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W.P.Nos.22893 of 2024, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

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

W.P.Nos.22893, 22900, 22911, 22917 & 22920 of 2024 and
WMP.Nos.24928, 24931, 24934, 24935, 24936, 24939, 24950, 24951,
24952, 24960, 24962, 24963, 24967, 24968 & 24970 of 2024

WP.No.22893 of 2024

P.Ashraf

... Petitioner

Vs.

- 1.The Commissioner of Municipal Administration,
75, Santhome High Road, Pattinappakkam,
MRC Nagar, Raja Annamalai Puram,
Chennai 600 004
- 2.The District Collector,
Nilgiris District, 171, Church Hill Road,
Charing Cross, Pudumund,
Ooty 643 001
- 3.The Municipal Commissioner,
Nelliyalam Municipality,
Pandalur,
The Nilgiris 643 233

... 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 of the impugned tender notification vide Na.Ka.No.2947/2023/E1 and Na.Ka.No.472/2024/E1 dated 22.07.2024 issued by the third respondent and quash the same and consequently direct the third



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respondent to open the tender called for in pursuance of the tender notification dated 20.02.2024 and act strictly in pursuance of the Tamil Nadu Transparency in Tenders Act, 1998 and rules.

For Petitioner : Mr.K.T.S.Murthy,
Senior Counsel
for Mr.Premchandrar.R

For Respondents : Dr.T.Seenivasan,
Special Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the tender notification dated 22.07.2024 on the file of the third respondent inviting the bids for various works.

2. The petitioners in all the writ petitions challenged the very same tender notification floated by the third respondent and as such, this Court is inclined to pass common order.

3. The petitioners are the contractors. While being so, the third respondent issued tender notification dated 20.02.2024 inviting tender for several cement road laying work and maintenance of cement road in



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Nelliyalam Municipality, Pandalur, Nilgiris District. The petitioners had applied for their respective works as indicated in the notification and submitted their price bids with all necessary documents as required under the tender notification. As per the notification, the bids are to be opened on 08.03.2024 at about 3.30 p.m. When the petitioners have been waiting for opening of the tender as per the notification dated 20.02.2024, however, the third respondent did not open the tenders so far. But to their shock and surprise, the third respondent had issued fresh tender notification with the very same reference number and format of the previous notification dated 20.02.2024 and inviting tender for the very same works in Nelliyalam Municipality, Pandalur, Nilgiris District. In fact, the terms and conditions in the fresh notification dated 22.07.2024 remain unchanged.

4. The learned Senior Counsels appearing for the petitioners submitted that without opening the earlier bids submitted by the petitioners as per the notification dated 20.02.2024, and without even cancelling the earlier tender, the third respondent once again issued fresh



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tender notification and it is clear violation of law and it was issued in order to favour certain other people. The tender is to be invited in pursuance of Section 4 of Tamil Nadu Transparency in Tenders Act, 1998 (hereinafter called as 'the Act'). Accordingly, opening of tender shall be done in the presence of the tenderers and in such time and such place as specified in the tender document.

4.1 Section 10 of the Tamil Nadu Transparency in Tenders Act, 1998 describes the manner of evaluation and acceptance of the tender after the opening of tender. Sub clause 2 of Section 10 of the Act says that after evaluation and comparison of tenders, the tender accepting authority shall accept the lowest tender ascertained on the basis of objective and quantifiable factors specified in the tender documents and giving relative weights among them. Therefore, it is mandatory and not directory in nature. Thereafter, as per Section 12 of the Act, if the price quoted by tenderer is higher by percentage as may be prescribed over the scheduled rates, the tender accepting authority shall reject the tender. Therefore, without even opening the tender, the third respondent ought



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not to have issued fresh tender notification for the very same work and that too by very same verbatim of the earlier notification dated 20.02.2024.

5. On written instruction, the learned Special Government Pleader appearing for the respondents submitted that as per Engineering Manual for Urban Local Bodies in Tamilnadu, clause 2.7.1 says about absurdly high or low rate. Accordingly, if the contractor offers for any item of work, a rate 25% less or 25% more than the detailed estimate rate, the same will be considered as an absurdly low rate or absurdly high rate respectively. Even though the tender amount as a whole is considered reasonable if it contains too many absurdly high or low rates, the engineer recommending the same shall carefully consider the risks involved in accepting such tenders. Therefore, as per the rates quoted by the petitioners in their respective tender bid, it is lower of 25.33 % than the amount quoted in the tender notification and as such, it is not possible to complete the work with standard quality. Further, due to administrative reasons, the tender bids which were submitted by the petitioners were not



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opened on 08.03.2024 and it was postponed to 12.03.2024. On 12.03.2024, the tenderers were invited and they were duly informed about the price ratio which were quoted by the petitioners above and below the rate quoted in the notification. However, due to announcement of parliamentary election, subsequently no action has been taken on the bids submitted by the petitioners.

