



W.P(MD)No.166 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.166 of 2024
and
WMP(MD)No.189 of 2024

Palanivelu

.. Petitioner

-Vs-

1. The Managing Director,
TAFCON,
Karur Main Road,
Mallachipuram,
Kambarasampettai,
Trichy.

2.The Regional Manager,
TAFCON,
Aranthangi,
Pudukottai District.

3.Kuttiappan

.. Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 2nd respondent to conduct fresh E-Tender cum E-Auction for Senthangudi 2019, Bit-I, Unit No.26, Unit No.20, Bit-3, Unit No.21 and 2020 Bit-1, Unit No.



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26, Bit-2, Unit No.27, in favour of the 3rd respondent based on the petitioner's representation dated 22.12.2023 and 26.12.2023.

For Petitioner : Mr.D.Ramesh Kumar
For Respondents : Mr.R.Baskaran,
Additional Advocate General
assisted by
Mr.D.Gandhi Raj
Special Government Pleader
for R1 & R2

ORDER

This writ petition has been filed by the petitioner seeking issuance of a writ of mandamus, to direct the 2nd respondent to conduct fresh E-Tender cum E-Auction for Senthangudi 2019, Bit-I, Unit No.26, Unit No.20, Bit-3, Unit No.21 and 2020 Bit-1, Unit No.26, Bit-2, Unit No.27, based on the petitioner's representations dated 22.12.2023 and 26.12.2023.

2. The facts of the case is that the 2nd respondent herein call for a E-tender cum -E-auction to collect Cashew Nuts from Aranthangi Regional Cashew Forest for which on 2011.2023 a tender notification was published by the 2nd respondent that they are going to conduct a E-tender cum E-auction on 22.12.2023. The petitioner wants to participate in the E-auction



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cum Tender to be held on 22.12.2023 and deposited the earnest money deposit with the respondents. According to the petitioner, he was intended to participate in the E-Tender cum E-Auction for Senthangudi 2019, Bit-I, Unit No.26, Unit No.20, Bit-3, Unit No.21 and 2020, Bit-1, Unit No.26, Bit-2, Unit No.27 and when he opened the website, he was not able to open the dialogue box as per the Column No.8(ii) of the notification and he was not in a position to participate in the tender process. Immediately, he made a phone call to the second respondent office, but none received the same and no reply was given. Thereafter, the petitioner rushed to the internet centre and again made an attempt to open the website but he was not able to participate in the said tender, because the website did not permit him to open the dialog box, which constrained the petitioner to sent a representation to the 1st and 2nd respondents on the very same day. But till date the petitioner has not received any fruitful reply. Further, the petitioner came to know that the E-tender cum E-auction came to an end by fixing the highest bid amount of Rs.6,45,000/- quoted by the third respondent herein, which is very lowest bit amount. Hence, to consider the representations of the petitioner dated 22.12.2023 and 26.12.2023, he has approached this Court.



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3. The learned counsel for the petitioner submitted that during the previous years, the respondents have a clause in their tender notification that any person can again call for fresh tender after paying additional of 15% of the bid amount quoted by the successful bidder. But, during this year, the above said clause is not present in the tender notification. However, the petitioner is ready and willing to quote highest bid amount than the 3rd respondent herein. Hence, in order to show his bonafide, the petitioner took a Demand Draft No.786466, in favour of the 2nd respondent herein for a sum of Rs.7,42,900/- which is 15% higher than the 3rd respondent's bid amount and requested them to call for fresh E-Tender cum E-Auction and the same was sent to the office of the 2nd respondent by way of registered post on 26.12.2023. Even after receipt of the said demand draft, the 1st and 2nd respondents did not chose to give any reply to the petitioner's representations and till now the said E-Tender cum E-Auction is also not confirmed in the name of the 3rd respondent. Because as per clause 9 of the tender notification the 3rd respondent ought to have paid the 100% bid amount within 3 working days after the completion of E-tender cum E-Auction, but



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till now the 3rd respondent did not pay the said amount. Hence, the learned counsel seeks interference of this Court.

4. The learned Additional Advocate General Mr.R.Baskaran along with Mr.D.Gandhi Rajan, learned Special Government Pleader would submit that they have filed counter wherein they reiterated the reasons as to why they have not considered.

5. Heard the learned counsel on both side and perused the materials available on record.

6. According to the learned Special Government Pleader, the second respondent conducted the E-tender cum E-auction for sale of cashew raised in the 36 cashew plantations through M/s.MSTC on 22.12.2023. All the relevant details as per Section 10 of the Tamil Nadu Transparency in Tenders Rules, 2000, in respect of the sale of cashew have been furnished in the sale notice for the above said sale which was sent on 23.11.2023 to all the registered contractors including the writ petitioner as well as the 3rd respondent herein. The sale notice was also published in the Trichy Edition



