



W.P.(MD)No.20527 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.03.2023

CORAM

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

W.P.(MD)No.20527 of 2022

C.Ajay Kumar

... Petitioner

vs.

1.The District Collector,
Kanyakumari District, Nagercoil.

2.The Assistant Director of Town Panchayat,
Collectorate Office, Nagercoil,
Kanyakumari District.

3.The Executive Officer,
Mondaikadu Selection Grade Town Panchayat,
Kanyakumari District.

... 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 pertaining to the tender notification issued by the third respondent in Na.Ka.No.39/2022/A1, dated 20.04.2022 and to quash the entire process of tender, as illegal and further, to direct the respondents herein to allot the tender on the basis of lowest bid price to the petitioner for the Solid Waste Scheme of Mondaikadu Panchayat for the financial year from 2022 to 2023.



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For Petitioner :Mr.A.Rajkumar Sena

For Respondents :Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus to call for the records relating to the tender notification issued by the third respondent/Executive Officer, Mandaikadu Selection Grade Town Panchayat in Na.Ka.No.39/2022/A1, dated 20.04.2022, and to quash the entire process of tender and to direct the respondents herein to allot the tender on the basis of lowest bid price to the petitioner for the Solid Waste Scheme of Mandaikadu Panchayat for the financial year 2022-2023.

2.Heard Mr.A.Rajkumar Sen, learned Counsel for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader for the respondents.



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3.In the affidavit filed in support of this Writ Petition, the petitioner, C.Ajay Kumar, Secretary of Paruthivai MinMini Samooga Nala Narpani Sangam, Mandaikadu, in Kanyakumari District, had stated that he was the Secretary of the said organization, which is a registered Society in No.SRG/Kanyakumari/76/2022 engaged in sanitation and public welfare. The said society was founded in the year 2014. It had also been stated that the third respondent/ Executive Officer, Mandaikadu Selection Grade Town Panchayat, Kanyakumari District had issued tender notification in Na.Ka.No.39/2022/A1, dated 19.04.2022 published in the daily vernacular newspaper on 20.04.2022 for outsourcing man power for Solid Wastage Scheme. The conditions, which were imposed, are as follows:

- “a)The tender shall be two cover system.*
- b)Tenderer shall have 3 years continuous experience*
- c)Annual turnover of tenderer the three financial years shall be above Rs.Fifty lakhs.*
- d)The minimum wages of Rs.550/- fixed by the District Collector shall to be altered and service charges hall not exceed @ Rs.10%.*
- e)All the tenders will be evaluated and the bid price of the tenderers having technical capability will be opened.”*



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4.The petitioner had participated in the tender and submitted documents on 29.04.2022 before 03.00 pm. It had been stated that the fixed contract labour outsourcing is Rs.550/- per head with bid price of 5% termed as service charges. Three tenderers had participated, namely, a)Shawn Security Force, Chanthaiyadi, b)Puliyoor Salai Labour Contract Cooperative Society Limited, No.7115 and c)Paruthivilai Minimini Samooga Nala Narpani Sangam. It had been alleged that the tender was not opened on 29.04.2022 at 03.00 pm, but only on 30.04.2022, the next day. It had been alleged that the per head wages of Rs.550/- is a fixed amount and there cannot be any change and that the service charges should not exceed 10%. It had been stated that the respondent had chosen the Puliyoor Salai Labour Contract Cooperative Society Limited, against the rules. Questioning the selection of such Society, the present Writ Petition had been filed.

5.A counter had been filed by the third respondent, wherein, they had denied all the allegations relating to *mala fide* in the tender process and had stated that originally, four bidders have received the tender schedule and three had submitted tender applications in sealed covers. It



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had stated that when the technical bids were opened, it was found that only one of the tenderers was eligible and the other two including the petitioner were found ineligible. The petitioner had not provided any evidence and documents for experience, for minimum annual turnover and for other basic eligibility, as provided in the notification. It had been stated that after the tender process had been completed, the successful bidder is executing the work with man power of 22 people ie., Electrical work-2, Drinking Water Project Work-3 and Public Health Workers-17. It had been stated that there had been no irregularity in the tender process.

6.It is also stated that the check list with respect to the bids were verified by a Committee consisting of Assistant Executive Engineer, Assistant Director, Town Panchayat, Junior Engineer and by the Executive Officer of the Mandaikadu Selection Grade Town Panchayat. It had been specifically found that the petitioner was informed about their disqualification on 30.04.2022 and that the Writ Petitioner understood about the special condition prescribed in the notification and that, they were not able to qualify in such condition. It had been stated that the



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elected body consisting of Chairman and and Members, had passed resolutions No.111, dated 30.06.2022 and the bid submitted by the successful bidder was accepted by reducing 1% of service tax. It had been, thus, stated that since the work had been given to the successful bidder, the Writ Petition should be dismissed.

