



W.P.No.5099 of 2024 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.5099, 5102, 5106, 5112, 5111, 5104, 5520, 5523, 5528, 5529,
5532, 5756, 5761, 5765, 5768 & 5407 of 2024 and
W.M.P.Nos. 5621, 5626, 5627, 5608, 5610, 5614, 5615, 5619, 5620,
5618, 5628, 5625, 6387, 6389, 6380, 5958, 5959, 6100, 6101, 6104,
6105, 6111, 6112, 6114, 6115, 6116, 6117, 6374, 6376, 6379, 6383 &
6384 of 2024

W.P.No.5099 of 2024

Meenakshisundaram Kumararaja
Proprietor of Galaxy Enterprises,
Poongavanapuram Street, Thiruvattiyur,
Chennai

.... Petitioner

Vs

1.The Superintending Engineer,
Highways Department,
Construction and Maintenance,
Coimbatore – 600 018.

2.The Divisional Engineer,
Highways Department,
Construction and Maintenance,
Pollachi.

3.Hariway Lines Pvt Ltd.,
No.14/09, Flat NO.102,
Bhakthavatchalam Nagar, 4th Street,
Adayar, Chennai – 600 020.

.... Respondents



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Prayer in W.P.No.5099 of 2024: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari calling for records of the 1st respondent in Tender ID No. 2024_HWAY_415173_1 dated 20.02.2024 and quash the same and thus render justice.

For Petitioner : Mr.Srinath Sridevan
Senior Counsel
for Mr.Bhagavath Krishnan
(in all writ petitions)

For Respondents : Mr.J.Ravindran
Additional Advocate General
assisted by
Mr.M.R.Gokul Krishnan (for R1 & R2)
Additional Government Pleader

Mr.S.R.Rajagopal, Senior Counsel (for R3)
for Ms.Thanga Vadhana Balakrishnan
(in all writ petitions)

COMMON ORDER

The writ petitioner is a contractor registered under Tamil Nadu Highways Department. There was a bid issued by the Superintending Engineer, Highways Department/R1 and the Divisional Engineer/R2 for production and supply of Roller Crash Barriers in the highways.

2. The tender notification has been issued under Comprehensive



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Road Improvement Development Programme (CRIDP 2023-2024) and specifies that it is an 'on-line' tender, both on the facing page of the bid as well as in the tender notice. The petitioner had participated in the tender and submitted a bid. While so, R1 has passed an order on 20.02.2024 rejecting the bid of the petitioner on the ground that the uploaded documents had not been received.

3. Learned counsel for the petitioner would submit that the tender was to be conducted in on-line mode only and thus the question of submitting a hard copy of the documents does not arise.

4. The respondents, for their part, would draw attention to the tender notice which contains clause 5 in the following terms:-

“5.The uploaded tender documents shall be received by the Superintending Engineer (H), C & M, Coimbatore Circle on or before 19.02.2024, 15.00 Hrs and failing which, the tender will be summarily rejected.”

5. According to them, the use of the word 'received' means received in hard copy. Their stand is supported by the private respondent who has been awarded the bid. To be noted, that there was an order of status quo that has been in force in the matter from the date when the matter came up for admission first and thus, though 3rd party interest has been created by issuance of the work order, the matter has been stalled at



that point.

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6. Rule 4-A of Tamil Nadu Transparency in Tender Rules, 2000 (in short 'Rules') has been inserted with effect from 30.03.2023 accompanied by G.O.Ms.No.94 on the same date. That Rule reads as follows:-

“The government may mandate procuring entities to do procurement through electronic mode through web portals as may be specified by order”

7. In G.O.Ms.No.94 dated 30.03.2023 the State sets out the instructions to the procurement entities as follows:-

“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



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Nadu Transparency in Tenders Act, 1998.”

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8. Thus, the intention of the State to go digital is clear. In this case, the tender Notification uses the phrase 'on-line'. If, in spite of the same, the authorities wish to receive any documents in physical form, such requirement (which, prima facie, appears to be contrary to Rule 4-A and G.O.Ms.No.94 dated 30.03.2023), would have to be stipulated specifically as a deviation clearly mentioning which documents are to be furnished additionally in hard copy as well.

9. Thus, with the clear expression that the tender is in on-line mode only, the explanation that the bid documents are to be in hard copy is clearly contrary to the Act and the tender notification itself.

10. An identical issue came up before the Madurai Bench of the Madras High Court agitated by this very same petitioner concerning the tender floated by the same respondents as before me, in Dindigul and by order passed in W.P.(MD).Nos.4531 & 4532 of 2024 on 01.03.24, the writ petitions have been allowed and that order has attained finality.

11. Though third party interest has been created in that case as well, in that the tender had been awarded, the distinction between that matter and the present is that the contract was pending finalization in that



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case, whereas in the present case the contract has been finalized. In my view, the above distinction would have no impact on the decision to be made.

12. The impugned orders are hence set-aside. The matter is remitted to the file of the 1st respondent who will resume the process of tender from the stage of technical scrutiny. Learned counsel for R1 is quick to point out that in the matters set aside in Madurai, this petitioner had ultimately been found unfit on technical scrutiny. This may well be. However, as the question of eligibility falls within the domain of the respondent, this Court will restrict the scope of intervention to the procedure followed by the authority alone.

13. These writ petitions are disposed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

27.03.2024

Index:Yes/No
Speaking order
Neutral Citation:Yes
mpl

To

1.The Superintending Engineer,
Highways Department,
Construction and Maintenance,



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Coimbatore – 600 018.

2. The Divisional Engineer,
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Dr.ANITA SUMANTH,J.

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