



W.P(MD)Nos.9443 & 9444 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.9443 & 9444 of 2024

and

W.M.P(MD)Nos.8571 & 8586 of 2024

W.P(MD)No.9443 of 2024 : -

Meenakshisundaram Kumararaja,
Proprietor of Galaxy Enterprises,
Poongavanapuram Street,
Thiruvattiyur, Chennai.

... Petitioner

Vs.

- 1.The Superintending Engineer,
Highways Department,
Construction and Maintenance,
Madurai.
- 2.The Divisional Engineer,
Highways Department,
Construction and Maintenance,
Dindigul.
- 3.Hariway Lines Pvt.Ltd,
No.14/09, Flat No.102,
Bhakthavatchalam Nagar 4th Street,
Adayar, Chennai,
Tamil Nadu – 600 020.



W.P(MD)Nos.9443 & 9444 of 2024

4.The Secretary to Government,
Highways Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the fourth respondent herein to consider, hear and pass orders on the Appeal and Interim Application dated 08.03.2024 filed by the petitioner herein and in the meantime restrain respondents 1 to 3 from taking any action pursuant to the Tender Notice No.53/2023-2024/HDO dated 24.01.2024.

For Petitioner : Mr.Srinath Sridevan, Senior Counsel
for Mr.P.M.N.Bhagavath Krishnan

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.D.Sasi Kumar
Additional Government Pleader
for R.1, R.2 & R.4

Mr.S.R.Rajagopal, Senior Counsel
for Mr.P.T.Ramesh Raja for R.3

W.P(MD)No.9444 of 2024 : -

Meenakshisundaram Kumararaja,
Proprietor of Galaxy Enterprises,
Poongavanapuram Street,
Thiruvattiyur,
Chennai.

... Petitioner

Vs.



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- 1.The Superintending Engineer,
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Adayar, Chennai,
Tamil Nadu – 600 020.
- 4.The Secretary to Government,
Highways Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the fourth respondent herein to consider, hear and pass orders on the Appeal and Interim Application dated 12.03.2024 filed by the petitioner herein and in the meantime restrain respondents 1 to 3 from taking any action pursuant to the Tender Notice No.53/2023-2024/HDO dated 29.01.2024.

For Petitioner : Mr.Srinath Sridevan, Senior Counsel
for Mr.P.M.N.Bhagavath Krishnan

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.D.Sasi Kumar
Additional Government Pleader
for R.1, R.2 & R.4



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W.P(MD)Nos.9443 & 9444 of 2024

Mr.S.R.Rajagopal, Senior Counsel
for Mr.P.T.Ramesh Raja for R.3

COMMON ORDER

Heard both sides.

2.The first respondent herein issued two tender notifications on 19.01.2024 inviting tenders for providing Roller Crash Barrier in State Highways in Kodaikanal (H) C&M Sub Divisions (MDU-177&187). The petitioner applied in response thereto. His tenders were rejected at the technical evaluation stage. Questioning the same, he filed W.P(MD)Nos.4531 & 4532 of 2024. The writ petitions were allowed vide order dated 01.03.2024 and the matter was remitted to the file of the first respondent herein. It was directed that the process will resume from the stage of technical scrutiny.

3.Once again, the petitioner was declared ineligible in the technical scrutiny that took place on 04.03.2024. Aggrieved by the same, the petitioner filed appeal before the Government on 08.03.2024 itself. The petitioner also sought interim relief. The appellate authority did not dispose of the appeal within 15 days. Nor any interim order was passed. In the meanwhile, work order was issued in favour of the third



W.P(MD)Nos.9443 & 9444 of 2024

respondent who was the successful tenderer. Hence, the present writ petitions came to be filed.

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

5.The learned Senior Counsel appearing for the third respondent strongly contended that the petitioner's experience certificate is a piece of forgery and called upon this Court to examine the issue on merits at least on a *prima facie* basis. The learned Senior Counsel was confident that if such an exercise is undertaken by this Court, the petitioner will be shown the door.

6.The learned Additional Advocate General submitted that the appeal could not be taken up for disposal on account of preoccupation of appellate authority with various administrative works and election related responsibilities. He impressed upon this Court that the project is utmost significance for road users and their safety and that the issue cannot brook any further delay. He reminded this Court that on account of



W.P(MD)Nos.9443 & 9444 of 2024

injunction granted in this case, the work that was already entrusted to the third respondent has come to a standstill. The resultant delay will lead to cost escalation. He called upon this Court to vacate the interim order and dispose of the writ petition.

7.I carefully considered the rival contentions and went through the materials on record. The only question that calls for consideration is whether the petitioner is entitled to time bound disposal of his appeal and whether the petition mentioned tender works should be put on hold till then. My answer is in the affirmative.

8.Any tender process will involve two stages : a) Technical scrutiny and b) Price bid evaluation. The disqualified or unsuccessful tenderer is entitled to file an appeal under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998. Section 11 of the Act reads as follows:

“11.(1) Any Tenderer aggrieved by the order passed by the Tender Accepting Authority under section 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.



