



W.P.(MD)No.31256 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.31256 of 2023

and

W.M.P.(MD)Nos.26774, 26775 and 26777 of 2023

and W.M.P.(MD)No.798 of 2024

M/s.Bhavadharani Builders
Rep. by its Managing Partner,
Palani Kumar
S/o.Nedumaran
No.64, Ground Floor,
Pasupathi Street, Jeeva Main Road,
Sellur,
Madurai.

... Petitioner

versus

1. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
Nungambakkam,
Chennai.
2. The Joint Commissioner/Executive Officer,
Arulmigu Thandayuthapani Swamy Temple,
Palani,
Dindigul District.



W.P.(MD)No.31256 of 2023

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3. The Executive Engineer,
Arulmigu Thandayuthapani Swamy Temple,
Palani,
Dindigul District.

4. M/s.VSPN Construction,
No.3/64, Papanpalayam Post,
Kaveri R.S.
Kumarapalayam Taluk,
Namakkal District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned tender rejection order passed by the 2nd respondent in ID.2023_HRCE_388015_1 dated 20.12.2023 and quash the same and further direct the 2nd respondent to declare the petitioner as successful bidder in respect of the tender work pursuance to the tender notice in No.6/2023-24 dated 26.10.2023.

For Petitioner : M/s.R.Maheswari

For R1 and R3 : Mr.R.Baskaran,
Additional Advocate General
assisted by Mr.P.Subba Raj,
Special Government Pleader

For R2 : Mr.Veera Kathiravan,
Additional Advocate General
assisted by Mr.Bharanidharan



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W.P.(MD)No.31256 of 2023

ORDER

The petitioner is a registered Partnership Firm recognized as a “A” class contractor for civil works with the Government of Tamilnadu. The petitioner has filed this writ petition as against the proceedings of the second respondent dated 20.12.2023 and for a consequential direction to declare him as successful bidder in respect of the tender work pursuant to the tender notice in No. 6/2023-2024 dated 26.10.2023.

2. The case of the petitioner is that in the month of August 2023, the second respondent invited e-tender for the construction of a Marriage Hall at Arulmigu Vageeswarar Temple, Keeranoor. As per the Tender Notification, one of the conditions is that the contractor has to enclose a Site Visit Certificate obtained from 3rd respondent after visiting the site. The petitioner, after visiting the site, obtained a Site Visit Certificate and submitted his tender application along with the



W.P.(MD)No.31256 of 2023

Site Visit Certificate. However, the tender was cancelled and thereafter, on 26.10.2023, re-tender Notification was issued with the very same conditions. As per this Notification, the last date for submission of tender is 12.12.2023 upto 3.00 p.m. and the tender would be open by 4.00 p.m. Though the petitioner has already obtained a Site Visit Certificate for the said site, he again visited the said site and requested for a fresh Site Visit Certificate, but, the same was not issued. Therefore, the petitioner has sent a representation to the second respondent through a registered post on 06.12.2023 and the second respondent received the same on 07.12.2023. However, the Site Visit Certificate was not issued. Therefore, the petitioner again approached the second respondent and sent another representation on 11.12.2023.

3. On 12.12.2023, the petitioner has received a reply around at 12.03 p.m. that the Site Visit Certificate would be issued, if they come to the office in-person. At that time, the petitioner's Engineer was in



W.P.(MD)No.31256 of 2023

the site and he took photographs along with google map location and sent it to the office of the respondents 2 and 3 through e-mail. Even then, the petitioner was not issued with the Site Visit Certificate. Therefore, the petitioner, having no other option, has submitted the tender application by quoting Rs.3,60,20,108/- along with the Site Visit Certificate, which he has obtained previously from the 3rd respondent. The tender was opened on 12.12.2023 at about 4.52 p.m. and the petitioner was also declared as “L1”. However, on 20.12.2023, the petitioner's bid was rejected on the ground of non-enclosing of the Site Visit Certificate and the 4th respondent has been declared as “L1”, who has quoted Rs.3,83,46,566/-. Therefore, the petitioner has filed this writ petition.

