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W.P.(MD)NO.18800 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.08.2022

PRONOUNCED ON : 03.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18800 of 2022 and
W.M.P.(MD)Nos.13703 & 13704 of 2022

Thamaraipoo Thannarva Paniyalar Sangam -
Mahathanapuram,
Rep. by its President,
Smt.S.Vanaja, W/o.Murugan,
Nethaji Colony, Mahathanapuram,
Mahathanapuram Post,
Kanyakumari District.

... Petitioner

Vs.

1. The District Collector,
Kanyakumari District,
O/o.at Ramavarmapuram,
Nagercoil,
Kanyakumari District.
2. The Assistant Director of Town Panchayath,
Collectorate Campus,
Nagercoil,
Kanyakumari District.
3. The Executive Officer,
Kottaram 1st Grade Town Panchayat,
Kottaram, Kanyakumari District.
4. The Chairman,
Kottaram 1st Grade Town Panchayat,
Kottaram,
Kanyakumari District.

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the tender notification issued by the 3rd respondent herein in Na.Ka. No.100/2022/A1 dated 29.07.2022 and quash the same as illegal and further direct the respondents herein to permit the petitioner to collecting and disposing of garbage and waste from Kottaram Ist Grade Panchayat for the financial year from 01.04.2022 to 31.03.2023.

For Petitioner : Mr.K.P.Krishna Doss

For R-1 & R-2 : Mr.K.Balasubramani,
Special Government Pleader.

For R-3 & R-4 : Mr.V.Om.Prakash,
Government Advocate.

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner challenges the tender notification dated 29.07.2022 issued by the third respondent calling for submission of bid for supply of manpower to carry out public



health works in the third respondent panchayat. The petitioner is a self-help group. It has been registered as a society under the Tamil Nadu Societies Registration Act 1975. The petitioner undertook the work of collecting and disposing garbage and waste generated in the panchayat limits during the pandemic period. The petitioner had engaged around twenty persons and carried out the said work. The third respondent had passed an order dated 28.10.2021 extending the work permit for the subsequent financial year also. The petitioner had also enclosed copies of the appreciation letters issued by the third respondent. The petitioner is however aggrieved by the conditions set out in the impugned tender notification.

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned tender notification and direct the respondents to permit the petitioner to continue to collect and dispose garbage and waste generated in the third respondent panchayat.



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4. While entertaining the writ petition, this Court directed that the tender process can go on but restrained the authority from finalising the bid.

5. The learned Special Government Pleader appearing for the respondents strongly submitted that the impugned tender notification does not call for any interference. He would point out that the petitioner also submitted their bid. They were found to be ineligible. Thereafter, they cannot turn around and question the validity of the tender terms and conditions. According to him, the principle of estoppel would operate. In any event, the conditions have been incorporated only to ensure that the outsourcing agency which is entrusted with the tender works is most suited to perform the job. He also would remind the Court that in matters such as this, this Court's power to interfere is very limited and the writ Court will not question the wisdom behind the incorporation of the conditions. He pressed for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.



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7. The learned Special Government Pleader produced a copy of the scrutiny report. It is seen therefrom that in response to the impugned tender notification, three bids were received. One was from the petitioner, while the other two were from Southern Solid Waste Management Service and Osai Suttucholal Men's SHG No.2. Even according to the respondents, only one bid turned out to be eligible.

8. Such a situation is patently unacceptable. The very purpose of inviting tenders is to increase competition. If because of the conditions stipulated in the impugned tender notification, there will not be competition, then the very purpose of inviting tenders is defeated. It is true that in matters such as this, the writ Court has limited powers of interference. However, the respondents cannot be allowed to be arbitrary in their approach. Public interest is paramount. The contract works involved are not technical or specialised works. It is only collection and disposal of garbage and waste. The petitioner had already been engaged in the said task. The third respondent also found the petitioner's performance to be



satisfactory. That is why, their work permit was extended and letter of appreciation was also issued. One cannot lose sight of the fact that the petitioner performed duty during Covid times. Such being the case, to hold that the petitioner is ineligible is definitely unfair and unreasonable. The conditions cannot be tailor-made as to eliminate the existing bidders. If after scrutiny, the number of eligible bidders is only one or two, then certainly it indicates that there is something wrong with the nature of conditions imposed. Proof of the pudding is in the eating. Since on account of the tender conditions, the number of eligible bids had been reduced to just one, I have to necessarily interfere.

9. In this view of the matter, the impugned tender notification is quashed. However, this Court will not be justified in straightaway giving direction to the third respondent to continue to engage the writ petitioner. Ultimately, these are not commercial matters. When Government works are involved, a transparent process must be followed and all eligible persons must be allowed to participate. I therefore direct the third respondent to issue a



fresh tender notification by incorporating appropriate conditions. The number of eligible bidders must not be less than three or more. Such notification will be issued within a period of four weeks from the date of receipt of a copy of this order.

10. This writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

03.01.2023

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

PMU

Note : Issue order copy on 04.01.2023.

To:

1. The District Collector,
Kanyakumari District,
O/o.at Ramavarmapuram,
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G.R.SWAMINATHAN,J.

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