W.P(MD)Nos.9443 & 9444 of 2024

WEB COPY

(2) In disposing of an appeal under sub-section (1), the Government may, after giving the party an opportunity of making his representations, pass such order thereon as they may deem fit.

(3) The order of the Government on such appeal shall be final.

(4) The Government may, pending the exercise of their powers under this section pass such interlocutory orders as they may deem fit.”

I had occasion to examine the statutory scheme in W.P(MD)No.11721 of 2022 (Dhana.Vimal Vs The Assistant Director of Town Panchayat, Thiruchirappalli & Others). Vide order dated 17.06.2022, I had held as follows:

“7.It is true that Section 10(7) of the Act is silent as to when the information must be furnished. As per Rule 27 of the Tamil Nadu Transparency in Tenders Rules, 2000, the process of tender evaluation should be confidential until orders on the tenders are passed. When the statute has prescribed an appeal remedy to the aggrieved tenderer, it cannot be rendered futile or meaningless by not furnishing the information in time. Subsequent developments ought not to render any remedy infructuous. Any statutory scheme should be meaningfully construed. A balance has to be struck so that no provision becomes a dead letter. After the award



W.P(MD)Nos.9443 & 9444 of 2024

of contract is notified, work order has to be issued in favour of the successful tenderer after which alone the implementation stage will begin. Section 11 gives ten days to file an appeal. The appeal has to be disposed of within 15 days after the appeal is filed. Interim relief can also be granted. It would be reasonable to hold that the tender accepting authority should issue work order not immediately but only after ten days after the orders are passed on the tenders. If the aggrieved party is really serious, he will not wait for the limitation period of ten days to file the appeal. He would immediately file the appeal and also pray for interim order. If the appeal is filed within six days after receipt of information under Section 10(7) of the Act, the Government must dispose of the interim application within three days thereafter. Such a construction will ensure that the statutory scheme is not subverted. In the case on hand, the information under Section 10(7) of the Act was not at all furnished to the petitioner. No publication has been made in the tender bulletin also.”

In this case, the rejection was on 04.03.2024. The appeal was filed in time. Interim relief was also sought. But no order was passed thereon. Work order came to be issued on 14.03.2024. In this background, this writ petition came to be filed and I also granted interim order.



W.P(MD)Nos.9443 & 9444 of 2024

9.The learned Senior Counsel appearing for the petitioner pointed out that unlike the Karnataka Legislation which calls upon the appellate authority to dispose of the appeal within 30 days as far as possible, the Tamil Nadu Act 43 of 1998 does not gave any such leverage. Section 11 (1) mandates that appeal should be filed of within 10 days and disposed of within 15 days from the date of receipt. There is a reason for imposing such a rigid inflexible outer time limit. If the appeal is not disposed of and if interim order is also not granted, the unsuccessful tenderers' appeal will become infructuous if in the meanwhile tender works are completed. Its for this reason, the legislature was conscious that the appeal itself should be disposed of within the aforesaid time limit.

10.When statute provides for an appeal or revision, those remedies cannot be rendered illusory by the inaction on the part of the authorities. Pursuit of such statutory remedies cannot be like the chasing of mirage by deer. I take judicial notice of the fact that by the time they are taken up for final disposal, many matters such as election petitions are dismissed as infructuous. Such a situation will not occur if the adjudication is expeditiously done. To ensure the same, time-limit has been stipulated in the statutory provision itself. The legislative intention



W.P(MD)Nos.9443 & 9444 of 2024

must be given its fullest effect. I, therefore, hold that when an appeal is filed under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998 within time, the appellate authority is obliged to give disposal within 15 days of receipt. The tender inviting authority shall not issue work order before the expiry of the period of limitation for filing appeal. The appellant must parallelly intimate the tender inviting authority about the lodging of appeal. If intimation is received about the filing of appeal, the issuance of work order will be deferred till the disposal of the appeal. Such a construction of the statutory scheme alone will effectuate legislative intent. Any other construction will definitely frustrate the object behind the stipulation of time limit for disposal of appeal under Section 11 of the Act.

11. Taking into account the extraordinary importance of this case, I direct the fourth respondent to take up the appeal for final disposal on **29.04.2024 at 11.00 A.M** in his office. No independent notice will be issued. The appellate authority will dispose of the petitioner's appeal within a period of seven (7) days thereafter. Section 11(2) envisages “giving the party an opportunity of making his representation”. This means that the appellant is entitled to be heard in person. In this case, the



W.P(MD)Nos.9443 & 9444 of 2024

successful tenderer has also been impleaded as a party in the appeal. The parties can appear in person or through VC mode. The contentions of both the parties are left open. The interim order passed by this Court will hold good till the appellate authority disposes of the appeal filed by the petitioner herein.

12.These writ petitions are disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

23.04.2024

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

Note: Issue order copy on 25.04.2024.

To

- 1.The Superintending Engineer, Highways Department,
Construction and Maintenance, Madurai.
- 2.The Divisional Engineer, Highways Department,
Construction and Maintenance, Dindigul.
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G.R.SWAMINATHAN,J.

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