



W.A.(MD)No.1953 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.08.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.1953 of 2025
and
C.M.P.(MD)No.11189 of 2025**

Jeba Jose

... Appellant

Vs.

1.The Director of Town Panchayats,
8th Floor, Urban Administration Campus,
Raja Annamalaipuram,
Chennai.

2.The Executive Officer,
Kumarapuram Town Panchayat,
Kanyakumari District.

... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.16317 of 2025 dated 16.06.2025 on the file of this Court.



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For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.N.Satheeshkumar,
Addl. Government Pleader.

JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The appellant herein filed W.P.(MD)No.16317 of 2025 challenging the tender notification issued by the second respondent. He specifically assailed clause 4.3 of the tender notification. The learned Single Judge vide order dated 16.06.2025 disposed of the writ petition in the following terms:-

14. The petitioner has approached this Court at the last minute, i.e., one day before the last date for making bid and for opening of the tender. As such, this Writ Petition is devoid of merits and therefore, liable to be dismissed. However, considering the fact that the petitioner wants to participate in the tender, there shall be a direction to the respondents not to open the bid till 19.06.2025.



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15. *The petitioner is directed to furnish the certificate from the Executive Engineer of Tirunelveli Zone as is contemplated in Clause 4.3 of the tender document. The petitioner shall make a bid tomorrow i.e. 17.06.2025, which shall be received by the respondents and the certificate shall be produced by 18.06.2025 at 12.00 p.m.*

16. *The learned Special Government Pleader for the respondents is directed to instruct the Executive Engineer of Tirunelveli Zone to issue necessary certificate as is required under the tender document.*

17. *It is made clear that this Court cannot step into the shoes of the parties to alter the conditions that is stipulated in the tender document. It is made clear that the petitioner's bid will be considered subject to the petitioner making the bid by tomorrow i.e., 17.06.2025 and subject to the petitioner submitting certificate from the Executive Engineer by day after tomorrow i.e., 18.06.2025 at 12.00 p.m. The respondents shall ensure that the petitioner is issued with necessary certificate. If the petitioner is able to produce all the documents that are required for issuance of certificate, the offer of the petitioner shall be considered."*

Aggrieved by the same, this writ appeal has been filed.



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3.Clause 4.3 of the tender notification reads as follows:-

“4.3.The bidder should submit a certificate from the Executive Engineer of Tirunelveli Zone / Townpanchayat's that all the tools and plants (Vehicles, Machineries and Bitumen mixing Plant i.e. Bitumen batch mixing Plant & Bitumen paver finisher, tipper lorry vehicle, Bitumen sprayer, Vibratory road roller, moving air compressor vehicle, water tanker vehicle) used for the work are in good working/operational condition/usable condition from the date of publication of the tender notice to the date of participation in the tender. Tenders without the above certificate will be considered technically ineligible. Therefore, the above certificate should be enclosed.”

4.Our attention is drawn to the order dated 22.09.2023 made in W.P.(MD)Nos.22102 and 22116 of 2023. A learned Single Judge of this Court vide order dated 22.09.2023 had observed as follows:-

“13.From the above, one of the conditions is that a Divisional Engineer has to give a certificate as to the working conditions of the machineries and along with that certificate, the tender document has to be submitted. In the event if the Divisional Engineer delays the issuance of certificate and chose to issue the certificate only in favour of few people, then the



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process of fair competition in the tender process itself would be defeated. The concept of inviting tender through public auction itself is to ensure more number of participants. This type of conditions would certainly defeat the object of public auction on these tenders.

14.Yet another condition is that the participants should own certain machineries. These machineries, which are required to be in the possession of the Contractor at the time of applying for the tender; can very well be hired at the time of execution of the work. It is the look out of the Contractor in executing the work. The justification of the Department in imposing this condition is that they want to ensure that the projects are completed within the stipulated time. This can be ensured by imposing certain penalties. The Contractors are participating in the tender with some Earnest Money Deposits. They are expected to deposit 10% of the amount at the time of award of contract. In the event, if there is any delay, the Department can fix some penalty against the Contractors, who are responsible for the delay and shall also recover the damages for the delay in execution of the works. But the sad state of affairs is that nobody is sticking-on to this condition and almost none of the Contractors is completing the work within the stipulated time.

15.By imposing these type of onerous conditions, the officials are eliminating the competitions and this would



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ultimately end with favoritism. Therefore, it is high time for the Department to ensure that reasonable conditions alone are imposed as tender conditions.”

5.We direct the first respondent to take note of the aforesaid direction and re-visit the advisability of incorporation of similar clauses in future tender notification.

6.The learned Additional Advocate General states that the writ petitioner / appellant is a class V contractor. The work in question can be executed only by class IV contractor. The writ petitioner / appellant lacks the *locus standi* to even maintain the challenge. Hence, this writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (K.R.S. J.)
04.08.2025

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