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W.P.No.6416 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2024

Pronounced on : 04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.6416 of 2024 and
WMP.Nos.7127, 7128 & 7130 of 2024

S.Mohamed Hanifa

... Petitioner

Vs.

- 1.The Municipal Commissioner (Administration)
cum Chief Engineer,
Municipal Administration & Water Supply Department,
MRC Nagar, Santhome, Chennai 600 028
- 2.The Director of Municipal Administration,
Urban Administration Building,
No.75, Santhome High Road,
MRC Nagar, Chennai 600 028
- 3.The Joint Director(Scheme),
Municipal Administration,
Urban Administration Building,
No.75, Santhome High Road,
MRC Nagar, Chennai 600 028
- 4.The Regional Municipal Director,
Municipal Administration & Water Supply Department,
Salem Zone, Arisipalayam,
Salem 636 009
- 5.The Commissioner,
Narasingapuram Municipality,
Attur Taluk, Salem District
- 6.M/s.R.G. & Co.,
No.65/1, R.R.Illam,
Jayam Nagar,
Near ATC Dippo,



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Valapady Post,
Salem 636 115

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of rejection passed by the fifth respondent dated 06.03.2024 in respect of the tender in Tender Ref.No.1737/2023/E1, quash the same and direct the fifth respondent to process the bid of the petitioner in respect of the Tender Ref.No.1737/2023/E1 dated 06.03.2024 on the file of the fifth respondent along with other tenderers in fair and reasonable manner in accordance with law.

For Petitioner : Mr.V.Elangovan
for Mr.S.Doraiswamy

For Respondents
For R1 to 4 : Dr.T.Seenivasan,
Special Government Pleader

For R5 : Mr.P.Kumaresan,
Additional Advocate General
Assisted by
Mr.P.Ganesan

ORDER

This writ petition has been filed challenging the order dated 06.03.2024 on the file of the fifth respondent thereby rejected the bid submitted by the petitioner as 'technically not qualified'.

2. The petitioner is a State level Class I Contractor and



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participated in several tenders called for by the respondents and also other Municipalities in the District of Salem. The petitioner was awarded several works and he completed them successfully. While being so, the second respondent issued tender notification dated 02.02.2024 for infrastructural works sanctioned to Municipalities under Kalaigiar Nagarpura Mempoatu Thittam of the year 2024-2025. The value of the work in a single package is ranging from Rs.19.90 lakhs to Rs.569 lakhs. As per the tender notification, the bid documents are available from 08.02.2024 to 23.02.2024 at the official portal of the respondents. As per the notification, the pre-bid meeting will be held on 12.02.2024 at Corporation / Municipal Office. The last date for submission of documents is on 23.02.2024 upto 3.00 p.m. and the date and time of opening of the technical bid is on 23.02.2024 at 3.30 p.m. The petitioner submitted his tender on 23.02.2024 in respect of the work No.1 in the tender notification i.e. providing new black top road for the areas as mentioned in work No.1. The value of the work is Rs.3,26,000/-. The petitioner had paid EMD of Rs.3,26,000/- along with his bid. However, the bid of the petitioner was rejected on the ground 'technically not



qualified' on 06.03.2024.

3. *Mr.V.Elangovan*, the learned counsel appearing for the petitioner would submit that in order to execute the work No.1, the petitioner is fully qualified and also possesses required equipments with good working condition for laying black top road. Without any prior intimation, the petitioner's bid was opened and rejected by the fifth respondent which is contrary to law and violation of Article 14 of the Constitution of India and also against the provision of Section 8 of the Tamil Nadu Transparency in Tenders Act, 1988 and Rules 21 and 22 of the Tamil Nadu Transparency in Tenders Rules, 2000. As per the tender notification clause 30.1, the fifth respondent ought to have assigned the reasons for rejecting the bids of the tenderers. The petitioner produced all the documents to prove his technical qualification i.e. possession of required equipments for laying black top road and complied the clause No.4.1.C. The petitioner quoted the rate in his bid as Rs.2,56,89,802.56/- , whereas the sixth respondent quoted as Rs.2,66,23,490.05/-. Even then, the sixth respondent was awarded the contract, whereas the petitioner's



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bid was rejected with *malafide* intention.

3.1 He further submitted that the fifth respondent had issued the experience certificate dated 06.03.2023 thereby certified that the petitioner has successfully executed several works within the jurisdiction of the fifth respondent worth about more than Rs.2,00,00,000/-. Therefore, the fifth respondent ought not to have rejected the bid on technical ground. That apart, the fifth respondent ought to have stated the reasons on what ground the petitioner was technically disqualified for awarding contract. Therefore, the action of the fifth respondent is amenable to judicial review. In support of his contention, he relied upon the judgment of the Hon'ble Division Bench of this Court rendered in the writ appeals in W.A.Nos.1104 & 1106 of 2021 dated 25.07.2024, wherein it is held as follows:

“26. Therefore, the conjoint reading of Sections 4 and 8 of the Act would manifestly and mandatorily make it clear that there is a duty cast upon the Tender Accepting Authority to inform the time and place as to when the tender document will be opened. Admittedly, the tender document does not disclose the same. But in the reply given by CMDA, for the



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queries raised under the Right To Information Act informed that only the qualified persons, those who have qualified under the pre-qualification stage alone were informed about the tender opening that too through phone.

27. As a matter of fact, the pre qualification stage is also part of tender opening. Therefore, even the pre qualification stage must be done in the presence of all the tenderers. Admittedly, evaluation of pre qualification criteria was not done in the presence of all tenderers. Therefore, the contention of CMDA that this petitioner was not qualified has to be rejected as the decision has been taken in secrecy, contrary to Section 8 of the Act.

