



W.P.(MD) No.13849 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.13849 of 2018

N.Kannan,
Proprietor,
Sri Saraswathi Engineering Work,
2/214, Dindigul Road, Batlagundu - 624 202,
Dindigul District.

... Petitioner

Vs.

1.The Secretary to Government,
Public Works Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Superintending Engineer,
Public Works Department,
Water Resource Development,
Periyar Vaigai Basin Circle,
Madurai.

3.P.Danapalan,
The Superintending Engineer,
Public Works Department,
Water Resource Development,
Periyar Vaigai Basin Circle,
Madurai.

... Respondents



W.P.(MD) No.13849 of 2018

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus, directing the first respondent herein to consider and dispose of the representation of the petitioner, dated 22.06.2018, for taking departmental action against the second respondent and for compensation of Rs.25,00,000/- from the second respondent for doing willful wrong to the petitioner within a reasonable time.

For Petitioner : Mr.P.Krishnasamy

For R1 & R2 : Mr.A.Sivanu Pandian
Government Advocate

For R3 : Mr.G.Rajendran

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the first respondent herein to consider and dispose of the representation of the petitioner, dated 22.06.2018, for taking departmental action against the second respondent and for compensation of Rs.25,00,000/- from the second respondent for doing willful wrong to the petitioner, within a time frame.

2. The contesting respondents 1 and 2 have not filed their counter affidavit.



W.P.(MD) No.13849 of 2018

3. This Writ Petition is predicated on the ground that the petitioner's bid has been rejected by the third respondent, who was the then Superintending Engineer.

4. The learned counsel for the petitioner would submit that the petitioner had earlier approached this Court in W.P.(MD)No.14386 of 2016, on the ground that no wide publicity or publication of the tender document was made in any prominent newspaper or magazine in Tamill Nadu prior to 08.07.2016 or thereafter and that the tender document for bid were sold only between 08.07.2016 and 08.08.2016 and the last date for issuance of bid document was 08.08.2016 and the last date for submitting the bid was 09.08.2016 till 12.00 hours and the date for opening the bid was 09.08.2016 at 12.30 hours.

5. It is submitted that since the Office of the second respondent had refused to receive his bid document, the petitioner was constrained to file the above Writ Petition in W.P.(MD)No.14386 of 2016 for a Mandamus, for a direction to the second respondent to allow the petitioner to participate in the bid scheduled on 09.08.2016. It is submitted that the petitioner also secured an order from this Court on 09.08.2016, which



W.P.(MD) No.13849 of 2018

directed the respondents to receive the petitioner's bid and to keep it in a sealed/closed cover and the bid was not to be opened until further orders of this Court. Since the petitioner participated in the proceedings on 09.08.2016, the Writ Petition was thereafter dismissed as infructuous with liberty to the petitioner to file a fresh petition in case, he is aggrieved by the finalization of the tender.

6. It is the specific case of the petitioner that the petitioner's offer was the lowest. Despite the same, the third respondent as the Superintending Engineer of the Public Works Department, failed to consider the petitioner's bid and instead, awarded contract for Rehabilitation and Improvement of Vagai Dam of Andipatti Taluk of Theni District under Drip - Renewal and Replacement of River Sluice Shutter Nos.3, 6 & 7 and repairs to spillway gate and hoisting arrangement of spillway gate Nos.1 to 7 at Vaigai Dam in Theni District, under DRIP to other bidder, even though their bid was not lower to the petitioner's bid/offer. Hence, the petitioner has prayed for the above relief.



W.P.(MD) No.13849 of 2018

7. That apart, it is submitted that the petitioner has also filed W.P. (MD) No.12938 of 2017, wherein the petitioner has challenged the tender process, which is still pending. It is submitted that awarding of the contract by the third respondent to a third party whose bid was higher than the petitioner by holding that the petitioner did not satisfy the requirement Clause 16.3 of the bid document insofar as production of security deposit, is illegal.

8. It is submitted that the petitioner has a certificate as a Small Scale Industry and therefore, in terms of G.O.(Ms)No.390, Finance (BPE) Department, dated 27.09.2013 the petitioner is not required to furnish the bid security. It is further submitted that the petitioner has given a representation on 22.06.2018 to the first respondent stating that the third respondent has abused his official power in favour of a person to whom the bid was awarded for extraneous consideration and caused not only loss of revenue to the Government but also deprived the opportunity to eligible person like the petitioner, who was entitled to the contract.

