



W.P(MD)No.13511 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.13511 of 2023

and

W.M.P(MD)Nos.11411 and 11413 of 2023

Kandasami

... Petitioner

Vs

1. The Commissioner of Rural Development
and Panchayat Raj Department,
Panagal Building, Chennai - 600 015.
2. The District Collector /
The Chairman of District Rural Development Agency (DRDA),
Sivagangai District,
Sivagangai.
3. The Project Director,
District Rural Development Agency,
Sivagangai, Sivagangai District.
4. The Executive Engineer,
District Rural Development Agency,
Sivagangai, Sivagangai District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Tender Rejection Order dated 04.06.2023 on the file of the second respondent and quash the same for Strengthening of Kalla Mathagupatti Road to Kalavananthal (via) Poyyamanipatti road at Package No.MGSMT SVG DT KKOIL_Pack_ 101 at Sivagangai District and to direct the respondents to open the price bid and award the said contract work to the petitioner.

For Petitioner : Mr. V.Kannan
For Respondents: Mr.V.Veera Kathiravan
Additional Advocate General
assisted by Mr.J.Ashok
Additional Government Pleader

ORDER

The writ petition has been filed in the nature of a Mandamus, seeking records relating to tender rejection order, dated 04.06.2023 on the file of second respondent/District Collector/Chairman of District Rural Development Agency (DRDA) Sivagangai District and to quash the same and to direct the second respondent to open the price bid and award the said contract work to the petitioner herein.



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2.The petitioner had participated in a tender floated by the respondent for Strengthening of Kalla Mathagupatti Road to Kalavananthal (via) Poyyamanipatti road at Package No.MGSMT SVG DT KKOIL_Pack_ 101 at Sivagangai District.

3.The petitioner is a Class I Contractor duly recognised and also registered with GST Authority and issued with GST Registration Certificate. The second respondent had issued a tender notice calling for tenders carrying out works strengthening of roads under the Tamil Nadu Rural Road Improvement Scheme 2022-23.

4.The petitioner had participated in the tender. The last date for submission of tender was 19.05.2023 at 3.00 PM. The online opening of tender was to be conducted on 19.05.2023 at about 4.00 PM. The entire process was through e-tender. The petitioner had claimed that he uploaded all the supporting documents and also paid EMD for the specified amount.

5.The petitioner had participated in the tender along with three other



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tenderers. It is claimed by the learned counsel for the petitioner that the tender documents were not opened on 19.05.2023 at 4.00 PM as scheduled. Rather, the respondents awaited for 15 days and thereafter, the impugned notice had been issued. In the impugned notice, the bid offered by the other tenderers had been rejected, for the reason stated therein. The bid offered by the petitioner alone could be then considered. The bid offered by the petitioner was also rejected, on the ground that it was the only bid and considered as a single bid, therefore, it was contended the said bid shall not be opened. Questioning that reason for rejection of tender, the present writ petition has been filed.

6.The learned Counsel for the petitioner stated that the respondents had deliberately rejected the bids offered by other participants, only with a view to reject the bid of the petitioner herein. It was also claimed that the bid was not opened on the stipulated date and time, namely 19.05.2023 at 4.00 PM and after 15 days the documents were opened in the absence of the petitioner. It was therefore contended that the respondents had ensured that there was no effective competition among the participants and holding that the bid submitted by the petitioner was a single bid, it was rejected. Claiming *mala*



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fide on the part of respondents, this writ petition has been filed.

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7.The learned Additional Advocate General however asserted that the petitioner had formed a cartel with the other participants. The other participants had not challenged the reasons for rejection of their bid, thereby leaving the petitioner's bid alone for consideration. It was contended that it was not an open and fair competition and therefore, the single bid of the petitioner was rejected by the respondents.

8.The same allegations have been alleged stated by the petitioner against the respondent and also by the respondents against the petitioner. The petitioner claims that the other participants had been deliberately rejected by the respondents, whereas, the respondents contend that the other participants were cartel members of the petitioner, since they had not questioned the reasons for the rejection of their bid.

9.It is seen from the grounds of rejection, quite apart from stating that documents were not submitted, the original draft was not submitted was also quoted. However, the EMD is paid in the form of Demand Draft, which



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automatically means that cash had been paid and the Demand Draft was purchased. It is strange that the other tenderers had not questioned that ground for their rejection. Whether the other participants were cartel members of the petitioner as claimed by the respondents or genuine participants as claimed by the petitioner need not be discussed here. What remains is that the bid of the petitioner was rejected.

10. There cannot be any evolution of the final offer made by the petitioner, since there was no comparable value. It is for that reason, the bid offered by the petitioner was rejected.

11. In this connection, the learned Additional Advocate General placed reliance on the guidelines issued by the Central Government in the National Rural Roads Development Agency, Ministry of Rural Roads Development, Government of India in No.P-17025/33/2011/P-1/RC, dated 15.01.2013. This is a circular issued by Central Government and these guidelines have been directed to be followed by the State Agencies also. The guidelines had been called Pradhan Mantri Gram Sadak Yojana (PMGSY). The procedure for tender had been examined and the guidelines of CVC and the Committee had



also been examined. They provide that a single tender can be accepted only by recording detailed justification, in support of acceptance with the approval of competitive authority.

