



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28041 of 2022

and

WMP(MD)Nos.22121, 22122 & 22123 of 2022

N.Nattathy

... Petitioner

Vs.

- 1.The Principal Secretary to Government/
Chairman of Tamil Nadu Warehousing
Corporation/Member of Tender Sub Committee,
Department of Cooperative, Food & Consumer
Secretariat, Chennai – 600 009.
- 2.The Managing Director/Member of Tender Sub
Committee, Tamil nadu Warehousing Corporation,
No.82, Anna Salai, Guindy,
Chennai – 600 032.
- 3.The General Manager/Tender Inviting Authority,
Tamil Nadu Warehousing Corporation, Chennai – 600 032.
- 4.A.Palaniammal
General Manager/Tender Inviting Authority,
Tamil nadu Warehousing Corporation,
No.82, Anna Salai, Guindy,
Chennai – 600 032.

5.N.Kumaresan

... Respondents

(R5 suo motu impleaded vide order dated 23.01.2023)



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned e-Tender in 1052/2022/G1 dated 24.03.2022 pulished/uploaded on 24.03.2022 on the Tamil Nadu Government website <https://www.tntenders.gov.in> for appointment of Handling and Transport Contractos to carry out Handling and Transportaion of Food Grains, Fertilizers, Sugar, Cement and other notified commodities in 52 Warehouses of the Respondent Corporation and the impugned order of the 1st respondent in Letter No.19807/A2/2022-2 dated 28.11.2022 rejecting the appeal of the petitioner dated 16.11.2022 and quash the same as arbitrary and illegal and consequently direct the respondents to issue fresh electronic re-tender to this effect by deleting the stringent, unimaginable, unworkable conditions and ambiguities which are against public interest.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.R.Baskaran,
Additional Advocate General for R1
assisted by Mr.B.Saravanan,
Additional Government Pleader

Mr.C.Gangai Amaran, standing counsel
for R2 to R4

Mr.K.Govindarajan for Mr.R.Murali for R5

ORDER

Heard the learned counsel on either side.



WEB COPY

2.The petitioner challenges the rejection of his appeal filed under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998 by the first respondent. This is the third round of litigation. The General Manager of Tamil Nadu Warehousing Corporation, Chennai – 32 issued tender notification dated 08.07.2021 for appointment of Contractors to carry out Handling and Transportation of Food Grains, Fertilizers, Sugar, Cement and other notified commodities for a period of two years in respect of 31 warehouses of the corporation. Questioning the eligibility conditions prescribed therein, the petitioner filed WP No.16435 of 2021 before the Principal Seat. Interim order was granted on 06.08.2021. When the matter was taken up on 24.03.2022, the tender inviting authority informed the court that a fresh notification has been issued. In view of the said development, WP No.16435 of 2021 came to be dismissed as infructuous.

3.The petitioner took part in the tender process. However, she was disqualified as ineligible. He filed WP(MD)No.8415 of 2022 challenging the conditions which rendered her ineligible. This Court vide order dated 25.04.2022 granted interim order in her favour. The writ petition was disposed of on 28.10.2022 granting liberty to her to file an appeal. Availing the said liberty, she filed an appeal. By the impugned order, it came to be rejected on



28.11.2022. On 01.12.2022, work order was issued in favour of the fifth respondent. Questioning the same, the present writ petition came to be filed.

4. When the writ petition was taken up for final disposal last week, the learned counsel appearing for the petitioner stated that he would confine the scope of the writ petition to "A" category warehouse in Tirunelveli alone. I thereupon made it clear that the outcome of the writ petition will not have any bearing on the work orders issued in respect of the remaining fourteen warehouses. Since Thiru.N.Kumaresan, the successful bidder in whose favour, work order was already issued was not made a party, he was suo motu impleaded as the fifth respondent and notice was issued to him.

5. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His primary ground of attack was that the tender inviting authority had favored some chosen players. That is why, she was impleaded in person also. He pointed out that WP No.16435 of 2021 was short-circuited and rendered infructuous. He also drew my attention to the clear breach of Rules 20 & 21 of the Tamil Nadu Transparency in Tenders Rules, 2000. The learned counsel trained his guns essentially on Clauses 18 and 19. He lamented that since the petitioner was not given adequate time, he could not comply with the tie-up requirement set out in Clause 18. As regards clause 19, the learned counsel took me through



the relevant provisions of the Contract Labour (Regulation and Abolition) Act, 1970 to drive home the point that this clause is impossible to perform before award of tender. His yet another contention was that the impugned order passed by the appellate authority has not met any of the contentions urged by the petitioner in the appeal memorandum. He called upon this Court to quash the impugned order and grant relief as prayed for.

