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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.7668 of 2023
and
W.M.P.(MD)No.7129 of 2023

RML.Mani

... Petitioner

vs.

1.The District Collector cum Chairman,
District Rural Development Agency,
Sivagangai District, Sivagangai.

2.The Project Director,
District Rural Development Agency,
Sivagangai District, Sivagangai.

3.The Assistant Director of Panchayat,
Sivagangai District, Sivagangai,

4.The Block Development Officer/Tender Inviting Authority,
Kalaiyarkovil Union, Sivagangai District.

5.Sivakumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the fourth respondent, dated



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30.03.2023 in Na.Ka.A2/1999/2022 and to quash the same as illegal and consequently, to direct the respondents 1 to 4 to declare the petitioner as successful bidder forthwith for the tender in strengthening of the road from Samathuvapuram at Purasaiudaippu Village in Mudikkarai Panchayat under Periyar Ninaivu Samathapuram Scheme 2022-23.

For Petitioner	:Mr.A.Mohan
For R1 to R4	:Mr.N.Muthu Vijayan Special Government Pleader
For R5	:Mr.V.Kannan

ORDER

This Writ Petition had been originally filed in the nature of a Mandamus seeking a direction against the first to fourth respondents to open and accept the e-bid submitted by the petitioner to carry out civil work, namely, “strengthening of road from Samathuvapuram at Purasadaiaudaippu Village in Mudikkarai Panchayat” under Periyar Ninaivu Samathuvapuram Scheme-2022-2023 and to consider the same along with other e-bids and declare the petitioner as a successful bidder.

2.Pending the Writ Petition, it had come to the knowledge of the petitioner that his bid had been rejected by an order, dated 30.03.2023



and consequently, the Writ of Mandamus was amended to a Writ of Certiorarified Mandamus, calling upon the respondents to produce the records relating to the rejection of the e-bid offered by the petitioner dated 30.03.2023 and to quash the same.

3.It must also be mentioned that after the bid of the Writ Petitioner had been rejected, the officials respondents had awarded the contract to the fifth respondent by a work order, dated 31.03.2023. The grant of that work has not been challenged till date. It would effectively mean that this Court can only examine the rejection of the bid of the petitioner, but cannot examine the grant of work order to the fifth respondent.

4.Heard Mr.A.Mohan, learned Counsel for the petitioner, Mr.N.Muthu Vijayan, learned Special Government Pleader for the respondents 1 to 4 and Mr.V.Kannan, learned Counsel for the fifth respondent.

5.The main contention raised by the learned Counsel for the petitioner is that the conditions for submission of documents stipulated



that they should be submitted on or before 03.00 pm on 30.03.2023 through online.

6. My attention had been drawn to the bid submission confirmation received by the petitioner herein, which reflects that the petitioner had submitted the documents on 30.03.2023 at 02.13 pm even before the closing time of 03.00 pm. It had also stated by the learned Counsel for the petitioner that the petitioner wanted to produce the hard copies, particularly, the original demand draft and other documents, but they were refused to be received by the respondents and immediately, thereafter, on the very same day, he had also preferred a complaint to the District Collector complaining about the refusal to receive the documents of the petitioner herein.

6. The learned Counsel for the petitioner also pointed out that on the very same day, 30.03.2023, in a hurried manner, the bid submitted by the petitioner was rejected and apparently, the fifth respondent had been issued with the contract. It is under those circumstances, this Writ Petition has been filed questioning now the rejection of the bid of the



petitioner.

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7.A counter affidavit had been filed by the fourth respondent/Block Development Officer and he had stated that the petitioner had submitted the e-bid tender through online. It had also stated that the original documents and the demand draft should also be submitted before 03.00 pm on 30.03.2023, but the petitioner has failed to comply with this condition. It is also stated that at 03.00 pm, after the closing time, the said official respondents had assessed the documents and ascertained that only three persons have submitted the documents, namely, the petitioner herein, the fifth respondent and another individual, Anbunathan. The original documents of the petitioner and the demand drafts were checked and it was found that they had not been submitted within the time stipulated and therefore, the bid of the petitioner had not been considered as per the applicable rules.

