



W.P.(MD)No.21657 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.21657 of 2025

and

W.M.P.(MD)Nos.16766 and 16770 of 2025

S.Kalyanasundaram

... Petitioner

-VS-

1.The District Collector,
Collectorate,
Thanjavur, Thanjavur District.

2.The Assistant Director of Town Panchayats,
Collectorate,
Thanjavur, Thanjavur District.

3.The Executive Officer,
O/o.The Executive Officer,
Perumagalur Town Panchayat,
Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the third respondent vide his proceedings in Na.Ka.No.20/2025 dated 18.07.2025 and quash the same as illegal.



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For Petitioner : Mr.H.Mohamed Zamil
for M/s.Ajmal Associates

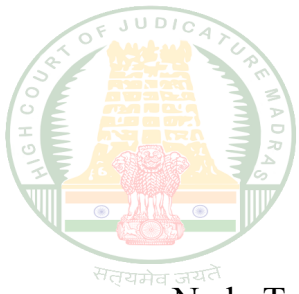
For Respondents : Mr.K.R.Badurus Zaman
Government Advocate

ORDER

Although the petitioner has approached this Court at the eleventh hour challenging the tender process pursuant to the Tender Notification dated 18.07.2025, bearing reference in Na.Ka.No.20/2025, wherein the date of auction is stated as "06.08.2025 [today] at 11:00 a.m.", this Writ Petition is admitted and disposed of after hearing the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

2. The specific case of the petitioner is that this is the third notification issued by the third respondent. It is submitted that an earlier notification was issued on 05.03.2025; however, the tender proceedings were not completed. Subsequently, a revised notice was issued on 04.04.2025, which also did not culminate in further proceedings.

3. It is further submitted that the impugned Tender Notification dated 18.07.2025 was issued without complying with the requirements under the Tamil



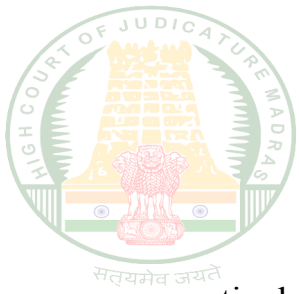
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Nadu Transparency in Tenders Act, 1998 [hereinafter referred to as "the Act"] and the provisions of the Tamil Nadu Transparency in Tenders Rules, 2000 [hereinafter referred to as "the Rules"].

4. The learned counsel for the petitioner contends that there was no wide publication of the impugned Tender Notification and that the petitioner became aware of the same only when it was circulated by one of the prospective contractors. In this connection, the averments made in the affidavit filed in support of the present Writ Petition read as under:-

*"3. I respectfully state that I am a resident of Perumagalur Village, Peravurani Taluk, Thanjavur District. The 3rd respondent vide his impugned proceedings in Na.Ka.No.20/2025 dated.18;07,2025 issued a reauction notice in and by which auction was scheduled to be held to various works. However, to the best of my knowledge, no paper publication was effected. It is a primary duty of the 3rd respondent to issue paper publication so as to put to entire public on notice. **However, the respondents simply circulated the order through some of the Registered Contractors without any paper publication.** The tender process therefore stands vitiated on the said score alone. The tender process also does not stipulate any specific period from which the successful bidder can proceed with the work."*

5. That apart, it is submitted that the Tender Notification is also vague, as it does not specify the markets for which the rights were being auctioned,



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particularly, with respect to the collection of toll charges and other related aspects.

6. In support of his submissions, the learned counsel for the petitioner relied on the judgment of this Court in **S.Selvarani vs. The Commissioner, Karaikudi Municipality, Karaikudi and another**, reported in **(2005) 1 M.L.J. 394**, wherein it has been held as under:

"6. The law is well-settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public-auction/public tender by inviting tenders from eligible persons and the notification of the public-auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality, with all relevant details such as date, time and place of auction, subject-matter of auction, estimated cost, Earnest Money Deposit, etc. The award of Government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and



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emergencies declared by the Government; where the procurement is available from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed and such contracts may be awarded through 'private negotiations'. (See Ram and Shyam Company v. State of Haryana and others AIR 1985 SC 1147).

