



W.P.(MD)Nos.17226 to 17228 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2023

PRONOUNCED ON : 24.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.17226 to 17228 of 2021

and

W.M.P.(MD)Nos.14092, 14093 and 14095 of 2021

W.P.(MD)No.17226 of 2021:

R.Dhakshinamurthy

... Writ Petitioner

/Vs./

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Secretariate, Chennai – 600 009.
- 2.The Dean,
Government Rajaji Hospital,
Madurai – 625 020.
3. The Director of Vigilance and Anti-Corruption,
Office of the Director of Vigilance and
Anti-Corruption,
Chennai

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance a ***Writ of Mandamus***, to direct the respondents 1 and 2 to call for Tender in respect of disposal the condemned articles by following the procedures



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contemplated in the guidelines for condemnation by notifying the name of the condemned articles and in accordance with Tamil Nadu Transparency in Tenders Act, 1998 and Rules, 2000 and consequently, to direct the 3rd respondent to conduct a detailed enquiry in respect of Tenders awarded for disposal of the condemned articles in Madurai Medical College and Rajaji Hospital, Madurai for the last three financial years and to take necessary action if any commission or omission is there.

W.P.(MD)No.17227 of 2021:

M.Manickam

... Writ Petitioner

/Vs./

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Secretariate, Chennai – 600 009.
- 2.The Dean,
Government Rajaji Hospital,
Madurai – 625 020.
3. The Director of Vigilance and Anti-Corruption,
Office of the Director of Vigilance and
Anti-Corruption,
Chennai

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance a ***Writ of Mandamus***, to direct the respondents 1 and 2 to call for Tender in respect of disposal the condemned articles by following the procedures contemplated in the guidelines for condemnation by notifying the name of the condemned articles and in accordance with Tamil Nadu Transparency in Tenders



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Act, 1998 and Rules, 2000 and consequently, to direct the 3rd respondent to conduct a detailed enquiry in respect of Tenders awarded for disposal of the condemned articles in Madurai Medical College and Rajaji Hospital, Madurai for the last three financial years and to take necessary action if any commission or omission is there.

W.P.(MD)No.17228 of 2021:

E.Thangarajan

... Writ Petitioner

/Vs./

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Secretariate, Chennai – 600 009.

2.The Dean,
Government Rajaji Hospital,
Madurai – 625 020.

3. The Director of Vigilance and Anti-Corruption,
Office of the Director of Vigilance and
Anti-Corruption,
Chennai

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance a ***Writ of Mandamus***, to direct the respondents 1 and 2 to call for Tender in respect of disposal the condemned articles by following the procedures contemplated in the guidelines for condemnation by notifying the name of the condemned articles and in accordance with Tamil Nadu Transparency in Tenders Act, 1998 and Rules, 2000 and consequently, to direct the 3rd respondent to conduct a detailed enquiry in respect of Tenders awarded for disposal of the



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condemned articles in Madurai Medical College and Rajaji Hospital, Madurai for the last three financial years and to take necessary action if any commission or omission is there.

In all cases:

For Petitioner : Mr.M.Saravana Kumar
For Respondents : Mr.B.Saravanan
Additional Government Pleader

COMMON ORDER

The present writ petitions are filed for Writ of Mandamus to direct the respondents 1 and 2 to conduct Tender by following procedure and guidelines in respect of disposal of the condemned articles by notifying the name of the condemned articles and in accordance with Tamil Nadu Transparency in Tenders Act, 1998 and Rules, 2000 and to conduct detailed enquiry in respect of Tenders awarded for disposal of the condemned articles in Madurai Medical College and Rajaji Hospital, Madurai for the last financial year and to take necessary action if any commission or omission is there.

