



WP(MD)No.21258 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 31.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.21258 of 2023
and
WMP(MD)No.17660 of 2023

PL.R & Co,
Having registered office at
2/32, Lembalakudi,
Thirumayam Taluk,
Pudukottai – 622 005,
Rep. by its Managing Partner
R.Rethinam

.. Petitioner

v.

- 1.The Superintending Engineer (Highways),
Construction and Maintenance Circle,
Tiruchirappalli.
- 2.The Divisional Engineer (Highways),
Quality Control Division,
Tiruchirappalli.
- 3.The Assistant Divisional Engineer (Highways),
Quality Control Sub Division,
Pudukottai.



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4.The Secretary to Government,
Highways and Minor Ports Department,
Secretariat,
Chennai – 600 009.

.. Respondents

[R.4 *suo-motu* impleaded vide order dated 31.08.2023]

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the second respondent to issue working condition certificate for the package Nos. TRY 55, 56, 57, 62, 63, 64, 65, 69, pursuant to the tender notice dated 03,04, 07/08/2023

For Petitioner : Mr.M.Rajarajan

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

The petitioner, with a grievance that his request for issuance of working condition certificate for the machineries in his possession has not been considered, has filed this writ petition.



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2.Learned Counsel for the petitioner submitted that the petitioner is intending to participate in a tender floated by the first respondent. One of the conditions imposed in the tender is that the applicant must have certain machineries and that the applicant should obtain a certificate from the second respondent as to the working conditions of the machineries. Along with the certificate alone, the tender document has to be submitted. Therefore, the petitioner has made an application to furnish the working condition certificate, however, it was not considered.

3.Learned Additional Government Pleader, on instructions, submitted that the working condition certificate of the machineries has been issued to the petitioner and as such, nothing survives for adjudication. This submission has not been disputed by the petitioner's Counsel.

4.The Government of Tamil Nadu, realizing the mischief played by some officials in deciding the tender works, has brought-in an



legislature, Tamil Nadu Transparency in Tenders Act and Rules. Even thereafter, the allegations of mala fides, arbitrariness, irrationality has not reduced and it is in fact increasing day by day. This Court, day-in and day-out, is witnessing several writ petitions in this regard. In view of the decisions of the Hon'ble Supreme Court, this Court is also refraining from interfering with these commercial contract matters. However, it has to be borne in mind that public money is involved in all these contracts. There must be some fairness and accountability in the awarding of contracts and also in the execution of the work.

5.This Court feels that the officials, who are dealing with these contract matters, are imposing onerous conditions under the guise of ensuring the best interest of the State. In this case, the authority has imposed the following condition:-

"9. The contractor should produce the documents for own possession of sufficient Plants & Machineries and obtain certificate from Divisional Engineer (H) (QC) concerned after the date of publication of Tender Notice as specified in the tender documents for working condition of the Plants & Machineries."



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6. From the above, it is clear that the Divisional Engineer has to give a certificate as to the working conditions of the machineries and along with that certificate, the tender document has to be submitted. In the event if the Divisional Engineer delays the issuance of certificate and chose to issue the certificate only in favour of few people, then the process of fair competition in the tender process itself would be defeated. The concept of inviting tender through public auction itself is to ensure more number of participants. This type of conditions would certainly defeat the object of public auction on these tenders.

7. Yet another condition is that the participants should own certain machineries. These machineries, which are required to be in the possession of the Contractor at the time of applying for the tender, can very well be hired at the time of execution of the work. It is the look out of the Contractor in executing the work. The justification of the Department in imposing this condition is that they want to ensure that the projects are completed within the stipulated time. This can be



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ensured by imposing certain penalties if there is any delay in execution.

The Contractors are participating in the tender with some Earnest Money Deposits. They are expected to deposit 10% of the amount at the time of award of contract. In the event, if there is any delay, the Department can fix some penalty against the Contractors, who are responsible for the delay and shall also recover the damages for the delay in execution of the works. But the sad state of affairs is that nobody is sticking-on to this condition and almost none of the Contractors is completing the work within the stipulated time.

8.By imposing these type of onerous conditions, the officials are eliminating the competitions and this would ultimately end with favoritism. It is high time for the Department to ensure that reasonable conditions alone are imposed as tender conditions. Therefore, this Court *suo-motu* impleads the Secretary to the Government, Highways and Minor Ports Department, as a party to this writ petition and Mr.G.V.Vairam Santhosh, learned Additional Government Pleader is directed to take notice on behalf of the newly impleaded respondent.



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9.The newly impleaded respondent / Secretary to Government shall look into this matter and issue necessary guidelines to fix the tender conditions in accordance with the Tender Transparency Act and Rules.

10.In this case, since it is represented that the certificate has been issued to the petitioner, after the filing of this writ petition, no further order is required to be passed in this regard.

11.In fine, this writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

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

31.08.2023

To

1.The Superintending Engineer (Highways),
Construction and Maintenance Circle,



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Tiruchirappalli.

B.PUGALENDHI, J.

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