4. The learned counsel appearing for the petitioner submits that the very same tender was floated in the month of August 2023. At that time, the petitioner had visited the site and he was also issued with a Site Visit Certificate. However, for the reasons best known, the tender



W.P.(MD)No.31256 of 2023

was cancelled and re-tender Notification was issued on 26.10.2023.

But, this time, the petitioner was deliberately evaded from issuing with the Site Visit Certificate in order to reject his tender application. The petitioner has taken his best efforts to obtain the Site Visit Certificate, by submitting a representation through registered post and also submitting representation through e-mail along with the photographs with google map, even then, he was not issued with the Site Visit Certificate. This according to the learned counsel for the petitioner is to eliminate the petitioner intentionally on the ground of non-enclosing of the Site Visit Certificate. The very same site is the subject matter in the tender notification. The petitioner was already issued with the Site Visit Certificate and he has enclosed the previous Site Visit Certificate, however, his tender application has been rejected on the ground of non-enclosing of the Site Visit Certificate. He further submits that the petitioner has quoted Rs.23,00,000/- less than the amount quoted by the 4th respondent and the 4th respondent has also not enclosed the Site Visit Certificate, however, he has been declared as “L1”.



W.P.(MD)No.31256 of 2023

5. The learned Additional Advocate General appearing for the second respondent submits that the petitioner's Tender was rejected on the ground that he has not fulfilled one of the conditions of enclosing the Site Visit Certificate. According to the petitioner, he was not issued with the Site Visit Certificate by the 3rd respondent. This is a factual issue to be proved by the petitioner with appropriate evidence that he and his staff members had approached the office of the 3rd respondent for Site Visit Certificate, but, the same has been refused by the 3rd respondent. Therefore, this Court, while exercising jurisdiction under Article 226 of the Constitution of India, cannot look into the disputed question of fact.

6. The learned Additional Advocate General further submits that as against the impugned proceedings dated 20.12.2023, a remedy is available to the petitioner under Section 11(1) of the Tamil Nadu Transparency in Tenders Act, 1998 (in short 'the Act') and as per Section 11(4) of the Act, the Government has the power to grant



W.P.(MD)No.31256 of 2023

interim order.

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7. The learned Additional Advocate General further submits that the tender conditions were annexed along with the tender notification, wherein, apart from the usual conditions, a special condition was introduced, according to which, the tender participant had to physically visit the site and to obtain a Site Visit Certificate from the concerned Executive Engineer and the Site Visit Certificate was to be uploaded and annexed along with the tender application. After issuing the first tender Notification dated 20.07.2023, the petitioner has made site inspection on 29.08.2023 and he was issued with the Site Visit Certificate and he also submitted the same along with the tender application. However, on the day before the opening of the tender, i.e. on 31.08.2023, the Chief Engineer, HR&CE Department, has instructed the second respondent that the tender schedule was issued on 20.07.2023 with the estimate prepared in the year 2022, which was issued with administrative and technical sanction in March 2023, but,

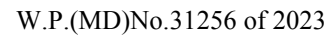


W.P.(MD)No.31256 of 2023

the e-tender was called for on 20.07.2023, which fell in the next financial year and therefore, a fresh estimate for the current financial year was to be obtained. In these circumstances, the second respondent has to cancel the tender scheduled on 01.09.2023. Accordingly, a fresh technical sanction was obtained from the Chief Engineer of HR&CE Department on 21.10.2023 and the e-tender Notification was issued on 25.10.2023 announcing the last date for receipt and opening of the tender on 12.12.2023. However, the petitioner, without approaching the 3rd respondent, has directly sent e-mail to the 3rd respondent on 06.12.2023 requesting him to issue a Site Inspection Certificate. The contents of the e-mail are as follows:

“I will decide to participate in the above tender. In the situation your condition asked the site visit certificate. So I have already visit with your staff dated on 28.8.2023. In the situation repeatedly, I will saw the site and also enclosed photos and aadhar card.

So kindly please issue the site visit certificate as early as possible.”



