



WP(MD)No.25916 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.25916 of 2023

and

W.M.P(MD)No.22263, 22264 & 22266 of 2023

M/s.Sai Hridham Infraa Private Ltd.,
Through its Managing Director V.Palanisamy
V.

... Petitioner

- 1.The Secretary to Government of Tamil Nadu,
Highways Department, Chennai.
- 2.The Chief Engineer, Highways (Construction and Maintenance),
Chennai.
- 3.The Superintending Engineer,
Highways (Construction and Maintenance), Trichy.
- 4.Krishnasamy, The Superintending Engineer
Highways (Construction and Maintenance), Trichy.
- 5.The Divisional Engineer,
Highways (Construction and Maintenance), Pudukkottai.
- 6.M/s.K.R.N & Co., No.663, NH Trichy – Pudukkottai Road,
Muthudaiyanpatti, Pudukkottai District.
- 7.JPS Construction, Engineering Contractor,
No.1391, Thaila Nagar, Machuvadi (Post),
Pudukkottai District.
- 8.S.D.Infra, No.25, IAS Nagar,
Thiruverumbur, Trichy District.



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9.Sree Infra Tech, 119, Elathi Street,
Thendral Nagar, K.K.Nagar, Trichy.

... Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of cancellation of tender in TN45/2023-24/HDO dated 13.09.2023 cancelled on 20.10.2023 on the file of the third respondent and quash the same and further directing the first respondent to conduct an enquiry and to initiate appropriate action regarding the illegal cancellation of the tender notice No.45/2023-24 HDO dated 13.09.2023.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.Veera Kathirvan,

Additional Advocate General assisted by
Mr.K.Balasubramani

Special Government Pleader
for R1 to R3 and R5

Mr.V. Karthic, Senior Counsel for R4

Mr.P.Ganapathi Subramanian for R6

Mr.N.Balakrishnan for R7

Mr.K.C.Maniyarasu for R8

Mr.B.Jameel Arasu for R9

ORDER

The petitioner is a registered Class – I contractor. It applied in response to the notification dated 13.09.2023 issued by the third respondent inviting bids under two cover system for the petition-mentioned road widening work.

The tender notification was in respect of two items of work. The petitioner is



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interested in bagging the second item. The last date for submission of technical bid documents was 19.10.2023. The tenders were to be opened on 20.10.2023. On the said date, the third respondent issued the impugned order cancelling the tender process itself on the ground that only one bid was available for technical evaluation. Challenging the same and for directing the first respondent to hold enquiry, the present writ petition came to be filed.

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

3.The tender inviting authority had been named in person and certain allegations have been made against him. The tender inviting authority had filed counter affidavit denying all the allegations. The learned Additional Advocate General appearing for the respondents 1 to 3 and the learned Senior Counsel appearing for the tender inviting authority in his personal capacity submitted that the allegations made by the petitioner are liable to be rejected. The other respondents also submitted that they have been unfairly targeted by the petitioner. The respondents prayed for dismissal of the writ petition.



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4.I carefully considered the rival contentions and went through the materials on record. Clauses 4, 5 and 6 of the tender notification dated 13.09.2023 read as follows :

"4.Bids must be uploaded with scanned copy of EMD pertaining to the works as per the above table in the prescribed form drawn in favour of the Divisional Engineer (H), C&M, Concerned Division.

5.The original EMD and all other original/attested technical bid documents as uploaded shall be received by the Superintending Engineer (H), C&M, Tiruchirappalli Circle or or before 19.10.2023, 14.00 hours failing which, the bid shall be summarily rejected.

6.The technical cover containing EMD and pre-qualification documents as prescribed in the tender documents received through "Online" only shall be opened at 15.15 hours on 20.10.2023 (as per server system clock) in the office of the Superintending Engineer (H), C&M, Tiruchirappalli Circle."

5.The stand of the tender inviting authority is that even though as many as five persons including the petitioner had submitted their online bids, the remaining four failed to submit the original EMD and all other original/attested technical bids documents in person to the tender inviting authority and as a result, the petitioner alone was left in the fray as a single tenderer. The case



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on hand is a high value tender. In view of G.O Ms. No.25 Highways and Minor Ports (HN2) Department dated 08.02.2021 if there was only a single tenderer, the authority has to cancel the tender process and go for a fresh bid.

6.The case of the petitioner is that the tender inviting authority had already decided to favour the sixth respondent herein, namely, M/s.KRN & Co. My attention is drawn to the order made in WP(MD)No.25227 of 2023 for directing the concerned authority to issue a work condition certificate. When the matter was listed for admission, in order to avoid further embarrassment , the authorities issued the certificate thereby rendering the writ petition infructuous. The allegation of the petitioner is that the private respondents have formed cartel among themselves with the blessings of the tender inviting authority. They had smelt that the petitioner had offered a highly competitive bid and that is why, they had frustrated the entire process by not submitting the original EMDs. The learned counsel for the petitioner would fault the tender inviting authority for not initiating any action against the private respondents herein who though otherwise technically eligible had deliberately refrained from participating in the last minute. It is further contended that Rule 4A of the Tamil Nadu Transparency in Tenders Rules, 2000 was introduced to completely avoid human interface between the tender inviting authority and the individual tenderers. Even though several other



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departments and local bodies are adopting online method of finalising the tender process, by including the condition that the original Demand Draft and the documents should be handed over in person, the clause had been weaponised to tinker with the integrity of the tender process. Rule 20-A of the Tamil Nadu Transparency in Tenders Rules, 2000 states that no tenderers shall be allowed to withdraw the tenders after submitting the tender. The learned counsel for the petitioner on the other hand submitted that the cancelling is vitiated by mala fides.

