



W.P(MD)No.28097 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28097 of 2023

and

W.M.P.(MD)Nos.24179 and 24180 of 2023

M/s.Sankaranand Infra,
Rep. by its Managing Partner,
S.Sankaranand.

... Petitioner

Vs.

1.The Regional Officer,
Ministry of Road Transport and Highways,
Regional Office, C-1-A, Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.

2.The Chief Engineer,
National Highways,
No.25, Sarthar Patel Road,
Guindy, Chennai – 600 025.

3.The Superintending Engineer,
National Highways,
No.5 Besant Road,
Chinna Chokkikulam,
Madurai – 625 002.

4.The Divisional Engineer,
National Highways,
Dindigul.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned tender notification in TN.No.04/HDO / NH/2023/ dated 19.07.2023 of the 3rd respondent and quash the same as illegal.

For Petitioner : Mr.Vallinayagam, Senior Counsel,
For Mr.A.Arun Prasad.

For Respondents : Mr.K.Govindarajan,
Deputy Solicitor General of India for R1.
Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.M.Prakash,
Addl. Government Pleader for R2 to R4.

ORDER

Heard the learned counsel for the writ petitioner, the learned Deputy Solicitor General of India for the first respondent and the learned Additional Advocate General assisted by the learned Additional Government Pleader for the respondents 2 to 4.

2.The third respondent issued tender notification dated 19.07.2023 inviting tenders on two cover system through online from eligible



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contractors for the petition mentioned road widening works. The petitioner was one of the participants. The petitioner had earlier laid 9.400 Kms which overlaps with the subject matter of the present tender process. The case of the petitioner is that in the very nature of things, widening works will involve causing some damage to the existing road. It is not in dispute that the petitioner is under a contractual obligation to maintain the road laid by him and the contractor liability period is to expire. The petitioner wanted to know from the authorities if the resulting liability will fall on him. The third respondent vide reply dated 06.11.2023 made it clear that the contractor who will bag the tender for widening works will be liable to set right the resulting damage and the petitioner will not be made liable.

3.In this writ petition, the tender notification itself has been challenged on the ground that the clarification now provided by the third respondent was not incorporated in the original tender notification.

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



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5.The learned Additional Advocate General on the other hand submitted that having participated in the tender process, the petitioner cannot be allowed to question the tender notification at this point of time. He pressed for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. Let me first note down the sequence of events. The tender notification was issued on 19.07.2023. It mentions that the last date for submission of tenders is 25.08.2023. The bids received through online were to be opened on 28.08.2023. It is stated by the officials though disputed by the petitioner that the technical bids were opened on 28.08.2023 and that evaluation is presently going on. Final report is likely to be submitted shortly. Only thereafter, financial bids will be opened. The petitioner sought clarification as regards his liability in respect of the road laid by him only on 30.10.2023. The third respondent vide communication bearing க.எண்.2250/EPC/PR/2021-22/NH67 /உ.பெரி I, dated 06.11.2023 replied as follows:-



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தேசிய நெடுஞ்சாலை

அனுப்புநர்

திரு.ஆர்.கே.எம்.எம்.எம்.டி.
கண் காணிப்புப் பொறியாளர்,
தேசிய நெடுஞ்சாலை
மதுரை

பெறுநர்

திருவாளர்கள் சங்கர் ஆனந்த் இன்பா
ஒப்பந்தக்காரர்
ரி.303-அல்பன் டவர்ஸ்
எண் 3 பழனியாள் வடக்கு தெரு
செங்குந்தபுரம், கரூர் 639 002.

க.எண். 2250/EPC PR 2021-22 / NH 67 / த. பொ | நாள். 06.11.2023

அவ்வாறு,

பொருள்:

மதுரை (தே.நெ) வட்டம் - திண்டுக்கல் (தே.நெ) கோட்டம் - Periodical
Renewal from Km 225.000 to 234.400 of Nagapattinam - Guddalore
- Mysore road NH67 (New NH81) & Permanent retification measures
for identified blackspot (ID No TN (02) 278) at Km 244.700-245.800
(Koonampatti privu of NH67 (New (NH81) (nagapattinam -
Guddalore - Mysore Road) - ஒப்பந்தக்காரர் கோரியதாகவும் - தொடர்பாக.