8. The learned Additional Advocate General, by referring the

9. The learned Additional Advocate General further submits that



W.P.(MD)No.31256 of 2023

seeking for another certificate for the present tender. The procedure is to visit the site along with the 3rd respondent and thereafter, seek for the site visit certificate. The petitioner ought not to have uploaded the tender application without the Site Visit Certificate as required to be issued after 27.10.2023. Even if such certificate was not being issued till 12.12.2023, the petitioner has other remedies. The petitioner, after having uploaded the tender form, which unacceptable documents and keeping quiet till 20.12.2023 when their tender was rejected, has not come forward to challenge the order of rejection of tender by alleging that the 3rd respondent did not issue the Site Visit Certificate.

10. This Court considered the rival submissions made and also perused the materials placed on record.

11. The second respondent has invited tender applications to construct a Kalyana Mandapam for Arulmighu Vageeswarar Temple, Keeranoor, which is the sub-temple of Arulmighu Thandayuthapani



W.P.(MD)No.31256 of 2023

Swamy Temple, Palani, at a cost of Rs.3.80 Crore. Originally, the tender was notified in the month of August 2023 with a condition that the participant had to physically visit the site and had to obtain a Site Visit Certificate from the concerned Executive Engineer and the tender documents have to be uploaded along with the Site Visit Certificate. The petitioner has visited the site on 29.08.2023 and obtained the Site Visit Certificate and also submitted his tender application along with the Site Visit Certificate. However, the tender was not opened as scheduled on 31.08.2023 and re-tender was invited on 21.10.2023.

12. The 2nd respondent claims that on the last date of the previous tender on 31.08.2023, the Chief Engineer of HR&CE Department, has instructed them that the tender scheduled on 20.07.2023 was issued with the estimate prepared in the year 2022 and therefore, the tender was cancelled and a fresh tender was invited after preparing the estimate for the current financial year. This ground was taken by the 2nd respondent in his counter affidavit, however, without



W.P.(MD)No.31256 of 2023

giving any details as to the estimate arrived in the year 2022 and the present estimate for the current financial year, which shows the manner in which the tender was floated in a mechanical manner. In the re-tender also, the petitioner has made his best efforts to get the Site Visit Certificate from the respondent, however, this time, he was not issued with the Site Visit Certificate.

13. According to the petitioner, he has visited the site on 06.12.2023 and made a request to issue a Site Visit Certificate. Since the same was not issued, he has sent a representation through registered post on 06.12.2023 and the same was received by the 2nd respondent on 07.12.2023. The acknowledgement from the office of the second respondent office was received on 07.12.2023 is also enclosed in the typed set of papers. The petitioner has made a specific averment that his representation through registered post on 06.12.2023 was received by the 2nd respondent on 07.12.2023, for which, a reply was also made by the 2nd respondent in such a casual manner that they have received



W.P.(MD)No.31256 of 2023

the representation dated 06.12.2023 only on 08.12.2023 and since the next days, i.e. 09.12.2023 and 10.12.2023, happened to be Saturday and Sunday, they have considered the same on 11.12.2023 and sent a communication through e-mail on 12.12.2023 requesting him to visit the site and to get the certificate. It is not the case of the respondent that the petitioner has made any representation through registered post. However, the 2nd respondent is justifying that the representation dated 06.12.2023 was received by them only on 08.12.2023 and they have considered it on 12.12.2023. The acknowledgement disclosed that it was received by the 2nd respondent on 07.12.2023 itself. Even thereafter, a stand has been taken that it was received on 08.12.2023. This stand taken by the 2nd respondent itself would disclose the manner in which the tender was floated to eliminate the petitioner from the tender process. The fact remains that the petitioner has quoted Rs.3,60,20,108/-, whereas, the 4th respondent has quoted Rs.3,83,00,000/- and there is a difference of Rs.23 lakhs, between the amount quoted by the petitioner and the 4th respondent. However, the



W.P.(MD)No.31256 of 2023

petitioner's bid was rejected that his bid was not enclosed with the Site

WEB COM Visit Certificate.

