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W.P.(MD)NO.4315 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.4315 of 2024

M.A.S.E.Nasar

... Petitioner

Vs.

1. The District Collector,
O/o.the Collectorate,
Sivagangai.

2. The Assistant Director of Town Panchayat,
O/o.the Assistant Director of Town Panchayat,
Collectorate Complex,
Sivagangai District.

3. The Executive Officer,
Selection Grade Panchayat,
Ilayangudi,
Sivagangai District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent vide his proceedings dated 15.02.2024 and quash the same as illegal and further direct the 3rd respondent to issue work order as per Tender notification in Na.Ka.No.428/2023/A1 dated 27.10.2023 for digging of bore well and construction of Sintex Tank in ward No. 14, 13, 18 to the petitioner in a time bound manner.

(Prayer is amended vide order dated 28.02.2024 in WMP(MD).4466/2024)



For Petitioner : Mr.D.Senthil
For R-1 & R-2 : Mr.D.Gandhiraj,
Special Government Pleader.
For R-3 : Mr.R.Senthil Kumar,
Additional Government Pleader.

* * *

ORDER

Heard both sides.

2. The local body/ third respondent herein issued tender notification dated 22.09.2023 calling for applications from the eligible contractors for carrying out certain civil works (ie.) installation of bore wells with syntax tank). The petitioner wanted to apply in response thereto. Since the tender schedule was not issued, the petitioner had to file W.P.(MD)No.24592 of 2023.

3. When the matter was taken up for hearing on 11.10.2023, the learned Additional Government Pleader submitted that the tender process itself had been cancelled. I directed that as and when the fresh tender notification is issued, the petitioner will be informed through e-mail.



4. The local body issued a fresh tender notification on 10.10.2023. The petitioner applied in response thereto. He turned out to be the lowest bidder. The tender process was also cancelled by citing technical issues. Thereafter, the local body issued tender notification on 27.10.2023. Totally three persons took part. The petitioner was also one of them and he turned out to be the lowest. Instead of confirming the petitioner's tender, the council passed the impugned resolution for cancelling the tender process. Challenging the same, the present writ petition came to be filed.

5. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

6. The learned Special Government Pleader appearing for the respondents submitted that the impugned resolution does not warrant interference. He pointed out that it is open to the tender inviting authority to cancel the tender process and that no applicant has any vested right as such. At this stage, the petitioner's right is inchoate in character. He pointed out that the petitioner had quoted ridiculously low amount. The council came to the conclusion that it is not possible to carry out the impugned works with the sum quoted by the petitioner herein. The stand



of the respondents is that if the authority comes to the conclusion that with the sum offered by the applicant it is not possible to fulfil the contract work, then the tender inviting authority is not obliged to confirm the tender by accepting the quotation offered by the lowest bidder. He called upon this Court to dismiss the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. The proposition of law sustained by the learned counsel for the third respondent is entirely correct. But the facts pertaining to this case cannot be lost sight of. It is not as if the tender process is being floated for the first time. In fact for the very same work, the local body issued the tender notification on 22.09.2023. It is not as if the tender process proceeded to its logical conclusion. Even the tender schedule was not given to the petitioner herein.

9. I take judicial notice of the fact that one way of interfering with the tender process is not by issuing tender schedule. The petitioner was constrained to come to this Court for getting tender schedule and he filed W.P.(MD)No.24592 of 2023.

10. When the matter was taken up for hearing, it was rendered infructuous in view of the stand taken by the respondents. The tender



process itself had been cancelled. The second tender notification process was initiated vide notification dated 10.10.2023 also made the very same fate. The petitioner's counsel states that he was the lowest tenderer. In fact the petitioner had received an SMS on his mobile phone that he was the lowest tenderer. It is in this background, the facts of the case have to be appreciated.

11. The third round of tender notification elicited three responses. The petitioner's bid turned out to be the lowest. One cannot assume that merely because the tenderer had quoted the lowest rate, the work to be discharged by him will turn out be of poor quality. There could be number of reasons as to why a businessman is making a particular offer. It could be to edge out his rivals and occupy the field. The conclusion of the council that with the lowest rate offered by the petitioner it is not possible to carry out works is not correct. The other reason set out in the council resolution that complaints had been received against the petitioner cannot also be accepted. When the petitioner was treated as an eligible applicant and his offer had been received, the same should be decided on merits by matching with the offers received from the other applicants. The petitioner cannot be non-suited at the stage of scrutiny of applications for this reason. That apart, this reason is vague



and bereft of details. Looked at from any angle, the impugned decision cannot be sustained and it is set aside.

12. The respondents are directed to evaluate the offers made by the various applicants. The final decision on merits and in accordance with law shall be taken by the third respondent within a period of three weeks from the date of receipt of a copy of this order. This writ petition stands allowed on these terms. No costs.

04.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

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G.R.SWAMINATHAN,J.

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