2. The brief facts as stated in W.P.(MD)No.17226 of 2021 is that the petitioner in W.P.(MD)No.17226 of 2021 is an approved contractors of Tamil Nadu Printing and Stationery Department and Director of Medical Education and Medical Sciences in respect of buying the waste scraps. The petitioner is doing the



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said business for the past 30 years in the name and style of “Sri Manjamalai Traders”. The Health Department would dispose the condemned, unserviceable material, equipment and furniture in Government Hospitals, Medical Colleges, Teaching Hospitals etc., The Government and the Department had issued guidelines whereby the Committees ought to be formed to deal with the same. And the Committees comprised of Hospital Superintendent/Chief Medical Officer, Resident Medical Officer, Nursing Superintendent/Senior Most Nursing Staff and Technical Professionals concerned with machinery/ accessories, and Assistant Director/ Administrative Officer. The Committee is empowered to examine the various parameters and take decisions on items that cost up to Rs.5 Lakh of original cost of each item, while a decision in relation to those valued above Rs.5,00,000/- would be taken by respective Principals/ Superintendents / District Coordinator for Health Services. If committee is not constituted, the Head of the institution is permitted to inspect the articles and approve after obtaining an inspection report on the condition of the articles. The Committee should meet once in a year annually and complete condemnation of unused items. The Committee should follow Limited Tender System if the value is between Rs. 25,000/- and Rs.1,00,000/- while the Tamil Nadu Tender and Transparency Act and Rules would be followed if the revenue is over Rs. One Lakh. Public Auction



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would be conducted in cases where the expected revenue would be less than Rs. 25,000/- and the upset price for disposal of condemned items would be fixed by the officials concerned. The 2nd respondent issued Tender Notification dated 14.07.2021 in Ref.No.6441/S1/2021 and invited Sealed Tenders for the disposal of the condemned articles in Madurai Medical College, Madurai. Further, stated that the tender forms will be issued from 14.07.2021 to 27.07.2021 and the last date for submitting the tender application was fixed on 28.07.2021. The sealed tenders would be received up to 12.00 Noon on 28.07.2021 and the Tenders will be opened at 3.00 P.M. on 28.07.2021. The petitioner submitted the tender application in-time.

3. However, in the present case along with the Tender Notification the 2nd respondent ought to have published the list of condemn articles as item wise, but the 2nd respondent failed to do so and had never published the list of condemned articles for the past so many years, but the said procedures were followed by the other Government Hospitals and Medical Colleges unanimously in the State. The petitioner's specific allegation is that the 2nd respondent sanctioned the "Contemned Articles Tender" in favour a particular individual for the past so many years in the name of different enterprises and thereby caused loss in lakhs to



the government. Hence, prayed to direct the 3rd respondent to conduct detailed enquiry. Further contention of the petitioner is that as per the tender schedule, the Tender inviting authority ought to have opened the Bid on the day mentioned in the Tender Notification. But the 2nd Respondent and his subordinates refused to open the Tender as per schedule for the reasons best known to them. The petitioner and other Tenderers had waited up to 6.00 P.M. on 28.07.2021 and the 2^a Respondent subordinates orally replied that the Tender Proceedings will be cancelled and further date will be intimated to the Tenderers and the said action are highly unwarranted, arbitrary, unconstitutional and contrary to the Tamil Nadu Transparency in Tenders Act, 1998. In the meanwhile, the 2nd respondent through letter dated 06.08.2021 has stated that the Tender was cancelled returned and the EMD amount would be returned. But the said letter was booked by the 2nd respondent's office on 11.08.2021 and the same was communicated to the petitioner on the next day. Based on the letter the petitioner and others tenderers had approached the 2nd respondent office in-person and enquired about the return of EMD amount. To the shock and surprise of the petitioner, the 2nd respondent's subordinates replied that the Tender was sanctioned to an individual and therefore the EMD amount was returned.



4. The contention of the petitioner is that even without calling for fresh tender the 2nd respondent had awarded the contract for lesser amount to a particular individual without following the Act and Rules and in a suspicious manner by getting illegal bribe from the person who was awarded with the contract and thereby caused loss for more than Rs.25 Lakhs/- to the government. Further the 2nd respondent subordinates openly stated that the particular individual had assured 25 % as commission, hence the tender was sanctioned for the past several years to him in the name of different enterprises. The petitioner had submitted representation dated 25.08.2021 alleging bribery and hence the same should be investigated by the 3rd respondent to initiate criminal action against erring officials. Hence the present writ petition is filed.