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

7. Admittedly, the petitioners had fulfilled all conditions while submitting their tender bids as per the tender notification dated 20.02.2024 such as deposit of EMD and also 1% of the value were deposited as per the tender conditions. As per the notification dated 20.02.2024, the tender should be opened on 08.03.2024. However, it was not opened on that date due to administrative reason and postponed to 12.03.2024.



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8. On perusal of records produced by the third respondent revealed that without even opening the tender, the third respondent verified the rates quoted by the petitioners and found that the rates quoted by the petitioners are lower than the price fixed as per the notification. Therefore, the third respondent concluded that standard of work cannot be expected from the rate quoted by the petitioners since it is 25.33% lower than the price quoted in the tender notification. It is relevant to extract the provision under Section 8 of Tamil Nadu Transparency in Tenders Act, 1998 hereunder:

“8.Opening of tender – The Tender Accepting Authority or any other officer authorised by it, shall open the tenders in the presence of tenderers present and who have submitted tenders in such time and in such place as may be specified in the tender document”

9. Thus it is clear that the tender accepting authority shall open the tenders in the presence of the tenderers who have submitted tenders. There is absolutely no evidence to show that the tenders submitted by the petitioners were opened in their presence on 12.03.2024. However, the



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third respondent managed to note down the rates quoted by them and concluded that it is lower at the rate of 25.33% than the price quoted in the tender notification. Further it is also relevant to extract the provision under Section 10(1) of Tamil Nadu Transparency in Tenders Act, 1998 hereunder:

“10.Evaluation and acceptance of tender-(1) The Tender Accepting Authority shall cause an objective evaluation of the tenders taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market rate for procurement and comparison of the tenders in accordance with the procedure and criteria specified in the tender document”

10. Accordingly, only on opening of the tender, the tender accepting authority shall evaluate the price quoted by the tenderers comparing the rates quoted in the tender notification as per the guidelines issued in the Engineering Manual for Urban Local Bodies in Tamilnadu. The clause 2.7.1 says about absurdly high or low rate. Accordingly, if the contractor offers for any term of work, a rate 25% less or 25% more than the detailed estimate rate, the same will be considered as an absurdly low



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rate or absurdly high rate respectively. According to the third respondent, the price quoted by the petitioners absolutely low rate than the estimate rate quoted as per the notification. It was concluded without opening the tenders. It is clear violation of provision of Section 8 of the Act. It is also relevant to extract provision under Section 12 of the Act hereunder:

12. Right to reject Tender -

(1) After negotiation with the tenderer and before passing the order accepting a tender as under sub-section (6) of Section 10, if the Tender Accepting Authority decides that the price quoted by such tenderer is higher by the percentage as may be prescribed over the schedule of rates or prevailing market price, the said authority shall reject the tender.

(2) The Tender Accepting Authority before passing the order accepting a tender, may also reject all the tenders for reasons such as changes in the scope of procurement, new technologies or substantial design changes, lack of anticipated financial resources, court orders, accidents or calamities and other unforeseen circumstances.

11. Accordingly, the tender accepting authority found that the price quoted by the tenderers is higher by percentage or lower than the



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percentage, shall reject the tender. It also shall reject for the reasons such as changes in the scope of procurement, new technologies or substantial design changes, lack of anticipated financial resources, court orders, accidents or calamities and other unforeseen circumstances. In the case on hand, admittedly tender accepting authority did not pass any order either rejecting or accepting the tender bid by the petitioners. They did not return the EMD deposit and other deposits made by them as per the tender notification dated 20.02.2024. Without even rejecting their tenders and without returning the amounts which were deposited by the petitioners, and without following any of the procedures as contemplated under the Act, the third respondent has now issued fresh tender notification dated 22.07.2024 which is impugned in these writ petitions.

12. In view of the above, the impugned tender notification is *ex-facie* arbitrary, illegal and unsustainable in law. As such, the impugned tender notification dated 22.07.2024 is quashed. Accordingly, the third respondent is directed to pass appropriate orders on the tenders bid by the petitioners as per the notification dated 20.02.2024 as contemplated



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under Section 12 of the Act by complying the provisions under Section 8 of the Act within a period of two weeks from the date of receipt of copy of this order. The third respondent is at liberty to issue fresh tender notification in accordance with law.

13. With the above direction, all the writ petitions stand allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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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- 2.The District Collector,
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