



W.P(MD)No.23833 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 11.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23833 of 2023

and

W.M.P(MD)No.19996 of 2023

S.Peter

... Petitioner

Vs.

1.The Executive Officer,
Kothanallor,
1st Grade Town Panchayats,
Kanyakumari District – 629 166.

2.The Junior Engineer,
Town Panchayats,
Kothanallor Town Panchayat (H.Q),
Kanyakumari District – 629 166.

3.The Assistant Executive Engineer,
Town Panchayats,
Nagercoil Zone – 629 116.

4.T.George Stephen

... Respondents



W.P(MD)No.23833 of 2023

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned Tender Notice No.270/2022/A1 where the tender bulletin dated 10.08.2023 issued by the first respondent and quash the same as illegal and consequently direct the first respondent to issue call for fresh Tender.

For Petitioner : Mr.P.Puhazh Gandhi

For Respondents : Mr.P.T.Thiraviyan
Government Advocate for R.1

Mr.S.RA.Ramachandran
Special Government Pleader
for R.2 & R.3

Mr.K.P.Krishna Doss for R.4

ORDER

The writ petitioner is a State Level Class 1 Contractor for Public Works Department and Highways Department. He had so far executed works to the tune of Rupees Fifty Crores. The first respondent issued tender notice for the following work :

“Providing cement concrete road from Kallampothai to
Cement Block Company, Mankottukulam –



W.P(MD)No.23833 of 2023

Varuveltykulam and Vellaipillaiyarkoil to Mamparakulam
Road in Kothanallur Town Panchayat.”

The petitioner applied in response thereto. The tender process involved what is known as “Two Cover system”. The last date for submitting the bids was 03.00 p.m on 28.08.2023. The bids were to be opened for technical scrutiny at 03.30 p.m on the same date. The petitioner would allege that the bids were not opened on the notified date and time and that they were opened only on 30.08.2023. The respondents 1 to 3 would of course deny the same and the learned Special Government Pleader would submit that the bids were opened on 28.08.2023 at 03.30 p.m.

2. According to the official respondents the petitioner did not possess the requisite experience. In any event he had not enclosed the required certificates. The undertaking was also not on duly stamped paper. On these twin grounds, the petitioner was disqualified at the technical bid stage itself. The fourth respondent was found to be the lowest bidder and he was awarded the work order. When the petitioner came to know of the same, he filed the present writ petition.



W.P(MD)No.23833 of 2023

WEB COPY

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petitioner and called upon this Court to grant relief as prayed for.

4. The first respondent has filed counter affidavit and the learned Special Government Pleader took me through its contents. According to him, the tender process was transparently and fairly conducted and that therefore no interference is warranted.

5. The fourth respondent had been already intimated that the writ petition would be taken up for final disposal today. The fourth respondent has not filed any counter affidavit. However the fourth respondent adopted the stand taken by the learned Special Government Pleader, the respondents pressed for dismissal of the writ petition.

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



W.P(MD)No.23833 of 2023

7.The scrutiny report dated 20.08.2023 sets out the following two reasons for the petitioner's ineligibility. (Serial No.5 not produced and S.No.12 Stamp paper value not correct). Serial No.5 of the tender notification is as follows:

“5. Whether proof for having satisfactorily completed Paver block Road Work of not less than 50% of the value put to tender under a “single agreement” in any one of the preceding three years (2020-21, 2021-22, 2022-2023) for a Government Department / Board / Government Undertaking enclosed?”

The learned Special Government Pleader submitted that the petitioner lacks the experience as stipulated in the tender notification. He initially submitted that the Certificate dated 04.12.2021 issued by the Executive Engineer, District Rural Development Agency, Nagercoil which has been enclosed at page no.106 of the typed set of papers pertains to the year 2019-2020 and that therefore the requirement is not fulfilled.

8. The learned counsel appearing for the petitioner points out that it is enough if the petitioner demonstrates that his experience falls within one of the three years (i.e.,2020-2021, 2021-2022, 2022.2023).



W.P(MD)No.23833 of 2023

Certificate dated 04.12.2021 in respect of the agreement dated 07.12.2020 was enclosed. It falls within the year 2020-2021. I am more than satisfied that the petitioner fulfils the experience requirement envisaged under S.No.5 of the tender notification.

9.The other reason is ridiculous. The petitioner has enclosed the affidavits in Annexure F and G formats. They are in Rs.20/- stamped papers. It is true that the tender notification insists that the affidavit should be furnished in a Hundred Rupees Non-judicial Stamp paper. The petitioner of course has committed a mistake by furnishing his undertaking in a twenty rupees stamp paper. But this is not a defect that goes to the root of the matter.

10. I am more than satisfied that the petitioner's bid was substantially responsive to the bid. To reject the petitioner's tender on the ground that the undertaking affidavit was not furnished in a Hundred rupees stamp paper appears to be too technical and takes a very narrow view of things. The whole purpose of conducting tender is to encourage competition.



W.P(MD)No.23833 of 2023

WEB COPY

11. There is nothing on record to show that the bids were opened in the presence of the bidders. The scrutiny report was signed only on 30.08.2023.

12. More than anything else one of the conditions of the tender notification is that the applicants must own Hot Mix Plant. Clause 4(C) (i) reads as follows:

“ 4(C)(i) The bidder should either furnish proof of ownership of a Hot Mix Plant or a letter from a Hot Mix plant operator for showing a firm tie-up arrangement for the supply of Hot Mix required for the contract. The Hot mix shall be delivered at the work site at 120° c. ”

Admittedly, the fourth respondent does not possess a Hot Mix Plant or a letter from a Hot Mix Plant operator for showing a firm tie-up arrangement. While the petitioner's bid is substantially responsive to the bid requirement, the fourth respondent is obviously not qualified. In the counter affidavit this aspect is sought to be glossed over in the following terms:



W.P(MD)No.23833 of 2023

“6. I respectfully state that there is no illegality and no violation of principles of natural justice. The tender was awarded in favour of the 4th respondent on production of documents in support of conditions No.5 & 12. The petitioner has not fulfilled the said conditions. It is not so that the 4th Respondent is not possessing the hot mix plant, the said plant is required only for bitumen work and not for cement mix. Since, everything was processed online, there is no secret in opening the tender and therefore there is no secret in opening the tender and therefore there is no violation and no irregularity. The process of opening the tender was strictly followed in accordance with Tamil Nadu Transparency in Tenders Act.”

If a Hot Mix Plant was not required for cement mix, I fail to understand as to why such requirement was incorporated in the first place. I am more that satisfied that the tender process is vitiated. It does not conform the requirements set out in the tender notification. The requirements set out in the Tamil Nadu Transparency in Tenders Act, 1998 had not been followed. The disqualification of the writ petitioner is set aside. The issuance of work order in favour of the fourth respondent is set aside. The first respondent will proceed from the stage of technical bid.



WEB COPY

11.10.2023

MGA

1.The Executive Officer,
Kothanalloor,
1st Grade Town Panchayats,
Kanyakumari District – 629 166.

2.The Junior Engineer,
Town Panchayats,
Kothanalloor Town Panchayat (H.Q),
Kanyakumari District – 629 166.

3.The Assistant Executive Engineer,
Town Panchayats,
Nagercoil Zone – 629 116.



WEB COPY



W.P(MD)No.23833 of 2023

G.R.SWAMINATHAN, J.

MGA/SKM

W.P(MD)No.23833 of 2023
and
W.M.P(MD)No.19996 of 2023

11.10.2023