



W.P(MD)No.5668 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.5668 of 2023

and

W.M.P.(MD)Nos. 5271 and 5273 of 2023

A.Pandian

... Petitioner

Vs.

1.The Secretary

Public Work Department,
Secretariat,
Chennai - 600 009.

2.Engineer in Chief,

Water Resource Department &
Chief Engineer (General),
Public Work Department,
Chepauk, Chennai- 600 005.

3.The Superintending Engineer,

Water Resource Department,
Lower Cauvery Basin Circle,
Santhapillai Gate,
Thanjavur,
Thanjavur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, directing the third respondent to call for the records of the entire impugned Tender proceedings of Tender invitation Nit 10/2022-2023 dated 23.12.2023 in respect



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of the Work and quash the same as illegal and void and consequently directing the third respondent to conduct the fresh tender in respect of work and accept the petitioner's valid tender in respect of the work and proceed with fresh tender proceedings.

For Petitioner : Mr.K.Muraleedharan

For R1 to R3 : Mr.D.S.Nedunchezian
Government Advocate

ORDER

This writ petition has been filed in the nature of certiorarified mandamus seeking a direction against the third respondent Superintending Engineer, Water Resource Department, Lower Cauvery Basin Circle, Santhapillai Gate, Thanjavur District, to produce the records with respect to the tender invitation Nit 10/2022-2023 dated 23.12.2022 and quash the same and direct the third respondent to conduct a fresh tender in respect of the work and accept the petitioner tender.

2. The petitioner had participated in the tender which had been issued by the respondents on 23.12.2022. The date of opening of the tenders was fixed on 12.01.2023 at 12.00 p.m. It has been very specifically stated that if any document or deed is received after that particular time and date, they will will be rejected. It is common knowledge that 11.01.2023 is a local holiday of



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Tanjavur District. Such holiday is not declared in the morning of 11.01.2023 but at the beginning of the month. The petitioner, for the reasons best known to him, had sent the tender documents by speed post on 10.01.2023. It is mentioned by the petitioner that it was received by the third respondent on 11.01.2023 at 16.07.43 hours. On 11.01.2023, the offices of the third respondent were completely closed owing to the local holiday. The speed post was delivered in the office premise, but not specifically received by any individual. On 12.01.2023, when the tenders were opened at 12.00 p.m., the petitioner did not participate. When the Court sought a reason for the same, the response of the learned counsel was that the respondents had already determined to whom to give the tender and that the fact was known to everybody therefore he did not participate. The petitioner was not interested in appearing physically on the date when the tender was opened. The Court cannot come to his rescue. The duty of the petitioner is to participate, if the petitioner was interested. It is a fact that the tapal was delivered on 11.01.2023. But when the bids were opened on 12.01.2023, the petitioner could have very much presented himself and insisted that his bid should also be considered along with the other bids. Merely throwing the onus on the respondents cannot come to the assistance of the petitioner herein.

3. The facts that on 11.01.2023, there was a local holiday and that the



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office of the respondents were totally closed, cannot be denied or disputed. The fact that such holiday was declared much earlier cannot be denied. The reason why the petitioner sent a speed post only on 10.01.2023, even though the notice for tender was issued on 23.12.2022 itself was not explained by the petitioner. It is seen that the tenders had been opened and the tender had been awarded and the works were also commenced.

4. Moreover, the writ petition has been filed only on 10.03.2023 as seen from the seal affixed by the Registry. By that time, the tenders have already been awarded.

5. The learned counsel for the petitioner stated that on the very next day he had filed an application under the Right to Information Act and received information from the respondent that his tender was not opened since it was received after the prescribed time. The petitioner could have taken recourse to the provision of the Tamilnadu Transparency in Tenders, Act and filed an appeal. The learned counsel stated that an appeal would lie only when the tender had been rejected. In fact that if a tender had not been taken for consideration also can be a ground to be taken for appeal. After two months, the petitioner has filed this writ petition when third party interests have already surfaced.



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6. Tenders have already awarded and the work has already commenced.

The clock can never be set back.

7. The Hon'ble Supreme Court, in a judgment in ***Uflex Ltd. Vs Government of Tamil Nadu and others***, reported in ***2021 SCC OnLine SC 738***, had very categorically stated that interference of Courts in matters relating to tenders should be discouraged. When the law provides an appellate remedy, the petitioner should have availed such remedy. The petitioner should also have ensured that he had taken necessary legal steps at the earliest. Having missed the bus, the petitioner cannot now turn around and place the blame on the respondents herein.

8. This writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

29.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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C.V.KARTHIKEYAN, J.

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To

- 1.The Secretary, Public Work Department,
Secretariat, Chennai - 600 009.
- 2.Engineer in Chief, Water Resource Department & Chief Engineer (General),
Public Work Department, Chepauk, Chennai- 600 005.
- 3.The Superintending Engineer, Water Resource Department,
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