பார்வை:

திருவாளர்கள் சங்கர் ஆனந்த் இன்பா, ஒப்பந்தக்காரர், கரூர்
அவர்களின் கடித நாள் 30.10.2023, (பில்லுவுகளைக்கூடவில் பெறப்பட்ட
நாள்: 01.11.2023)

பார்வையில் காணும் கடித வாயிலாக பொருளில் குறிப்பிட்டுள்ள பணி நங்கனாக
மேற்கொள்ளப்பட்டு முடிக்கப்பட்டு ஒப்பந்த பொறுப்பு காலத்தில் உடனடிக
குறிப்பிடப்பட்டுள்ளது. மேலும் அக்கடிதத்தில் தற்போது சாலை அகலப்படுத்தும் பணியும்
மையத்திட்டு அமைக்கும் பணியும் மேற்கொள்ள (Widening from Two Lane Paved Shoulder
to Four Lane with Paved Shoulder Km 81.000 - 86.630, Km 86.600 - 90.550, Km 90.550 -
90.850 (RHS) Km 90.850 - 96.300 & 97.600 - 110.700 of NH-81 (Old NH-67 - Km 221.600 -
234.700, Km 236.000 - 241.450, Km 241.450 - 241.750(LHS), Km 241.750 - 243.700 & Km
245.670 - 251.000) and Strengthening from Km 81.300 - 86.500 and Km 87.600 - 96.000 of
NH-81 (Old NH-67 Km 236.000 - 244.700 and Km 245.800 - 251.000) including Widening of
Pipe & Slab Culverts, Minor Bridge, Reconstruction of Box Culverts, Kerb Type Centre
Median, Retaining & Well Protective Walls and Junction Improvements of NH-81
(Coimbatore - Chidambaram Section) (Old NH-67) (Nagappattinam Guddalur Mysore Road)
on EPC mode in the State of Tamil Nadu) ஒப்பந்த அனுப்பு கோரப்பட்டுள்ளதாகவும்
அவ்வாறு அப்பணியினை ஒப்பந்தக்காரரை வைத்து மேற்கொள்ளும் போது ஏற்படும்
பழுதினை யார் மேற்கொள்வார்கள் என கோரியுள்ளீர்கள். மேற்காணும் பணியினை பெரும்
ஒப்பந்தக்காரரால் பணி மேற்கொள்ளப்படும் போது தங்களுடைய ஒப்பந்த பொறுப்பு காலத்திலுள்ள
(Km 225.000 to 234.400, Km 244.700-245.800) தளத்தில் புதிய ஒப்பந்தக்காரரால் ஏதேனும்
பழுது ஏற்படும் பட்சத்தில் அது அவ்வொப்பந்தக்காரராலே அப்பழுது சீர செய்யப்படும் என
தெரிவித்துக்கொள்ளப்படுகிறது.

கண்காணிப்புப் பொறியாளர்,
(தே.நெ) வட்டம், மதுரை.

நகல்: துணைமையப்பொறியாளர் (தே.நெ) சென்னை அவர்களுக்கு
பணித்து சமர்ப்பிக்கப்படுகிறது.

நகல்: கோட்டப்பொறியாளர் (தே.நெ) திண்டுக்கல்



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7.I sustain the stand of the learned Additional Advocate General that having submitted his tender, it is not open to the petitioner to question tender notification when the evaluation process is presently on.

8. There is some force in the contention of the learned senior counsel for the petitioner that the clarification now furnished by the third respondent should have been mentioned in the original tender notification as that would have definitely had bearing on the financial quote made by the tenderers.

9. The petitioner had ample time between 19.07.2023 and 25.08.2023 to raise the issue. Having submitted his tender, it is not open to the petitioner to question the tender notification at this point of time. The petitioner's rights have been sufficiently safeguarded. The reply given by the third respondent is more than clear. In the light of the clarification now provided, if the petitioner happens to be the lowest tenderer, it is for him to take the call. If any other person is the successful bidder, the responsibility is his and the petitioner will be absolved from responsibility road in respect of the resulting damage.



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The petitioner asked a straight question and he got a straight answer from the third respondent. On this ground, I am not inclined to interfere with the tender notification. The reason is that the petitioner having participated is estopped from challenging at this point of time. The writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Chief Engineer,
National Highways,
No.25, Sarthar Patel Road,
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2.The Superintending Engineer,
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G.R.SWAMINATHAN, J.

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