5. The 2nd respondent Dean had filed counter wherein it is stated that a “Condemnation Committee” is formed to condemn the unused articles, lab apparatus, Machine, instruments, damaged plastic materials, unused damages glassware and unused wooden furniture of Madurai Medical College as per the government norms. The Committee members are as follows:

- a. Chairman- Dean, Madurai Medical College, Madurai.
- b. Member- Vice Principal, Madurai Medical College, Madurai.
- c. Member- Professor and Head of the department of Community



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d. Member- Bio Medical Engineer, Madurai Medical College, Madurai.

e. Member- Junior Administrative Officer, Madurai Medical College, Madurai.

The said Committee would inspect the articles and display the same in separate place for auction. However, due to Medical Council of India inspection and Corona Pandemic situations the unused articles ought to be disposed of immediately. Hence the Condemnation Committee sought market rate quote from the Statistics Department in respect of old iron, plastics, wooden, glass wares and other articles and the same were provided by the statistics department. Thereafter the condemnation committee decided to conduct the auction by kilogram per article and called for tender application from 14.07.2021 to 23.07.2021 from the eligible contractors directing to submit applications along with the following documents:

- i. EMD Amount of Rs.5000
- ii. Undertaking Affidavit.
- iii. 2020-2021 Income Tax Clearance Certificate
- iv. Sales Tax Clearance Certificate
- v. Solvency Certificate
- vi. Nationality Certificate
- vii. GST Number and Certificate.



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On receipt of the filled tender applications on 28.07.2021 at about 3 pm, the tender applications were opened before the tender applicants. The respondents had issued 8 tender applications but only 4 filed applications were received and quoted for the articles by lot size and not by the Kilogram per articles and the rate quoted for the lot size is very low when compared to the kilogram per articles. If lot size rate is accepted then the same would incur loss to the government. Further all the applicants are not eligible as per the condition imposed in the tender notification and also all the applicants have not fulfilled the conditions imposed in the tender notification. Hence, the Condemnation Committee decided to cancel the auction and intimated to the contractors, but the Contractors opposed, particularly the writ petitioners opposed and demanded to declare them as successful bidder. However, the condemnation committee finally cancelled the tender and decided to conduct retender based on Kilogram per articles basis. Hence, the tender already called for was cancelled and EMD amount collected from contractors were returned and a fresh tender was called for 09.08.2021 of which 4 tender applications were received and they have quoted rate by Kilograms per article but only one applicant alone fulfilled the condition imposed in the tender notification. The tender applications were opened before the contractors



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and a comparative statement was prepared and the Committee was satisfied with the rate quoted by the contractors who participated in the second tender. As per the rules the highest quote was selected as successful bidder and order was issued. Due to the revised tender, the rate quoted was higher than the earlier and there is no revenue loss to the government. The Condemnation Committee has not committed any wrong as alleged, the cancellation of earlier tender is as per law and there is no violation of law and there is no illegality in the tender auction. The petitioner with malafide intention had filed this writ petition to threaten the officials and to get the tender in the minimum price and has not come with clean hands before this Hon'ble Court and hence prayed to dismiss the writ petition.

6. Heard Mr.M.Saravana Kumar, the Learned Counsel appearing for the petitioner in all cases and Mr.B.Saravanan, the Learned Additional Government Pleader appearing for the respondents in all cases and perused the records.