33. However, the learned Additional Advocate General would contend that they did not submit any certificate to show that they are in the vegetable trade for the past 5 years. It is pertinent to mention here that the tender document do not specify as to the format of the declaration. It simply refers that they must have past 5 years experience in the perishable trade. Therefore, the statement made by the petitioner that they have been in the perishable trade for two generations would unequivocally and indubitably satisfies the tender condition. Therefore, the rejection order of the respondent that the declaration given by the petitioners vide letter dated 20.01.2020 is not in consonance with Addendum is manifestly and palpably unreasonable, arbitrary and irrational.

3.2 He also relied upon the judgment of this Court rendered in



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WP.Nos.13481 & 13488 of 2021 dated 29.10.2021, wherein it is held as follows:

“23. It is noteworthy to mention here that the supreme court has repeatedly held that the courts have ample powers under Article 226 of the constitution to mould the relief and give a relief even if a prayer is not sought. Therefore, taking note of all the attendant circumstances, this court, to meet the ends of justice and keeping in mind the larger public interest, deems it fit and appropriate to quash the tender process and consequential award of contracts granted to the fifth respondents to the limited extent of unfinished works qua package nos.59 and 60 and are accordingly, quashed. As a sequel, the first respondent shall call for fresh tender only in respect of the unfinished works and conduct the tender process in accordance with law following the terms and conditions without any deviations whatsoever.”

4. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

5. On perusal of the counter filed by the fifth respondent and on hearing the submissions of Mr.P.Kumaresan, the learned Additional Advocate General appearing for the fifth respondent, revealed that as per



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the tender notification, the bid documents were available from 08.02.2024 to 23.02.2024 and pre-bid meeting date was on 12.02.2024. The bid opening date was 23.02.2024. The last date for bid submission was 23.02.2024. The financial bid opening date was 06.03.2024. The petitioner and three others participated in the tender. The requirement for the work mentioned in the tender notification under clause No.4.1.C. is as follows:

- | | | |
|-------------------------|---|---|
| a. Central Mixing plant | - | 1 |
| b. Paver Machine | - | 1 |
| c. Tipper Lorry | - | 4 |
| d. Vibratory Roller | - | 1 |
| e. Static Roller | - | 1 |
| f. Vehicle Mounted | | |
| Mechanical Sprayer | - | 1 |
| g. Water Lorry | - | 2 |

5.1 Accordingly, the petitioners had only 2 Nos. of tipper lorry instead of 4. Therefore, the petitioner did not qualify in the technical bid on the ground that he did not possess enough machineries to qualify for the bid. Further, the following defects were found in the bid submitted by the petitioner:

- a. The petitioner failed to enclose civil engineering work details for the last five years as per clause 4.1.A.2 but



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only produced document relating to works details of 2 years.

b. Satisfactory completed CC works of 50% value of the tender not enclosed as per Clause 4.1.A4

c. Annexure A to H were filled and not signed by the Notary Public

6. The technical bid was opened on 23.02.2024 and found that the petitioner and another were found technically non responsive. Therefore, the petitioner's price bid was not opened and the petitioner was informed about the rejection of his technical bid as per the clause 24.1 of the tender notification. Accordingly, Tender Inviting Authority shall notify those bidders whose technical bids did not meet the qualification criteria or were considered non responsive, indicating that their price bids will be returned unopened after the award of the contract. The employer shall simultaneously notify the technically qualified bidders indicating the date, time and place set for opening the price bids. Accordingly, it was notified that the petitioner's bid failed to meet the qualification criteria and it was intimated to the petitioner about the rejection of technical bid. The tender condition stipulates that the information has to be sent to the



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unsuccessful tenderer. Accordingly, it was duly informed to the petitioner by a messenger. That apart, the successful bidder quoted, though higher than the petitioner, it was not lower than the estimated value. Therefore, there is no financial loss to the exchequer.

7. That apart, as against the rejection of bid, there is appeal remedy as provided under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1988. It is relevant to extract the provision under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1988 hereunder:

"11. Appeal - (1) Any tenderer aggrieved by the order passed by the Tender Accepting Authority under section 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.

(2) In disposing of an appeal under sub-section (1), the Government may, after giving the party an opportunity of making his representations, pass such order thereon as they may deem fit.

(3) The order of the Government on such appeal shall be final.



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(4) The Government may, pending the exercise of their powers under this section pass such interlocutory orders as they may deem fit."

8. Accordingly, any tenderer aggrieved by the order passed by the Tender Accepting Authority under Section 10, may appeal to the Government within a period of 10 days from the date of the receipt of the order. However, the petitioner, without exhausting the appeal remedy, has filed this writ petition. Therefore, when there is an effective alternative remedy is available, the writ petition is not at all maintainable under Article 226 of the Constitution of India.

9. Though this Court has power to issue writs, not only for the enforcement of fundamental rights, but for any other purpose as well and where an alternative remedy is available to the aggrieved person, the discretion of this Court is not to entertain a writ petition. Exceptions to the rule of alternative remedy arises where a writ petition has been filed for the enforcement of fundamental right. In this regard, the Hon'ble Supreme Court of India in the case of ***Radha Krishnan Industries Vs. State of Himachal Pradesh and Others***¹, held as follows:

¹ (2021) 6 SCC 771



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27.3 Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

27.4 An alternate remedy by itself does not divest the High Court of its powers under [Article 226](#) of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5 When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under [Article 226](#) of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

Therefore, the judgments cited by the learned counsel appearing for the petitioner are not applicable to the case on hand.

10. In view of the above, this writ petition is not maintainable and the same is liable to be dismissed. According, this writ petition is dismissed. Consequently, connected miscellaneous petitions



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are closed. There shall be no order as to costs.

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Neutral Citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To



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