



W.P(MD)No.3343 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.02.2024

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition(MD)No.3343 of 2024

and

W.M.P(MD)Nos.3323 and 3326 of 2024

S.S. & Co.,
Rep. by its Managing Director,
B.Subramanian
No.28/5 Chithambaranathapuram 1st Street,
Devakkottai,
Sivagangai District.

... Petitioner

-Vs-

- 1.The Government of Tamil Nadu,
rep. by the Superintending Engineer,
National Highways,
Tirunelveli Circle,
Tirunelveli.
- 2.The Deputy Superintending Engineer,
National Highways, Tirunelveli Circle,
Tirunelveli.
- 3.The Divisional Engineer,
National Highways,
Quality Contral,
Tirunelveli.



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4.The Head Draughting Officer,
National Highways,
Tirunelveli.

5.The Junior Draughting Officer,
National Highways,
Tirunelveli.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 1st respondent in TN.No.3/2023-24/HDO/Dated 12.02.2024 in so far declaring the bid of the petitioner as 'Non-Responsive' and quash the same as illegal and consequently direct the 1st respondent to accept the available documents submitted by the petitioner for technical evaluation and thereafter evaluate the financial bid of the petitioner also and thus render justice.

For Petitioner : Mr.A.Mohan

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.D.Gandhi Raj
Spl. Govt. Pleader



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ORDER

This writ petition is filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 1st respondent in TN.No.3/2023-24/HDO/Dated 12.02.2024 in so far declaring the bid of the petitioner as 'Non-Responsive' and quash the same as illegal and consequently direct the 1st respondent to accept the available documents submitted by the petitioner for technical evaluation and thereafter, evaluate the financial bid of the petitioner also.

2. According to the petitioner, the first respondent has issued tender notification on 26.12.2023 for the project, namely, “Widening Two lane paved shoulder and Improvement at Km 14/6 – 20/4 Uppoor – Kottaiyur Road (SH)” at the cost of Rs.1228.00 lakhs. The petitioner is the registered Class-I Contractor with 20 years experience in laying bridges and roads across the State. According to the tender notification, one of the conditions is that the Contractor should produce the documents for own possession of sufficient Plants and Machineries and obtain certificate from the Divisional Engineer, National Highways, Quality Control concerned after the date of



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the publication of the tender notification. The petitioner has approached the third respondent on 18.01.2024 in person and requested him to issue Quality Control Certificate after due verification of his plant and machineries. However, they have not issued any certificate. Hence, the petitioner has submitted written representation to the third respondent on 23.01.2024 through registered post and requested them to conduct inspection to check working conditions of the machineries and issue required working condition certificate. However, the third respondent has not chosen to conduct any inspection and failed to issue the said working condition certificate till the last date of submission of bid i.e., on 30.01.2024. Hence, the petitioner has uploaded his bid through online on 30.01.2024 by enclosing the previous working condition certificate issued by the Divisional Engineer, Highways, Quality Control Division, Madurai dated 21.12.2023.

3. The first respondent by proceedings dated 30.01.2024 has granted the work order in favour of the petitioner declaring that the petitioner had quoted a lowest bid of Rs.30,35,12,000/- for the road work of Tuticorn – Tiruchendur – Kanyakumari Section of NH 32. When the first respondent had issued work order for the massive project than the current project, they



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should not say that the petitioner does not enclose the working condition certificate.

4. According to the petitioner, the third respondent wantonly, deliberately, arbitrarily and with *malafide* intention to eliminate the petitioner from active participation in the tender, had not issued the said certificate. Hence, the filed the present writ petition for the above said relief.

5. The learned Additional Advocate General appearing for the respondents would submit that the petitioner is very well aware about the process and how their bid has been evaluated. The petitioner being a Class I contractor submitted the said working certificate to be issued by the authorities regarding major items of constructional plant viz., Earch Compactor, Motor Grader, Central Hot Mix Plant, Sensor Paver Finisher 9m width, pneumatic Tyred Roller, Vibratory Roller, Static Roller, Lorry / Tipper and Lorry with water Tanker. Necessary documents for the above plants and equipments should be enclosed along with the tender schedule. Further, current working condition certificate for the above plants should be obtained from the Divisional Engineer (H) Quality Control concerned and



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enclose the original certificate along with the pre-qualification tender document for which certificate should be obtained after the date of tender publication. However, the petitioner has produced certificate issued before the date of tender notification. Further, the said certificate has been issued by the Divisional Engineer (H), (QC). According to the respondents, the petitioner has to obtain the said certificate from the National Highways and not from the State Highways. According to the respondents, in the certificate, the authority has not mentioned about the motor Grader, Lorry /Tipper and Lorry with water Tanker, which are essential.

6. According to the respondents, the petitioner sent a representation on 23.01.2024 and the same was received by the respondents on 24.01.2024. From 25.01.2024 to 28.02.2024, are holidays. Hence, the respondents sent a letter to the petitioner on 29.01.2024 by fixing the inspection date as 30.01.2024. However, on 30.01.2024, the petitioner is not ready for inspection.

7. According to the petitioner, no such letter has been received in respect of the inspection and tender held on 31.01.2024. According to the



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respondents, though they have sent a letter, there is no response from the petitioner. Hence, the respondents have not considered the case of the petitioner. Hence, the respondents have rejected the petitioner's tender on the technical ground.

8. It is further submitted that the working condition certificate should be obtained after the date of the tender notification, however, the petitioner has produced the said certificate, which was issued before issuance of the tender notification. The said tender notification has been issued on 26.12.2023. When two months and five days are available to the petitioner for obtaining the said certificate, he waited till last moment i.e., 23.01.2024 and on 23.01.2024, he sent a letter to the authorities, but he has not approached the authorities with other modes apart from the letter. Thereafter, there is no response from the petitioner and hence, the authorities have not proceeded further.

9. In the absence of the any other materials to show that the petitioner was vigilant enough to approach the authority within the stipulated time and he was awaiting till his bid was rejected and thereafter, he approached this



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Court at the last minute to stall the entire proceedings, this Court is not inclined to accept the case of the petitioner. The petitioner has not filed the working conditions certificate, which would be obtained after the notification. Hence, on the major fault of the petitioner, the petitioner's bid has been rejected. Since the petitioner is the Class I contractor, he should be well aware of the above instructions regarding the bid.

10. In view of the above, this Court is not inclined to grant the relief sought for by the petitioner. Hence, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

NCC : Yes/No

12.02.2024

Index : Yes/No

Internet : Yes

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Note : Issue order copy on 19.02.2024

To

1. The Superintending Engineer,
Government of Tamil Nadu,
National Highways,
Tirunelveli Circle,
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V.BHAVANI SUBBAROYAN, J.

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