7.The learned Counsel for the petitioner primarily questioned the procedure, by which the tender process was conducted by stating that though it was held out that the bids would be opened at 03.00 on 29.04.2022, the bids were not actually opened at that date and time. It was stated that the bids were opened behind the back of the petitioner on 30.04.2022. It had also been stated that though the fixed basic salary was Rs.550/-, and it was stated that service charges should not exceed 10%, the successful bidder had actually quoted Rs.619/- per individual and had also quoted 9.5% as service charges. It was also stated that the bid covers were not opened on 29.04.2022 at 03.00 pm, but opened only on the next day, ie., on 30.04.2022. Placing reliance on these grounds, the tender process was assailed by the learned Counsel for the petitioner.



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8.The learned Special Government Pleader, however, pointed out that the contract had actually been given to the successful bidder as early as on 01.07.2022 and he had also been executing the work. It was also pointed out that the successful bidder had not been impleaded as a party in the Writ Petition. It was also stated that the amount of Rs.550/- was the basic minimum wages to be paid and that the service charge was only a variable and should not exceed 10%. The learned Special Government Pleader stated that the entire process was done in a transparent manner. It was also stated that the petitioner was found ineligible, when the technical bid was opened and this fact of ineligibility was also informed to the petitioner herein.

9.I have carefully considered the arguments advanced.

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



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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.”

11.The Honourable Supreme Court had very categorically stated that interference towards tender process should be discouraged. It is also to be seen that Section 11 of Tamil Nadu Transparency in Tender Acts provides for an appeal to be filed, if ever there is any dispute, which arises relating to the procedure in which bids were evaluated. In the instant case, the petitioner had participated in the tender process for solid waste management. The special conditions of the tender were as follows:

- “a)The tender shall be two cover system.*
- b)Tenderer shall have 3 years continuous experience*
- c)Annual turnover of tenderer the three financial years shall be above Rs.Fifty lakhs.*
- d)The minimum wages of Rs.550/- fixed by the District Collector shall to be altered and service charges hall not exceed @ Rs.10%.*
- e)All the tenders will be evaluated and the bid price*



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of the tenderers having technical capability will be opened.”

12. There were three tenderers who had participated:

- 1) Shawn Security Force, Chanthaiyadi,
- 2) Pulliyoor Salai Labour Contract Cooperative Society Limited,
No.7115 and
- 3) Paruthivilai Minimini Samooga Nala Narpani Sangam.

13. Along with the counter affidavit, the third respondent had also produced documents relating to the tender process. It is seen that the postponement of the opening of the tender was recorded in Na.Ka.No. 39/2022/A1, dated 29.04.2022, wherein, the Executive Engineer, Mandakadu Selection Grade Town Panchayat had very specifically stated that since he had some official work, the tender would be opened on the next day at 11.00 am on 30.04.2022. It had also been stated that this fact had been communicated to all those who had bid in the tender process. Therefore, no *mala fide* can be attributed for the opening of the tender on the next day.



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14.The proceedings of the Tender Evaluation Committee had also been produced, wherein, it is seen that the petitioner herein had not given any documents relating to the particulars of agency, financial particulars, auditor balance sheet and the annual report. They have also not given any certificate, as is required towards the annual turn over for the past three years.

15.These are certificates and details that should be given by any participant for any tender to inspire confidence that they would complete the work during the contractual period. The petitioner, who had not given any of the documents, cannot place the blame on the respondents for the procedure adopted.

16.Very specifically it had been stated in the counter affidavit that the petitioner was informed that the certificates have not been enclosed by the petitioner herein. To this statement in the counter affidavit, there is no reply filed on behalf of the petitioner.

17.The respondents have, thus, explained both the postponement



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of the date of the opening of the bid and also the ineligibility of the petitioner and therefore, disqualification of the petitioner in the technical round itself. It is also seen that the petitioner had not impleaded the successful bidder, as a respondent in the Writ Petition. It is also seen that the work had been entrusted as early as on 01.07.2022 and as on date, the successful bidder had now been engaged for more than eight months.

18.For the reasons above, the Writ Petitioner necessarily have to suffer an order of dismissal. The Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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

16.03.2023

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Kanyakumari District, Nagercoil.

2.The Assistant Director of Town Panchayat,
Collectorate Office, Nagercoil,
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C.V.KARTHIKEYAN, J.

cmr

Order made in
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