12. Learned counsel then drew our attention to the provisions of Sec.10(3) of the Tamil Nadu Transparency in Tenders Act, 1998. In this connection, we would like to observe that no statute can prevail over the Constitution of India. According to the theory of jurisprudence of the eminent jurist Kelsen (the Pure Theory of Law), in every country there is a hierarchy of laws and the general principle is that if there is conflict between two laws - one in the higher layer of the hierarchy and the other in the lower rung - then the law in the higher layer will prevail. In our country, the hierarchy of laws is as follows:-

- 1. Constitution of India;*
- 2. Statutory Laws - made either by Parliament or by the State Legislatures;*
- 3. Delegated Legislation, which may be in the form of Rules or Regulations made under a statute etc.,*
- 4. Executive instructions or Administrative Orders, viz. Government Orders, etc.*



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The Tamil Nadu Transparency in Tenders Act, 1998 being a State legislation falls under category (2) above and therefore the provisions of Sec.10(3) of the said Act cannot override or prevail over the provisions of Art.14 of the Constitution, which is in the highest layer in the hierarchy mentioned above. Hence, the provisions of Sec.10(3) of the said Act can only be interpreted in the manner in which we have mentioned above, viz. that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public-auction/public tender by inviting tenders from eligible persons and the notification of the public-auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality so that every eligible persons may bid in the auction. This alone will ensure the compliance of Art.14 of the Constitution. It is only in rare and exceptional cases, as mentioned above, that this rule may be departed and contracts may be awarded through private negotiations."

7. The learned Government Advocate appearing for the respondents, on the other hand, submits that the Writ Petition has become infructuous, inasmuch as the last date for submission of bids was earlier today, i.e., 06.08.2025 in the morning and the bids have already been opened. It is further submitted that the following contracts have also been awarded pursuant thereto.



வ. எண்	விபரம்	பெயர் முகவரி	அதிகபட்ச ஏலம் கோரியத் தொகை
1.	ஆடு அடிக்கும் தொட்டியில் கட்டணம் வசூலிக்கும் உரிமை	அ.பவ்நிர்முகமது, த/பெ.அப்துல்காதர், வ.உ.சி நகர், பெருமகளுர்	27400
2.	கே.ஆர்.புரம் OHT அருகில் உள்ள தென்னை மரங்கள்	செ.சுந்தர்ராஜன், த/பெ.செல்லையா, விவேகானந்தா நகர், பெருமகளுர்	5350
3	சுறாவளி உடைப்பு குளம்	மா.ரவி, த/பெ.மாணிக்கம், காந்தி நகர், பெருமகளுர்	800
4	நவக்குண்டு குளம்	வீ.செந்தில்குமார், த/பெ.வீரமுத்து, காமராஜ் நகர், பெருமகளுர்	1500
5	நாகராஜன் குளம்	கா.துக்காராம், த/பெ.காளிமுத்து, காமராஜ் நகர், பெருமகளுர்	1300
6	கொந்தவா குளம்	வீ.செந்தில்குமார், த/பெ.வீரமுத்து, காமராஜ் நகர், பெருமகளுர்	1250
7	குறவன் குளம்	வீ.செந்தில்குமார், த/பெ.வீரமுத்து, காமராஜ் நகர், பெருமகளுர்	1500
8	கொர்கன் குளம்	கா.துக்காராம், த/பெ.காளிமுத்து, காமராஜ் நகர், பெருமகளுர்	1300
9	தாமரை குளம்	செ.சுந்தர்ராஜன், த/பெ.செல்லையா, விவேகானந்தா நகர், பெருமகளுர்	1250
10	மடத்து குளம்	செ.சுந்தர்ராஜன், த/பெ.செல்லையா, விவேகானந்தா நகர், பெருமகளுர்	1150

8. That apart, the learned Government Advocate submits that the third respondent is not required to issue a newspaper publication or advertisement, in view of the amendment brought to the Rules pursuant to G.O.Ms.No.207, Finance (Salaries) Department, dated 26.06.2018. It is submitted that the said Government Order has incorporated an Annexure for the purposes of Rule 11(2) of the Rules.

9. Upon a specific query from this Court as to whether any publication was made in accordance with the procedure prescribed under Section 9 of the Act,



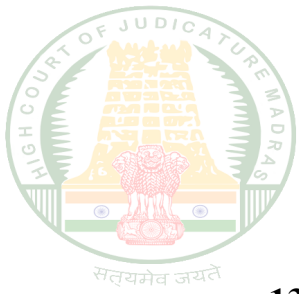
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read with Rule 5 of the Rules, the learned Government Advocate for the respondents reiterated that such procedure is no longer mandatory, in view of the amendment introduced through G.O.Ms.No.207, dated 26.06.2018.

10. I have considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

11. Section 9 of the Act deals with the functions of the Tender Inviting Authority, namely, the third respondent in the present case. As the Tender Inviting Authority, it is the statutory duty of the third respondent to invite tenders through a notice containing such particulars as may be prescribed. These particulars are detailed under the Tamil Nadu Transparency in Tenders Rules, 2000.