14. The Site Visit Certificate is a new concept introduced by the Department as one of the conditions of the tender. These conditions are invented to eliminate certain contractors by not issuing the certificate. Wherever the public money is involved, there are attempts to exploit the same. Previously, the tender documents were issued selectively. Therefore, the Tamil Nadu Transparency in Tenders Act and Rules were enacted. The Government of Tamil Nadu, realizing the mischief played by some officials in deciding the tender works, has brought-in an legislature, Tamil Nadu Transparency in Tenders Act and Rules. Even thereafter, the allegations of mala fides, arbitrariness, irrationality has not reduced and it is in fact increasing day by day. This Court, day-in and day-out, is witnessing several writ petitions in this regard. In view of the decisions of the Hon'ble Supreme Court, this Court is also refraining from interfering with these commercial contract



matters. However, it has to be borne in mind that public money is involved in all these contracts. There must be some fairness and accountability in the awarding of contracts and also in the execution of the work.

15. Further, the Hon'ble Supreme Court in ***A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Ors.***, reported in (2007) 7 SCC 482, has held that it is the duty of Courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation. The relevant portion is extracted as under:

“10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/Sebais/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such



W.P.(MD)No.31256 of 2023

acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.”

16. Since the deity is a minor, this Court is having a role to protect the property of the deity on parens patria jurisdiction. The Doctrine of parens patria jurisdiction evolve from Charanlal Sahu's case.

17. Following the ratio laid down by the Hon'ble Supreme Court in *A.A.Gopalan's* case, this Court in WP.20237/2021, dated 22.09.2021, has held as follows:

“d) The temple lands vest in the idol, idol being of minor status in law, this Court is guardian. In other words, this Court is parens patriae and this principle was reiterated by Hon-ble Supreme Court in



A.A.Gopalakrishnan case [A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Ors., reported in (2007) 7 SCC 482] wherein Hon-ble Supreme Court held that it is the duty of the Courts to protect and safeguard the properties of religious and charitable institutions. Therefore, in my parens patriae capacity i.e., parens patriae capacity of this Court and custodia legis qua temple properties that vest in idol in minor status, I deem it appropriate to say that the prayer which on first blush came across as innocuous, cannot be acceded to."

18. In this case, the 2nd respondent has deliberately chosen the 4th respondent, who has quoted Rs.23 lakhs above the amount quoted by the petitioner and thereby, causing loss to the minor deity to the tune of Rs.23 lakhs. Further, the 2nd respondent rejected the petitioner's bid on the ground of non-enclosing of the Site Visit Certificate. It appears that the petitioner has obtained the Site Visit Certificate in the month of August 2023. The 2nd respondent is going to construct a Kalyana Mandapam only on the same site. This may not change the character in the site between August 2023 and December 2023. Even for the



W.P.(MD)No.31256 of 2023

second time, the petitioner has sought for a Site Visit Certificate and he sent a representation through registered post on 06.12.2023 and the same was received by the 2nd respondent on 07.12.2023, however, it has been considered and sent a communication to the petitioner only on 12.12.2023 and that too just two hours prior to the last date and time for submitting the tender.

19. This petitioner is also having documents to show that he has taken photographs of the site along with Google map location. It is a basic thing that no prudent man will avoid visiting the site when he is participating in the tender for Rs.3.8 crore. However, the respondent, by not issuing the Site Visit Certificate, deliberately is causing loss to the minor deity, which cannot be permitted by this Court as per the directions of the Hon'ble Supreme Court in *A.A.Gopalan's* case.

20. Accordingly, this writ petition is allowed and the impugned order dated 20.12.2023 passed by the 2nd respondent is hereby set



W.P.(MD)No.31256 of 2023

aside. The respondents are directed to conduct a fresh tender in a fair and proper manner by taking into consideration of the interest of the minor deity. No costs. Consequently, connected miscellaneous petitions are closed.

08.03.2024

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

1. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
Nungambakkam,
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2. The Joint Commissioner/Executive Officer,
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W.P.(MD)No.31256 of 2023

B.PUGALENDHI, J.

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W.P.(MD)No.31256 of 2023

08.03.2024