6.The learned Additional Advocate General on the other hand submitted that no interference is called for in the writ petition. He further submitted that since transportation of PDS items is the subject matter of tender process, the appellate authority took note of its importance and declined to interfere. He pointed out that the writ petitioner having taken part in the tender process cannot be permitted to challenge the validity of the conditions. According to him, the doctrine of estoppel would clearly operate against the petitioner.

7.The stand taken by the learned Additional Advocate General was endorsed in toto by the learned standing counsel for the Tamil Nadu Warehousing Corporation as well as the learned counsel appearing for the successful bidder. The learned counsel for the successful bidder pointed out that the petitioner cannot really have any grievance as regards the validity of the conditions because in subsequent tender in which the very same



impugned conditions had been incorporated, the petitioner was successful for another "A" category warehouse, namely, Villupuram. He would also point out that the petitioner has not challenged the rejection of his tender. The learned Additional Advocate General, the learned counsel for the successful bidder as well as the standing counsel for the warehousing corporation submitted in unison that there is no merit in this writ petition. They pressed for dismissal of this writ petition.

8.I carefully considered the rival contentions and went through the materials on record. I must make a few preliminary observations. The order passed by the appellate authority fails to meet any of the contentions urged by the petitioner in her appeal memorandum. In many cases, courts decline to interfere with the tender processes primarily because an effective remedy is provided under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998. I have already dealt with the manner in which the appellate jurisdiction has to be exercised vide order dated 17.06.2022 in WP(MD)No.11721 of 2022. Now I need to add one more obvious requirement ie., the appellate authority has to sum up all the essential contentions raised by the unsuccessful tenderer in the appeal memorandum and then deal with all of them.

9.A famous law writer once asked a question - Who is the most important person in the court ?. He answered that it is neither the counsel



nor the Judge. Nor the witness. It is the losing litigant!. When an unsuccessful tenderer appeals under Section 11 of the Act, the appellate authority must address all the concerns raised by him. In this case, the appellate authority has failed to meet the core arguments advanced by the petitioner herein.

10.Rule 20(2) of the Tamil Nadu Transparency in Tenders Rules, 2000 enables the authority superior to the tender inviting authority to reduce the time-limit stipulated as per sub-rule (1). My attention was drawn to the minutes of the meeting of the Board of Directors held on 15.03.2022 authorizing the tender inviting authority to go in for a short tender and finalise the new tender on or before 31.03.2022. The learned standing counsel would therefore contend that the requirement set out in Rule 20(2) has been fulfilled and that therefore this Court should not fault the authority for fixing the last date for submission of bids as 09.04.2022 and thus by giving only 15 days time. The manner in which the authority superior to the tender inviting authority must exercise the discretion under Rule 20(2) has already been dealt with by order dated 11.08.2017 in WP Nos.17261 of 2017 etc., A learned Judge of this Court had held as follows :

“17.The learned Advocate General submitted that under sub-rule (2) of Rule 20 of the Tamil Nadu Transparency in Tenders Rules, 2000, the 3 rd respondent had obtained the



WEB COPY



written authorization for reducing the time limit from 30 days. The learned Advocate General also produced the note dated 19.06.2017 put up by the 3rd respondent to the 2nd respondent for reducing the minimum period from 30 days to 15 days.

18. On a perusal of the note dated 19.06.2017, the 2nd respondent, the Director, Department of Handlooms and Textiles has made an endorsement, which reads as follows: "Based on the notes given by the JD (U) due to urgency we may go in for short tender. It was told that there was precedent in Pongal 2017, Pongal 2016 etc. sd/- 19.06.2017"

19. On a reading of the endorsement made by the 2nd respondent, it is clear that in spite of the delay in calling for tender for the years 2016 and 2017, citing the delay in the said orders as precedence, the 2nd respondent had ordered for short tender, reducing the minimum time limit contemplated under Rule 20. Merely because in the previous years, the respondent had called for tender reducing the time limit as contemplated under Rule 20, that cannot be cited as a precedence for reducing the time limit from 30 days. There must be acceptable reasons given by the superior authority viz., the 2nd respondent for reducing the time limit to less than 30 days. The exercise cannot be done in a mechanical way and there must be application of mind and there must also be acceptable reasons for reducing the time limit from 30 days. When the Rules say that there must be 30 days time limit, it must be adhered to by the authorities, unless the superior authority gives sufficient reason for reducing the time as contemplated under Rule 20(2) of the Rules. The 2nd respondent has not given any reason for reducing the time limit from 30 days, except stating that in the previous years also, the time limit was reduced.

20. In these circumstances, the impugned tender notification dated 22.06.2017 are liable to be set aside. Accordingly, the same are set aside."



In the present case also, the decision taken under Rule 20(2) is virtually non-speaking.