9. The third respondent in the counter affidavit has stated that the third respondent has retired from service on 30.06.2018 after attaining the



W.P.(MD) No.13849 of 2018

age of superannuation. It is further submitted that pursuant to the orders of this Court dated 09.08.2016, in W.P.(MD)No.14386 of 2016, the bid of the petitioner was received and since the petitioner was allowed to participate in the bid, the Writ Petition was dismissed on 02.06.2017 and based on the opinion of the Additional Government Pleader of this Court, the bid was opened and the contract was awarded and the petitioner's bid was rejected as "non-responsive bid" for failure to provide security deposit as is contemplated in Clause 16.3 of the bid document.

10. The third respondent further submitted that the third respondent has not abused his position and the allegations in this Writ Petition contains lies. It is further submitted that the petitioner attended the bid opening in person on 08.05.2017 along with other bidders and he was duly informed about his non-submission of the bid security and he has also signed in the bid opening record to that effect and that the petitioner has not raised any objections or complaints in this matter at that time.

11. That apart, it is submitted by the third respondent that the petitioner has submitted only one copy marked as original and that too in an incomplete manner in violation of Clause 19.1 of the bid documents.



W.P.(MD) No.13849 of 2018

That apart, it is submitted that the petitioner has violated Clauses 16.1, 16.2 and 16.3 of the bid document. It is further submitted that the petitioner has also failed to satisfy the following qualifying criteria, which are to be submitted by a bidder according to Clause 4.5 of the bid document:-

- "a. Achieved in at least 2 Financial year, a minimum Annual Financial Turnover of Rs.162.00 lakhs at 2016-2017 price level.*
- b. Satisfactorily completed as a prime contractor at least one similar work of value not less than that of Rs.64.80 lakhs @ 2016-2017 price level.*
- c Executed in any one year the following minimum quantities.*
 - i. Renewal and repairs to spillway regulator shutters and hoist - 535 sq.m.*
 - ii. Grit plastering and painting -1600 sq.ft*
 - iii. Availability of key and critical equipment.*
 - iv. Credit facilities not less than Rs.40-05 lakhs."*

12. It is also submitted that the above information was also furnished to the petitioner by the Office of the second respondent on 07.06.2017, vide letter No.DO1/F208(A)/2017. It is therefore, submitted that the Writ Petition is liable to be dismissed.



W.P.(MD) No.13849 of 2018

WEB COPY 13. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 2 and the learned counsel for the third respondent. I have also perused the counter affidavit filed by the third respondent.

14. The submissions of the petitioner that the rejection of the petitioner's bid by the third respondent, who was the then Superintending Engineer of the Public Works Department was on account of extraneous consideration. The action of the third respondent *prima facie* appears to have ignored the bid of the petitioner for wrong reasons. The petitioner was registered as the Small Scale Industry Unit and was not required to submit the bid security. Fact remains that the third respondent has also retired from service on 30.06.2018. Therefore, no further departmental proceedings can be initiated against him at this distant point of time.

15. Considering the fact that the petitioner has made out a *prima facie* case of irregularity by the third respondent, I direct the first respondent to depute a Senior Officer from the Public Works Department to cause an enquiry by calling for the records and give a report to the first



W.P.(MD) No.13849 of 2018

respondent and communicate the same to the petitioner. In case, any irregularity is noticed in awarding of the contract to a third party in the tender process by the third respondent, the petitioner may be allowed to work out his remedy based on the above said report in accordance with law. It is expected that the report will be generated within a period of six months from the date of receipt of a copy of this order and duly communicated to the petitioner.

16. This Writ Petition stands disposed of with the above observations and directions. No costs.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

05.04.2024

To

1.The Secretary to Government,
Public Works Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Superintending Engineer,
Public Works Department,
Water Resource Development,
Periyar Vaigai Basin Circle,
Madurai.



WEB COPY



W.P.(MD) No.13849 of 2018

C.SARAVANAN, J.

smn2

W.P.(MD) No.13849 of 2018

05.04.2024