



W.P(MD)No.4815 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 04.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4815 of 2024
and
W.M.P(MD)Nos.4616 & 4617 of 2024

R.Nixon Alvin

... Petitioner

Vs.

1.The Chief Engineer,
Public Works Department,
Madurai Region,
Thallakulam, Madurai.

2.The Superintending Engineer,
Public Works Department,
Buildings (Construction & Maintenance) Circle,
Tirunelveli.

3.The Executive Engineer,
Public Works Department,
Buildings (Construction & Maintenance) Division,
Nagercoil, Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 19.02.2024 issued by the second



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respondent and quash the same as illegal and consequently direct the respondents to issue the work order for the Construction of Additional building in Government Hospital at Kulasekaram in Kanniyakumari District on the basis of the E-Tender submitted by the petitioner on 15.02.2024.

For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.V.Nirmal Kumar
Government Advocate

ORDER

Heard both sides.

2.The writ petitioner is a registered Class - I contractor. The second respondent issued tender notice dated 06.02.2024 inviting tenders from eligible contractors for the work of construction of additional building in Government Hospital at Kulasekaram in Kanyakumari District. The last date for submission of the tender was 15.02.2024 up to 03.00 p.m. The petitioner was one of the participants. His tender was rejected on the ground that due to uploading of insufficient documents. Challenging the same, the present writ petition came to be filed.



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3.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 set aside the impugned order and grant relief as prayed for.

4.The learned Additional Advocate General appearing for the respondents submitted that the petitioner was obliged to upload site verification certificate as per Condition No.8. Since in this case such certificate was not uploaded, the petitioner was rejected at the technical scrutiny stage itself. He also would point out that the third respondent has no ill will towards the petitioner. The petitioner at present is carrying out quite a few contract works for Public Works Department. In fact, the third respondent himself had recently issued such certificate in favour of the petitioner. The stand of the respondents is that the petitioner did not approach the third respondent for such certificate and to create record, he sent a letter by registered post. It was delivered in the office of the third respondent only at 05.30 p.m on 14.02.2024. The third respondent responded to the said communication on 15.02.2024 itself. According to



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the respondents, there is no arbitrariness involved. They called upon this Court to sustain the impugned order and dismiss the writ petition.

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

6.The tender notice contains the following condition:

“8. The contractor who quotes tender should personally visit the work site and submit a visit Certificate issued by the concerned Executive Engineer.”

This is a vital document without which the petitioner's tender application would be rejected. Issuance of such certificate is not entirely in the hands of the petitioner. It requires the co-operation of the concerned official. Tender notice was issued on 06.02.2024. The last date for submission of tender was 15.02.2024 up to 03.00 p.m. The petitioner is a serious player. It is not as if he is batting for some third party. He is a Class - I contractor registered with the department. The petitioner states that he did approach the third respondent in his office but the third



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respondent did not extend his co-operation. In paragraph 2 of the affidavit filed in support of the writ petition, a categorical averment in this regard has been made. The question is whether this claim of the petitioner sounds probable. Section 114 of the Indian Evidence Act, 1872 empowers the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

7.The petitioner had sent a letter making a request in this regard on 10.02.2024 itself. Letter was sent under registered post with acknowledgment due. On 14.02.2024, the petitioner had visited the site and taken photographs. The duty Doctor as well as the duty nurse are found in the photograph.

8.From this I can safely infer that the petitioner did make a request to the third respondent in person on 10.02.2022 itself but the third respondent did not extend his co-operation. Section 3 of the Indian Evidence Act, 1872 defines proof in the following terms:



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“Proved.—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. ”

From the postal endorsements it is seen that the registered post sent by the petitioner on 10.02.2024 was not received on 12.02.2024 and that it came to be delivered in the office of the third respondent only at 05.30 p.m on 14.02.2024. The petitioner had correctly written down the said address in the postal cover. The petitioner has done everything that he was expected to do. Nothing more can be expected from the writ petitioner herein. In fact, the petitioner's representation was received on 14.02.2024 and the office seal is also affixed thereon.

9.In matters such as this, I would expect a speedier response from the office of the third respondent. These are matter of business and nothing stopped the office of the third respondent from contacting the petitioner immediately over phone or in any other mode and informing him that they are ready to extend their co-operation. The fact that the



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third respondent remained utterly indifferent indicates lack of *bona fides*.

I however refrain from passing any personal remark in this case. The rejection of the petitioner's bid is clearly arbitrary and illegal. It is set aside.

10.This writ petition is allowed accordingly. The petitioner's tender will also be considered on par with the tenders received from the other persons. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

Note: Issue order copy on 06.03.2024.

To

1.The Chief Engineer,
Public Works Department,
Madurai Region,
Thallakulam,
Madurai.



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G.R.SWAMINATHAN, J.

MGA

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