11.Thirdly, the validity of the conditions was the subject matter of WP No.16435 of 2021. The writ court was actively seized of the matter. When the case was listed for final hearing on 15.03.2022, an adjournment was taken by the Corporation stating that the learned Advocate General will be leading them in the matter. This was pulling the wool on the eyes of the Court. On the same day at 10.30 A.M itself, the Board of Directors had met and taken a decision to go in for a short tender and finalise the matter. On 24.03.2022, a submission was made that a fresh tender notification has been issued and therefore, the matter has become infructuous. I have to express my displeasure over the manner in which the tender inviting authority conducted herself in this matter.

12.Rule 20 of the Tamil Nadu Transparency in Tenders Rules, 2000 is as under :

"Minimum time for submission of tenders.-

(1) The Tender Inviting Authority shall ensure that adequate time is provided for the submission of tenders and a minimum time is allowed between date of publication of the



Notice Inviting Tenders in the relevant Tender Bulletin or in the newspapers whichever is later and the last date for submission of tenders. This minimum period shall be as follows.-

(a) for tenders upto rupees two crores in value, fifteen days; and

(b) for tenders in excess of rupees two crores in value, thirty days.

(2) Any reduction in the time stipulated as per sub-rule (1) has to be specifically authorized by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing."

Rule 21 of the Tamil Nadu Transparency in Tenders Rules, 2000 is as under :

"Opening of tenders.-

(1) All the tenders received by the Tender Accepting Authority shall be opened at the time specified in the Notice Inviting Tenders and in cases where an extension of time for the submission of tenders has been given subsequent to the original Notice Inviting Tenders in accordance with sub-rule (5) of Rule 18 at the time so specified subsequently. "The e-submitted tenders may be permitted to be opened by a Tender Inviting Authority or a member of the Tender Scrutiny Committee from their new location if they are transferred after the issue of Notice Inviting



Tender and before tender opening and where the new incumbent is yet to obtain his digital signature certified.”;

(2) The time specified for the opening of tenders shall be immediately after the closing time specified for the receipt of tenders allowing a reasonable period, not exceeding one hour, for the transportation of the tenders received to the place they are to be opened in the presence of the tenderers who choose to be present.

(3)The tenders will be opened in the presence of the tenderers or one representative of the tenderer who chooses to be present.”

Though the tender value was in excess of Rs.2.00 crores, time-limit of 30 days was not provided. The tender notification was issued on 24.03.2022. But the last date for submission of tender was fixed as 09.04.2022. The clear breach of this requirement is sought to be glossed over by taking shelter behind a non-speaking order said to have been passed under Rule 20(2). The tenders that were received on 09.04.2022 were opened only on 12.04.2022. A careful reading of the statutory scheme leads me to conclude that the aforesaid statutory requirements are not directory. When the statute prescribes performance in a particular manner, it should be done in that manner and no other manner.



13. Though I have accepted every contention advanced by the learned counsel appearing for the petitioner, it is a case of "**operation success patient died**". As rightly pointed out by the learned Additional Advocate General and strongly seconded by the learned standing counsel as well as the counsel for the fifth respondent, the petitioner had not come to the court immediately after the impugned tender notification was issued on 24.03.2022. She took part in the tender process and submitted her tender on 09.04.2022. It is true that the petitioner had earlier lodged her objection and challenged the tender conditions. This in my view will not advance her case. A learned Judge of this Court in the decision reported in **2017 (6) CTC 785 (CSEPDITRISHE CONSORTIUM v. Tamil Nadu Generation and Distribution Corporation Ltd)** had categorically held that a person who had already taken part in a tender process cannot be allowed to challenge the validity of the conditions. Another learned Judge of this Court vide order dated 13.07.2018 in WP No.12903 of 2018 had held that a participant cannot later complain that the time-limit set out in Rule 20 was not adhered to. In a catena of decisions, this principle of estoppel as applicable to tender processes has been upheld. In view of the conduct of the writ petitioner, I refrain from considering the contentions raised by the learned counsel for the petitioner in respect of the validity of the impugned conditions. I may incidentally note that in a subsequently conducted tender process which



contained the impugned conditions, the petitioner not only took part but was also successful !.

14.The writ petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

30.01.2023

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

To

- 1.The Principal Secretary to Government/
Chairman of Tamil Nadu Warehousing
Corporation/Member of Tender Sub Committee,
Department of Cooperative, Food & Consumer
Secretariat, Chennai – 600 009.
- 2.The Managing Director/Member of Tender Sub
Committee, Tamil nadu Warehousing Corporation,
No.82, Anna Salai, Guindy,
Chennai – 600 032.
- 3.The General Manager/Tender Inviting Authority,
Tamil Nadu Warehousing Corporation,
Chennai – 600 032.



WEB COPY



G.R.SWAMINATHAN, J.

skm

W.P(MD)No.28041 of 2022

30.01.2023