12. As per Sub-section (2) of Section 9 of the Act, the Tender Inviting Authority is required to communicate the notice inviting tenders to the Bulletin Officer, based on the value of the procurement and within the time prescribed, to facilitate its publication in the appropriate Tender Bulletin. Admittedly, in the present case, no such publication was made in the Tender Bulletin.



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13. Sub-section (3) of Section 9 of the Act, further mandates the Tender Inviting Authority to host the notice inviting tenders on the web portals as may be notified by the Government from time to time and to publish the same in daily newspapers having wide circulation, depending on the value of the procurement, as may be prescribed under the Rules.

14. Further, Sub-section (3-A) of Section 9 of the Act, stipulates that the Tender Inviting Authority shall also ensure that the notice inviting tenders is hosted on the dedicated website administered by the State Tender Bulletin Officer.

15. Sub-section (4) of Section 9 of the Act, provides that the Tender Inviting Authority shall supply the schedule of rates and tender documents, in such manner and at such places as may be prescribed, to every intending tenderer who applies for the same.

16. For ease of reference, Section 9 of the Act reads as under:-

"9. Functions of the Tender Inviting Authority.- (1) The Tender Inviting Authority shall invite tenders in the form of a notice containing such particulars as may be prescribed.

(2) The Tender Inviting Authority shall communicate the Notice Inviting Tenders to the Bulletin Officers according to the value of the



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procurement and within such time as may be prescribed, so as to publish the same in the appropriate Tender Bulletin.

(3) The Tender Inviting Authority shall also,-

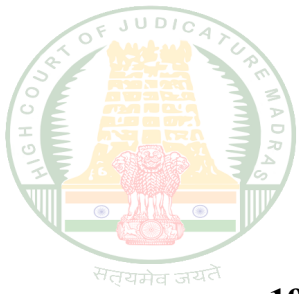
(a) host the notice inviting tenders in the web-portals as may be specified by the Government, by notification, from time to time; and

(b) publish the notice inviting tenders in daily newspapers having wide circulation depending upon the value of the procurement as may be prescribed. (3-A) The Tender Inviting Authority shall also cause the Notice Inviting Tender hosted in the dedicated website administered by the State Tender Bulletin Officer.

4. The Tender Inviting Authority shall supply the schedule of rates and tender documents in such manner and in such places as may be prescribed to every intending tenderer who has applied for such document."

17. In order to give effect to the statutory mandate under Section 9 of the Act, Rule 5 of the Tamil Nadu Transparency in Tenders Rules, 2000 has been framed. Rule 5 provides for the publication of District and State Tender Bulletins through electronic mode.

18. As per Rule 5(1) of the Rules, the District Tender Bulletin is required to be published in electronic mode by the District Bulletin Officer at least once in a week.



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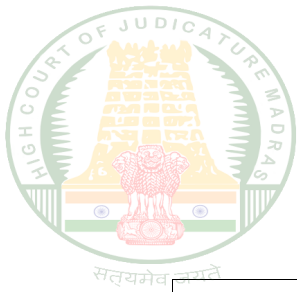
19. As per Rule 5(2) of the Rules, the State Tender Bulletin shall likewise be published electronically by the State Tender Bulletin Officer, also at least once in every week.

20. Rule 5(3) of the Rules further stipulates that the State Tender Bulletin Officer shall ensure publication of all notices inviting tenders and intimations of acceptance of tenders that are received up to twenty-four hours prior to the actual publication of the bulletin.

21. Further, Rule 5(4) of the Rules provides for the issuance of an extraordinary issue of the tender bulletin, where urgent publication is required. In such cases, the Secretary to Government of the concerned administrative department (for the State Tender Bulletin) or the District Collector (for the District Tender Bulletin) may, for reasons to be recorded in writing, direct the respective Bulletin Officer to publish the same.

22. Rule 6 of the Rules deals with the distribution of Tender Bulletins, detailing how and to whom the published bulletins are to be made available.

23. For ready reference, Rules 5 and 6 of the Rules are reproduced below:-



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Rule 5	Rule 6
5. Publication of Tender Bulletin.- (1) The District Tender Bulletin shall be published by electronic mode by the District Tender Bulletin Officer at least once in every week. (2) The State Tender Bulletin shall be published by electronic mode by the State Tender Bulletin Officer at least once in every week. (3) The Tender Bulletin Officer shall cause to be published all Notices Inviting Tenders and intimations of acceptance of tenders received upto twenty four hours prior to the actual publication of the bulletin. (4) In case a Notice Inviting Tender or information relating to acceptance of the tender needs to be published urgently, then the Secretary to Government of the concerned administrative department in the case of the State Tender Bulletin or the District Collector in the case of the District Tender Bulletin can for reasons to be recorded in writing, direct the respective Tender Bulletin Officers to publish an extraordinary issue of the Tender Bulletin.	6. Distribution of Tender Bulletins.- (1) The Tender Bulletin Officer shall deliver the Tender Bulletin to the registered subscribers by e-mail and publish tender bulletins in the dedicated website administered by the State Tender Bulletin Officer for viewing or downloading by tenderers or any person subscribing to Tender Bulletins. (2) ... (3) Any person or institution can be enrolled as a regular subscriber to the tender bulletin on payment of a fixed fee annually, half-yearly or quarterly, as the case may be.