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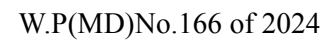
of the Daily Thanthi and Dinakaran Newspapers on 08.12.2023. There were 10 bidders participated in the E-tender cum E-auction on MSTC platform on 22.12.2023 for the aforesaid 36 plantations and completed the process within the time stipulated in the sale notice. The 3rd respondent has participated in the tender and emerged as successful bidder. According to the respondents, the first respondent is the approving authority to confirm the same in favour of the highest bidders of the E-tender cum E-auction. Therefore, a sale report was sent to the 1st respondent by the 2nd respondent vide his letter No.3050/2023 dated 22.12.2023. The 1st respondent vide letter No. 5669/2023/L2 dated 03.01.2024 has approved the sale in respect of the 22 cashew units in favour of the highest bidders based on the report submitted by the 2nd respondent and passed Orders to collect the full sale amount, taxes and GST from the highest bidders as per the terms of the notice. Accordingly, the 3rd respondent, being the highest bidder, has remitted the full sale amount on 05.01.2024. It would further submit that the writ petitioner has sent a representation stating that he was unable to register his bid amount due to non-availability of server of M/s.MSTC from the internet centre and requested to conduct resale again. If it is the case, no tenderer could have participated in the E-tender cum E-auction.



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7. He further submitted that having failed to participate in the tender process, the petitioner has now come up with stories to justify his liability to participate in the tender process. Further, he has sent a representation on 26.12.2023 along with a demand draft for Rs. 7,42,900/- drawn in favour of the Regional Manager, TAFCORN, ARanthangi on Regional 26.12.2023 from Indian Overseas Bank, Keeranur Branch which is 15% higher than the amount quoted by the highest bidder for the above said 5 cashew units. As there is no provision to consider such request of the writ petitioner, the said Demand Draft was returned to him by the 2nd respondent vide letter No. 3050/2023 dated 27.12.2023 and the same was delivered on 30.12.2023. He further submitted that the argument of the writ petitioner that the Dialog Box was not opened is entirely denied due to the reason that both the writ petitioner and the 3rd respondent herein are residents of the same village and the 3rd respondent participated in the tender process and has become the successful bidder for the said 5 units. Hence the question of non-availability of server of M/s.MSTC does not arise. Furthermore, it is relevant to place on records that 22 units have been sold on 22.12.2023 and it is evident that the server of M/s.MSTC was functioning properly and correctly. If there had been any server issue as claimed by the petitioner herein, no units



8. The learned Special Government Pleader would further submit that the sale process has been conducted and completed as per conditions stipulated in the sale notice conditions. The sale notice was also sent to the petitioner on 23.11.2023. The bidders who intend to participate in the tender cum E-auction are required to be familiar with all the conditions of the sale notice before the sale. By participating in the tender process based on the sale notice, he is agreeing to abide by the terms and conditions of the sale notice. Hence the writ petitioner does not have any *locus standi* to question the conditions stipulated in the sale notice at a later point in time. The act of the writ petitioner shows that it is only afterthoughts to obstruct the tender process of the sold units as per conditions. As there is no provision in the sale notice for post sale offer, the Demand Draft for Rs. 1,00,000/- sent by the petitioner has been returned by the 2nd respondent on 23.11.2023.



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27.12.2023 with reasons through RPAD vide Postal receipt No.RT414368768IN of Aranthangi S.O Post Office and it was delivered on 30.12.2023 as per details in the "Track Consignment" downloaded from the website of Department of Posts, Ministry of Communications, Government of India. As per condition No.9 of sale notice, a status of information will be sent to the highest bidder on scheduled date after completion of sale and the same will not confer any rights as his offer is accepted. The successful bidder is required to wait for intimation of acceptance of his offer. The highest bidder should remit the full sale amount within 3 days from the date of acceptance of his offer after deduction of EMD already paid. Accordingly, the 3rd respondent has remitted the full sale amount on 05.01.2024 for all 5 units as mentioned under para 7 herein which is within the time stipulated in the sale notice. But the writ petitioner has suppressed these factual aspects and filed the present writ to mislead the Court. Hence, he prays for dismissal of this writ petition.

9. In view of the above submissions made by the learned Special Government Pleader and also the averments made in the counter affidavit filed by the 2nd respondent, it is clear that the petitioner did not participate in



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the E-tender cum E-auction process, but to show his bonafide, the petitioner took a Demand Draft No.786466, in favour of the 2nd respondent herein for a sum of Rs.7,42,900/- which is 15% higher than the 3rd respondent's bid amount and requested them to call for fresh E-Tender cum E-Auction. As there is no provision in the sale notice for post sale offer, the Demand Draft for Rs.7,42,900/- sent by the petitioner has been returned by the 2nd respondent on 27.12.2023 with reasons through RPAD vide Postal receipt No.RT414368768IN of Aranthangi S.O Post Office and it was delivered on 30.12.2023. Earlier, this Court directed the respondents to produce appropriate documents before this Court and now, it is seen that there were many bidders participated in the said E-tender cum E-auction process and nobody have the server problem. Even the successful bidder 3rd respondent herein belongs to the same village of the petitioner has no internet connectivity problem and he participated in the said process. Hence, from the above, it is clear that all the procedures have been followed properly by the authorities concerned and the failure on the part of the petitioner is proved with substantial materials. Therefore, this petition is liable to be dismissed.



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10. In the result, this Writ Petition stands dismissed. No Costs.

Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet : Yes
PJJ

To

1. The Managing Director,
TAFCON,
Karur Main Road, Mallachipuram,
Kambarasampettai, Trichy.

2. The Regional Manager,
TAFCON,
Aranthangi, Pudukottai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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