7.The following issues arose for consideration :

“a) Whether the incorporation of the condition that the original EMDs and all other original/attested technical bid documents as uploaded should be received in person by the tender inviting authority is legal.

b) Whether as a result of the non-submission of the original EMDs and other documents to the tender inviting authority, the petitioner is the sole remaining tenderer in the field and whether on that ground, the authority was justified in cancelling the tender process.”



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It is seen that the tenderers have been playing hide and seek with the department by not submitting the original EMD at the time of scrutinising the documents. As rightly submitted by the learned Additional Advocate General appearing for the department as well as the learned Senior Counsel for the tender inviting authority in his personal capacity, the petitioner has been equally guilty of adopting the said practice in the past. It is a case of pot calling the kettle black. I had dealt with a similar situation in WP(MD)No. 10933 of 2020 (Priyam Industries and Engineering Pvt Ltd v. the Special Officer and Commissioner of Trichirappalli City Corporation). Vide order dated 03.09.2020, I had suggested to the tender inviting authority in the said case that instead of insisting on personally furnishing an EMD, they can rather open an account in which the intending tenderer can straightaway remit the EMD. Rule 4-A of the Tamil Nadu Transparency in Tenders Rules, 2000 states that the Government may mandate procuring entities to do procurement through electronic mode through web portals as may be specified by order. It was inserted by G.O Ms. No.93 Finance (Salaries) dated 30th March 2023. G.O Ms. No.94 dated 30.03.2023 reads as follows :



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Government of Tamil Nadu
2023



MANUSCRIPT SERIES

FINANCE (Salaries) DEPARTMENT
G.O.Ms.No.94, Dated 30th March 2023.

செலாவர்த்த, பதவியைப் பற்றி நிர்வாகக் குறைபாடு ஆணை - 2023

ABSTRACT

Tenders – Instructions issued to all procuring entities to do procurement through electronic mode under the Tamil Nadu Transparency in Tenders Rules, 2000 – Orders- Issued.

Read:

G.O.Ms.No.93, Finance (Salaries) Department, Dated: 30.03.2023.

ORDER:-

The rule 4-A of Tamil Nadu Transparency in Tenders Rules, 2000 states that the Government may mandate procuring entities to do procurement through electronic mode through web portals as may be specified by order.

2. Accordingly, Government issue instructions to all procuring entities as detailed below:

- a) From 01-04-2023 onwards all tendering activities shall be done through the web portal <https://tntenders.gov.in>.
- b) The Government further direct that such tendering activities shall include all stages of procurement from floating the bid upto generating and issuing the Letter of Award.
- c) Further, any tender floated and finalized without following the web portal <https://tntenders.gov.in> route shall be considered a violation of procedure.
- d) Finance (Salaries) Department may issue further instructions to streamline the process.
- e) This order shall not be applicable to the following procurements:-
 - (i) Tenders which have already been floated before **01.04.2023**.
 - (ii) Procurement covered under **Section 16** of Tamil Nadu Transparency in Tenders Act, 1998.

(BY ORDER OF THE GOVERNOR)

N.MURUGANANDAM
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT.



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Even a bare reading of the aforesaid Rule and the G.Os would lead one to the conclusion that the tender inviting authority must ensure that there is no human interface between tenderers and the evaluation authority. It is submitted by the learned counsel for the petitioner and it is not disputed by the learned Additional Advocate General that many other departments are already implementing the e-tender system without making any room for human interface.

8.It appears that the Tamil Nadu Highways Department alone is continuing to insist on submission of original EMD and other documents in person. Rule 4-A was introduced as early as on 30.03.2023 and G.O Ms.No.94 was issued on the same date. I fail to understand as to why the Highways Department alone is continuing to retain the aforementioned clause in their tender notification. This makes me suspect the very motives of the individuals issuing the tender notification. Since in other districts also, tender notifications containing similar clauses have been issued. I refrain from censuring the fourth respondent. May be, I have to censure the entire Highways Department. I refrain from doing so with the fond hope that in future all the tenders of the Highways Department will strictly conform to Rule 4-A r/w. G.O Ms.No.94 dated 30.03.2023. The Government had introduced the aforesaid Rule with the fond hope of eradicating corruption in high value



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tenders. Such a noble object cannot be allowed to be frustrated by officials by retaining the clauses such as the one mentioned above. I, therefore, answer the first issue in favour of the petitioner by holding that the incorporation of Clause 5 in the tender notification is patently illegal.

9. Even though I have held this issue in favour of the petitioner, that will still not advance his case. This is because G.O Ms.No.25 dated 08.02.2021 clearly states that only if there are two or more bids, award can be issued and not otherwise. In this case, as a result of the conduct of the respondents 6 and 7, the petitioner alone was left in the fray. It is a case of single tender. It has been held time and again that a participant in a tender process has no right to insist that the tender should be awarded in his favour. The tender inviting authority is always at liberty to cancel the tender process. Of course, it cannot be done arbitrarily. But in the case on hand, except the petitioner remaining four bidders had backed out. In fact, by not submitting the original EMDs, their tenders have been rejected. It is for this reason I am not inclined to invoke Rule 20 against them. Rule 20 states that no tenderer shall be allowed to withdraw the tenders after submitting them. In this case, their submission was not complete. In future, the department shall incorporate a condition for penalising a participant if he adopts any deliberate tactics to frustrate the tender process. But these are matters for future. The second



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issue is answered against the petitioner. The order impugned in this writ petition is sustained. The writ petition is dismissed with the aforesaid observation, declaration and direction. No costs. Connected miscellaneous petitions are closed.

30.11.2023

Index : Yes / No
Internet : Yes/ No
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