12.In this case, there is no justification in seeking a direction to open the bid of the petitioner alone, since it would not provide a fair value. The object is transparency in the tender system.

13.In the said guideline with respect to determination of a single tender and with respect to opening of single bid tendered, it had been provided as follows:

“A.Definition of Single Tender: If, consequent to invitation of tenders/bids for any package, only one bid/tender is received or consequent to technical evaluation if only one bid/tender is found eligible, such bids/tenders shall be termed as single tenders for the purposes of PMGSY.

B.Opening of Single Bids/Tenders: If in the first invitation/call, single bid is received, the State Rural Roads Development Agency (SRRDA) or authority inviting the tenders/bids shall not open the bid. In such cases the bids shall be re-invited. Modification in the e-procurement software shall be made by the NIC to delete the bid (while maintaining the data in the data base) from the server after the date of opening of bids and generate appropriate reports in this regard.”



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14.It had also been provided that subsequent to invitation of bids, the agencies are free to re-package the works or revise the estimate cost. Thus, as a concept, opening of a single tender was frowned upon by the Central Government.

15.This concept had been further examined by a Division Bench of this Court in ***(1999) 3 MLJ 274 [R.J.Veeraraghavan vs The Tamil Nadu Slum Clearance Board, represented by its Chairman, Chennai]***, wherein, the Division Bench had stated as follows in paragraph No.53.

“53. With regard to other two writ appeals in W.A.Nos. 1694 and 1695 of 1998, petitioner's tender was not accepted for the reason that the Board have taken policy decision not to accept the single tender. It is an admitted fact that three persons purchased the tender forms and appellant alone submitted the tender. Respondents bona fide believed that the other two persons might have colluded with petitioner and have withdrawn from the competition. For the best interest of respondents and for getting better competitive relates without any deterioration in the quality of work, if respondents have taken policy decision, not to accept the single tender, same cannot be said as mala fide.”

16.The Division Bench had clearly stated that a single tender system cannot be opened after the other tenders have been rejected. The rejection of the single tender cannot be said to be *mala fide*.



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17. In this case, the respondents allege that all the participants had formed a cartel with the petitioner, whereas, it is alleged by the petitioner that other participants are the agents of the respondents. Either way, the bid of the petitioner alone cannot be opened and I hold was correctly rejected.

18. The learned Additional Advocate General also pointed out the narrow scope of interference in tender issues while exercising discretion under Article 226 of Constitution of India.

19. In ***(2022) 6 SCC 127 [N.G.Products Limited Vs Vinod Kumar Jain and others]***, where, the relief of a rejected tenderer was examined, the Hon'ble Supreme Court had held as follows:

"21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India.

22.

23. In view of the above judgments of this Court, the Writ Court should re-frain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the



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terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

20. In *Uflex Limited Vs Government of Tamil Nadu and Others*, in **Civil Appeal No.4862-4863 of 2021**, dated 17.09.2021, which was filed by State of Tamil Nadu against the Judgment of a Division Bench of this Court, the Hon’ble Supreme Court had frowned upon the Division Bench in an issue relating to tender adjudication in favour of rival tenders. The observation of the Hon’ble Supreme Court 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.”

21.The learned counsel for the petitioner drew the attention of this Court to Section 8 of the Tamil Nadu Transparency in Tenders Act relating to opening of tender. Section 8 of the Act is as follows.

“8. Opening of Tender.- The Tender Accepting Authority or any other officer authorised by it, shall open the tenders in the presence of tenderers present and who have submitted tenders in such time and in such place as may be specified in the tender document.”

22.If according to the learned counsel for the petitioner, there is a violation of this particular provision, then that is a ground to reject the entire process and to direct the respondents to re-issue and call again for fresh tenders.

23.The learned counsel for the petitioner also placed reliance on Rule



21(1) of the Tamil Nadu Transparency in Tender Act Rules, 2000. The said rule is extracted below.

“21. Opening of tenders.- (1) All the tenders received by the Tender Accepting Authority shall be opened at the time specified in the Notice Inviting Tenders and in cases where an extension of time for the submission of tenders has been given subsequent to the original Notice Inviting Tenders in accordance with sub-rule (5) of Rule 18 at the time so specified subsequently. 1 “The e-submitted tenders may be permitted to be opened by a Tender Inviting Authority or a member of the Tender Scrutiny Committee from their new location if they are transferred after the issue of Notice Inviting Tender and before tender opening and where the new incumbent is yet to obtain his digital signature certified.”;

24. Viewed from any angle, either accepting the arguments advanced by the learned Counsel for the petitioner or the arguments advanced by the learned Additional Advocate General. I hold that the respondents had correctly cancelled the entire tender process and had taken a decision to re-issue the tender.

25. I am informed that a tender notice had been again re-issued. The petitioner can always participate in the said process. He can also ensure that the other participants are not those, whom the respondents would categorise as members of his cartel.



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26.Reference was made to Section 11 of the Act. That issue is left open, since it is a statutory right of the petitioner and he may take any decision in this regard. This Court cannot interfere in that process.

27.In view of the above reasons, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

09.06.2023
(4/5)

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

PNM
To

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C.V.KARTHIKEYAN, J.

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ORDER IN
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