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W.P. Nos. 1135, 1138, 1141 and 1146 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 1135, 1138, 1141 and 1146 of 2024

and

**W.M.P. Nos. 1183, 1187, 1188, 1189, 1191, 1192, 1197,
1198, 1191 and 1192 of 2024**

K.Singaravelu

... Petitioner in all W.P.s

-VS-

1. The Tender Inviting Authority-cum-
Superintending Engineer PWD
Building (C&M) Circle
Tiruvarur – 1.

2. The Executive Engineer
PWD, Buildings (C&M) Division
Nagapattinam.

... Respondents in all W.P.s

Prayer in W.P. No. 1135 of 2024 :- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records from the First Respondent pertaining to the impugned rejection dated 05.01.2024 in respect ID. 2023-PWD_402038_1 and its Tender Ref. No. 17-01/BCM /TVR/2023-24 and to quash the same and consequently to make the e-tender in view of the Tamil Nadu Transparency in Tenders Act, 1998.



W.P. Nos. 1135, 1138, 1141 and 1146 of 2024

Prayer in W.P. No. 1138 of 2024 :- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records from the First Respondent pertaining to the impugned rejection dated 05.01.2024 in respect ID. 2023-PWD_402759_1 and its Tender Ref. No. 17-06/BCM /TVR/2023-24 and to quash the same and consequently to make the e-tender in view of the Tamil Nadu Transparency in Tenders Act, 1998.

Prayer in W.P. No. 1141 of 2024 :- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records from the First Respondent pertaining to the impugned rejection dated 05.01.2024 in respect ID. 2023-PWD_402113_1 and its Tender Ref. No. 17-04/BCM /TVR/2023-24 and to quash the same and consequently to make the e-tender in view of the Tamil Nadu Transparency in Tenders Act, 1998.

Prayer in W.P. No. 1146 of 2024 :- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records from the First Respondent pertaining to the impugned rejection dated 05.01.2024 in respect ID. 2023-PWD_402068_1 and its Tender Ref. No. 17-03/BCM /TVR/2023-24 and to quash the same and consequently to make the e-tender in view of the Tamil Nadu Transparency in Tenders Act, 1998.

For Petitioner : Mr. P.Vijendran (in all W.P.s)

For Respondents : Mr. S.J.Mohammed Sathik,
Government Advocate (in all W.P.s)



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COMMON ORDER

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Heard Mr. P.Vijendran, Learned Counsel for the Petitioner and Mr. S.J.Mohammed Sathik, Learned Government Advocate, who takes notice for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that he had participated in e-tender for construction of class rooms, labs, toilets in certain Government Schools in Nagapattinam District in furtherance to Notice No. 17/BCM/TVR/2023-24 dated 19.12.2023 published by the First Respondent. It has been informed to the Petitioner in the Tender Summary Report in the website of the Tamil Nadu Tenders e-Procurement System of the Government of Tamil Nadu on 05.01.2024 that his tenders have not been admitted for not producing relevant documents, which is assailed in these Writ Petitions.

3. In the Counter-Affidavit filed by the First Respondent, it has been stated that the Petitioner did not visit the site or produced any materials in support of such visit as required in clause 13 of the Appendix – I of the aforesaid Tender Notice, which reads as follows:-



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13. Every tenderer is expected before quoting his rates, to inspect the site of the proposed work'. He should also inspect the quarries and satisfy himself about the quality and availability of materials. The name of quarries and kiln etc. where from certain materials are to be obtained will be given in the descriptive specification sheet. The best class of materials to be obtained from the quarries or other source defined shall be used on the work. In every case the materials must comply with the relevant standard specification or in the tender notice or as required by the Executive Engineer shall be submitted for Executive Engineer's approval before the supply to site of work is begun. If the contractor after examination of the source of materials complying with the standard or other specification of the contract cannot be obtained in specification sheet, he shall so state in his tender and state where from he intends to obtain materials, subject to the approval of the Executive Engineer.

The aforesaid explanation of the First Respondent deserves acceptance.

4. At this juncture, reference must be made to the decision of the Hon'ble Supreme Court of India in *Maa Binda Express Carrier -vs- North-East Frontier Railway* [(2014) 3 SCC 760], where the legal position on the extent of interference of the Writ Court in the exercise of discretionary powers of judicial review of the decision-making process in respect of tenders has been explicated as follows:-

8. The scope of judicial review in matters relating to award of contracts



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by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. **It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers.** So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

(emphasis supplied)

Tested on the anvil of the said principles, the requirement in the said condition that a participant in the tender has to visit the site of work and obtain a certificate from the concerned Executive Engineer in proof of it and upload the same along with the tender document would ensure that only diligent persons participate in the tender and encourage transparency in the process, which is



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certainly in public interest.

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5. Viewed from that perspective, this Court does not find any acceptable reason to interfere with the impugned action of the Respondent in not considering the bid submitted by the Petitioner without production of the Site Inspection Certificate, which is an essential requirement for participate in the tender.

In the result, these Writ Petitions, which are devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

19.01.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

Maya

To

1. The Tender Inviting Authority-cum-Superintending Engineer PWD
Building (C&M) Circle, Tiruvarur – 1.
2. The Executive Engineer
PWD, Buildings (C&M) Division
Nagapattinam.



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P.D. AUDIKESAVALU, J.

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19.01.2024