner is a Class I Contractor, registered with the Government Department, for the past 15 years. He has necessary men and other infrastructure to execute the contract and his annual turn over of work is around Rs.5 Crores.

6. The respondent had invited a tender for execution of road works in Pudukottai District. The petitioner had participated in six such works notified by the respondent. It is for that reason that six writ petitions have been filed, since the bids offered by the petitioner have not been considered by the respondent.

7. In this writ petition, the last date for submission of tender was



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30.01.2023 at 02.00p.m. There was an amendment and the date was extended upto 31.01.2023 at 02.00p.m. The opening of e-bid was fixed as 03.00p.m., on 31.01.2023, which was subsequently extended to 04.00p.m., on 01.02.2023.

8.It is a single cover system. This did not require independent assessment. If eligible, the financial bid alone would be the sole criteria for finalizing the tender process. This would also indicate that if any doubt was found ineligible, automatically, the next stage of opening the financial bid would be proceeded with by the respondent.

9.One among the conditions for participation was that a certificate will have to be issued by the Divisional Engineer, NABARD and Rural Roads to establish that the participant has necessary machineries and plants and more over that they are in working condition.

10.On 24.01.2023, the petitioner had requested the Divisional Engineer (Quality Control), Highways, Trichy to inspect the machineries of the petitioner herein and issue such certificate.



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11.It is stated that in the affidavit that the Divisional Engineer (Quality Control), Highways, Trichy had also inspected the same and on 28.01.2023, the certificate had been prepared by the said official, but it was sent by post on 31.01.2023 and received by the petitioner only on 01.02.2023.

12.It must be kept in mind that the last date for submission of the tender document, which was originally fixed on 30.01.2023 had been extended upto 31.01.2023. The petitioner had received the certificate only on 01.02.2023. Naturally, the petitioner could not submit that certificate on 31.01.2023. However, the hard copy of the certificate had been forwarded to the respondent on 01.02.2023. The main crux of the arguments advanced by the learned counsel for the petitioner is that the Divisional Engineer (Quality Control), Highways, Trichy, though had issued the certificate on 28.01.2023 had not informed the petitioner about that particular fact. Therefore, the petitioner had to await for the certificate, which was received by him by post only on 01.02.2023.

13.The learned Additional Advocate General stated that the petitioner had also contributed to the delay. It was only on 24.0.2023 did the



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petitioner place a request to inspect the machineries and equipments which inspection is a serious issue and had to be done only after proper verification and inspection.

14.In this regard, it is seen the Divisional Engineer (Quality Control), Highways, Trichy had actually issued the certificate on 28.01.2023 itself. The learned Additional Advocate General also pointed out that the burden was also on the petitioner to verify whether such certificate was actually issued instead of awaiting for the same to reach him.

15.Be that as it may, let me not enter into a deep discussion on these aspects. The fact is that the petitioner has been now given that particular certificate. This would indicate that the plants and machineries have been evaluated, verified, inspected and certified by the competent authority, ie., the Divisional Engineer (Quality Control), Highways, Trichy. This certificate may now be considered by the respondent.

16.When the writ petition came for hearing on 01.03.2023, the learned Additional Advocate General, who appeared on behalf of the



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respondent, on instructions informed to the Court that the tender process would not be finalised till the disposal of the writ petition. This was recorded by my Predecessor on 01.03.2023.

17.Today, the learned Additional Advocate General, on instructions, stated that the papers submitted by the petitioner would also be considered, along with that of other participants. Let that process be done. After proper evaluation, let finalisation of the tender be done.

18.This Court places its deep appreciation for the fact that the learned Additional Advocate General had examined the issue in its correct perspective.

19.No further orders are required in this writ petition. Accordingly, all the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

16.03.2023

NCS : Yes/No
Index : Yes / No
Internet: Yes/ No
PNM



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To

The Superintending Engineer(H),
NABARD and Rural Roads Circle,
Trichy.



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C.V.KARTHIKEYAN, J.

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