7. The Learned Counsel appearing for the petitioner submitted that the respondents had not conducted the tender in transparent manner, since the respondents failed to publish the list of articles available for condemnation and relied on the tender notifications issued by other hospitals / colleges namely



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Tuticorin Medical College Hospital dated 18.07.2017, Tanjore Medical College 01.11.2017, Tambaram Sanitorium Hospital 02.02.2018, Salem Medical College Hospital 18.07.2018 and Rajiv Gandhi Hospital, Chennai 19.07.2018. However, the respondents submitted that the present tender was issued during Covid Pandemic and the Tender was conducted as per Covid restrictions. It is seen that the petitioner had relied on the tender notifications issued during 2017-2018, but the present tender notification is dated 14.07.2021 and hence the contention of the respondents that the present notification was issued during Covid Pandemic is acceptable. But the same cannot be shown as a reason for issuing a notification without list of articles for condemnation. The respondents are not having any power to conduct tender without list of articles for condemnation. Therefore, this Court is of the considered opinion that the said impugned notification is violative of the guidelines issued to conduct the tender notification.

8. The Learned Additional Government Pleader appearing for the respondents tried to convince this Court by stating that the list of articles was given and produced a proceeding dated 19.08.2021. On perusing the said proceeding it is seen that the list of articles is given to the successful bidder and



not along with the Tender Notification or Tender Form. Hence the respondents are incorrect in submitting that the list of articles are given to the petitioner.

9. This Court directed the respondents to produce the file and the same was produced. On perusal of the file, it is seen that the tender was issued, wherein it is stated that *“Since no Printed Form is available, Typed Tender Form along with its annexure is sold to the...”*. From this, it is evident that there is no printed form and this is the first violation.

10. The ‘Tender Form’ contains five pages and the “Annexure” is attached in 5th page. It is in the annexure the respondents have stated the name of the articles and the articles would be weighted in kilograms. But in some of the forms issued to the participants, it is seen the respondents had not mentioned the articles would be weighted in kilograms. This is another violation.

11. On further perusing the forms it is seen two types of forms are submitted. One for the following articles:

- i. For Equipment and Machinery
- ii. Instruments

Another one is for the following articles:



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- i. Condemned Surgical Items
- ii. Condemned Steel Furniture
- iii. Condemned Wooden Furniture
- iv. Brass
- v. Aluminum
- vi. Stainless Steel
- vii. Miscellaneous Scrap
- viii. Electrical Scrap
- ix. Unused Tube Light
- x. Waste Materials
- xi. Water Paper
- xii. Empty Plastic canes and other plastic material
- xiii. Empty Card Board Boxes
- xiv. Empty Milk Pouches
- xv. Condemned Lien
- xvi. Empty Oil Tins
- xvii. Empty Gunny Bags
- xviii. Gunny Pieces
- xiv. Empty 200 Liter Barrels
- xx. Empty Wooden Boxes

Strangely, the said forms were not issued to the petitioners herein but the same is issued to the other persons. The respondents had stated that the printed form is not available, hence typed form is issued, but the said typed form were issued to some



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persons along with list of articles and were not issued to other persons along with list of articles and the same is violation of conditions and transparency of tender.

12. The next contention of the petitioner is that there are over writing in the list of participants, which would indicate that the respondents included the last minute participants. Further the last-minute participants were not possessing the relevant documents, which are condition precedent to participate in the tender process. On perusing the document, it is seen that two entries are over writing, which would lead to suspicion.

13. Based on the above discussions, the Court is of the considered opinion that the respondents had failed to conduct the Tender in Transparent manner and hence, the same is liable to be set aside. However, the tender was conducted in the year 2021, due to efflux of time, the same tender cannot be cancelled. At the same the petitioners cannot be left without any relief. Therefore, the respondents are directed to pay cost of Rs.3000/- to the petitioners in all cases and the same is only a token to the mental agony that the petitioners had suffered.



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14. For the reasons stated above, the writ petitions are disposed of as stated supra with cost of Rs.3,000/- payable to each petitioner in the writ petitions by the respondents. Consequently, connected Writ Miscellaneous Petitions are closed.

24.07.2024

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

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To

- 1.The Principal Secretary,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariate, Chennai – 600 009.
- 2.The Dean,
Government Rajaji Hospital,
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3. The Director of Vigilance and Anti-Corruption,
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