



W.A(MD)No.276 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.02.2024

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE G.ILANGO VAN**

W.A(MD)No.276 of 2024
and
C.M.P(MD)Nos.2682, 2683 and 2684 of 2024

S.S.& Co.,
Rep. by its Managing Partner,
Mr.B.Subramanian, ... Appellant/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 Control,
Tirunelveli.
- 4.The Head Draughting Officer,
National Highways,
Tirunelveli.



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

.. Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against the order made in W.P(MD)No.3343 of 2024, dated 13.02.2024.

For Appellant : Mr.H.Lakshmi Shankar

For Respondents : Mr.R.Baskaran,
Additional Advocate General, assisted by
Mr.T.Amjad Khan,
Government Advocate.

JUDGMENT

[Judgment of the Court was delivered by The Hon'ble CHIEF JUSTICE]

The present appellant is the original writ petitioner. The present respondents had floated the tender for widening two lane paved shoulder and improvement at Km 14/6 – 20/4 at Uppoor – Kottaiyur Road. The approximate value of the contract is Rs.1228.00 lakhs. The writ petitioner filed the tender along with others. The writ petitioner's tender was held to be non responsive. The same was assailed by the writ petitioner by filing W.P(MD)No.3343 of 2024. The learned Single Judge dismissed the said



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writ petition under the judgment and order, dated 13.02.2024. Aggrieved thereby, the present writ appeal is filed.

2. The learned counsel for the appellant strenuously contends that the Department malafidely and arbitrarily acted in the matter. The last date for filing the tender is 30.01.2024. The writ petitioner on 23.01.2024 asked the authorities to inspect the equipments of the writ petitioner and issue the required certificate as contemplated in the tender document. The respondents intentionally delayed the said process and on 30.01.2024 gave a letter to the writ petitioner that they will inspect the equipments on 31.01.2014 ie., after the last date for filing of the tender. This act of the respondents is wanton. It was only with a view to hold the petitioner's bid as non responsive. The equipments of the petitioner were not inspected whereas in the case of others, on 29.01.2024 and 30.01.2024, the inspection was carried out and the certificates were issued.

3. The learned counsel for the appellant further submits that on one hand, the respondent authorities did not co-operate with the writ petitioner in inspecting the equipments and on the other hand, inspected the



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equipments of other tenderers and issued the certificate. It is further submitted by the learned counsel that on 30.01.2024, the petitioner is issued with the work order of a larger project than the one in question. This itself shows that the writ petitioner was well-equipped with all the necessary machineries. The learned submits that the writ petitioner acted promptly.

4. The learned Additional Advocate General submits that the petitioner gave a letter only on 24.01.2024 and 25.01.2024 to 28.01.2024 were holidays and immediately thereafter, steps were taken for inspection. The writ petitioner did not avail the opportunity and did not present himself for inspection. He further submits that the work order had already been issued on 19.02.2024 to the successful bidder and the work had also been commenced. The duration of the work is nine months.

5. We have considered the submissions canvassed by the parties so also gone through the judgment and order passed by the learned Single Judge.



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6. The scope of judicial review in cases of contract and more particularly, in tender matters is in a narrow compass. This Court would exercise its power of judicial review only if it is found that the decision making process is not properly adhered to or the decision is arbitrary and malafide. Arbitrariness is antithesis to rule of law, justice, equity, fair play and good conscience. Arbitrariness has no role in the society governed by Rule of law. At the same time, the loss of public exchequer and the consequential delay that would be caused, if the Court interferes with the tender process is also required to be considered.

7. There appears to be some disputed questions of fact involved in the matter. The petition does not aver favoritism to the successful bidder. The work order is also issued to the successful bidder. But the successful bidder is not before us. The agreement is also executed in between the Department and the successful bidder. It appears that the original certificate issued from the Divisional Engineer, National Highways Quality Control, Tirunelveli, is mandatory for the tender bid to be held responsive. Clause 9 of the tender document reads thus:



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“9.The bidder should produce the documents for own possession of sufficient Plants & Machineries and obtain certificate from Divisional Engineer, National Highways, Quality Control, Tirunelveli and enclose the original certificate along with pre-qualification tender document for which certificate should be after the date of publication of Tender.”

8. The disputed question of fact as to whether the delay is on the part of the Department or the petitioner, cannot be gone into in a writ jurisdiction under Article 226 of the Constitution of India. The fact remains that mandatory certificate is not annexed with the tender. Moreover, interference at this stage would be an impediment to the public work as a tender is for widening two lane paved shoulder and improvement at Km 14/6 – 20/4 at Uppoor – Kottaiyur Road. Therefore, we do not want to interfere with the discretion exercised by the learned Single Judge.

9. For all the aforesaid reasons, it would not be possible to interfere with the matter at this stage, more particularly, when work order is already issued. If the appellant feels that it was the delay on the part of the respondents in issuing the certificate which fact is disputed by the



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respondents, then the appellant has a remedy available to claim damages in that regard.

10. With these observations, this writ appeal stands disposed of.

No Costs. Consequently, connected Miscellaneous Petitions are closed.

(S.V.G., CJ.)

(G.I., J.)

26.02.2024

NCC : Yes/No
Index : Yes/No
PM

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