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24. There are further procedural requirements contemplated under Rules 7 and 8 of the Rules. For clarity and completeness, Rules 7 and 8 of the said Rules are reproduced as under:-

Rule 7	Rule 8
7. Tender Bulletin to contain information only.- (1) The tender bulletin shall contain only information of the Notice Inviting Tenders and the orders accepting a tender and does not in itself create a legal right or liability. (2) A Notice Inviting Tender will not be invalidated merely on the grounds that the notice although published in newspapers has not been published in one or the other of the District Tender Bulletins or State Tender Bulletins or when published in the State Tender Bulletin could not be published in a District Tender Bulletin or <i>vice versa</i> .	8. Information to be published in the District Tender Bulletin.- Subject to the provisions of rule 10, Notices Inviting Tenders and decisions on tenders in all cases where the value of the procurement exceeds rupees ten lakhs and is below rupees twenty five lakhs shall be published in the District Tender Bulletin of the district where the headquarters of the Tender Inviting Authority is located and in the district where the work is to be executed or the goods and services supplied.

25. The requirement for publication of the notice inviting tenders in newspapers is contemplated under Rule 11 of the Rules. In this regard, reliance is placed on the above-mentioned G.O.Ms.No.207, Finance (Salaries) Department, dated 26.06.2018, by which the Tender Inviting Authority has been exempted



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from issuing newspaper publications in cases where the value of the contract is below Rs.10,00,000/-.

26. For ease of reference, Rule 11 of the said Rules is reproduced as under:-

"11. Publication of Notice Inviting Tenders in Newspapers.

(1)

(2) The Tender Inviting Authority shall have the Notice Inviting Tenders published in daily newspapers. The number, editions and language of the newspapers in which the Notice Inviting Tenders shall be published will be based on the value of procurement as specified in the Annexure.

(3) In cases where publication of Tender Notices is to be done only in Newspapers with circulation within the District, the Information and Public Relations Officer attached to the District Collectorate shall be the competent authority to release the advertisement and in all other cases the competent authority to release the advertisement shall be the Director of Information and Public Relations, Chennai.

(4) The Notice Inviting Tender shall be given due publicity in Newspapers. The Director of Information and Public Relations will publish the Notice Inviting Tenders as per instructions of the Procuring Entity."



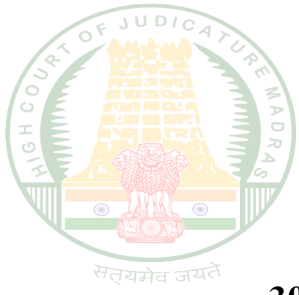
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27. Even if newspaper publication is dispensed with in view of Rule 11 of the Rules, read with the Annexure inserted by G.O.Ms.No.207, Finance (Salaries) Department, dated 26.06.2018, the third respondent, as the Tender Inviting Authority, is nevertheless bound to comply with the mandatory procedures contemplated under Section 9 of the Act and Rules 5 to 7 of the said Rules.

28. In the present case, it is admitted that the procedure contemplated under the above-stated provisions of the Act and Rules has not been followed. Therefore, the impugned Tender Notification dated 18.07.2025, is liable to be quashed and all tenders that have been confirmed pursuant thereto on 06.08.2025 stand set aside.

29. The respondents are hereby directed to issue a fresh Tender Notification, strictly in compliance with Section 9 of the Tamil Nadu Transparency in Tenders Act, 1998, read with Rules 5 to 7 of the Tamil Nadu Transparency in Tenders Rules, 2000, within a period of thirty (30) days from the date of receipt of a copy of this order.



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30. The Writ Petition stands disposed of with the above direction. No costs.

Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No
Index : Yes / No
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06.08.2025

To:-

- 1.The District Collector,
Collectorate,
Thanjavur, Thanjavur District.
- 2.The Assistant Director of Town Panchayats,
Collectorate,
Thanjavur, Thanjavur District.
- 3.The Executive Officer,
O/o.The Executive Officer,
Perumagalur Town Panchayat,
Thanjavur District.



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C.SARAVANAN, J.

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