8.It had also stated that the bid of the fifth respondent was the lowest bid and therefore, he was awarded with the contract. It had also been stated that the petitioner has no locus to question the proceedings,



as his bid had been rejected particularly because he had not submitted the entire documents as were required within the time stipulated.

9.A counter had also been filed by the fifth respondent, who has been awarded the contract and in his counter, he had given the list of documents, which he had submitted within the time on 30.03.2023. It had also been stated that thereafter, the work order has been granted to him and it was stated that it was a time bound work order to be completed within one month and therefore, even on the date of filing of the counter affidavit, namely, 12.04.2023, it has been stated that the fifth respondent had completed about 25% of the work. Today, a representation was made that substantially more percentage of the work had been completed and that the work is ongoing.

10.The fourth respondent had also filed the documents which the petitioner had filed along with his bid. It is seen that the petitioner had not filed an affidavit as is required, which had been filed by the fifth respondent and also by the other contesting party, Anbunathan. The fifth respondent had filed, as is seen from the records, a certificate from the



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bank, an annexure which is called 'F' affidavit, an annexure, 'G' undertaking, a term deposit advice from the Karur Vysya Bank. The petitioner herein along with the e-bid had submitted a copy of the demand draft, PAN card issued from the Income Tax Department, GST Certificate. Two affidavits, as are required, had not been submitted.

11.The primary issue to be examined are the allegations of the petitioner that the petitioner had handed over the hard copies, but they were refused to be received and that immediately, thereafter, he had given a complaint before the District Collector. This fact has been denied in the counter. The learned Counsel for the petitioner stated that it is only a general denial. But the fact is that the respondents had denied that the petitioner had produced necessary documents to be submitted along with the e-bid.

12.These are issues, which have to be examined only by the respondents. If the respondents had, according to the petitioner, refused to receive the documents of the petitioner, then the petitioner should have taken recourse to Section 11 of the Tamil Nadu Transparency in Tenders



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Act, 1998. Section 11 of the Act provides an appeal to be filed by any tenderer aggrieved by an order passed by the Tender Accepting Authority.

When an alternative remedy is available, the petitioner had given a complaint to the District Collector. Even though that might be an initial step taken by the petitioner herein, still the proper step would have been to file an appeal as provided under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998. This Court cannot examine contractual disputes between the parties.

10. In *Uflex Ltd. Vs Government of Tamil Nadu and others*, reported in **2021 SCC OnLine SC 738**, the Hon'ble Supreme Court held as follows:

“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.... 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.”



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11.The Honourable Supreme Court had frowned upon High Courts examining issues relating to grant/non-grant of tenders. The judgment cited was an appeal, which went from the Madras High Court to the Supreme Court questioning an interference in the grant of tender. The Supreme Court had come down heavily on the Court and stated that High Courts should not, as a matter of regularity, interfere with grant or otherwise of tenders and the matter should be proceeded only in accordance with the permission of the Act, namely, the Tamil Nadu Transparency in Tenders Act, 1998.

12.It is also seen that the fifth respondent had been awarded the contract and that has not been challenged, which effectively means that the fifth respondent can continue to do the work, as has been granted to him.

13.In view of the all these facts, I am not able to interfere with the order passed which is adverse to the interest of the petitioner herein. The Writ Court also has its limitations. This Writ Petition stands dismissed.



No order as to costs. Consequently, connected miscellaneous petition is closed.

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

27.04.2023

cmr

To

1.The District Collector cum Chairman,
District Rural Development Agency,
Sivagangai District, Sivagangai.

2.The Project Director,
District Rural Development Agency,
Sivagangai District, Sivagangai.

3.The Assistant Director of Panchayat,
Sivagangai District, Sivagangai,

4.The Block Development Officer/Tender Inviting Authority,
Kalaiyarkovil Union, Sivagangai District.



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C.V.KARTHIKEYAN, J.

cmr

Order made in
W.P.(MD)No.7668 of 2023

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