



W.P.(MD)No.21944 of 2024:-

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 18.11.2024

Delivered On : 18.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.21944, 21946 and 23628 of 2024

and

W.M.P.(MD)Nos.18588, 18589, 18590, 18591, 20006 and 20007
of 2024

W.P.(MD)No.21944 of 2024:-

AAR Transport Company,
Represented by its Sole Proprietor,
A.Ranjith,
S/o.Arumugam,
L1/53 TNHB Colony Podhigai Nagar,
Koodal Nagar,
Madurai - 625 018.

... Petitioner

Vs.

- 1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office, Chennai - 107.
- 2.The Deputy Collector (*) / **Regional Manager**,
Tamil Nadu Civil Supplies Corporation,
Regional Office,
Virudhunagar District.



W.P.(MD)No.21944 of 2024:-

3.M/s.Kandasamy & Co.,
Door No.2/70, A-6 GSK Complex,
Near Old RDO Office Kozhinjipatti,
Andagalur Gate Post Rasipuram (TK),
Namakkal District – 637 401.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Rc.No.C1/0895/2023 dated 28.06.2024, passed by the 2nd respondent and quash the same as illegal and consequently direct the 2nd respondent to call for fresh tenders within the time stipulated by this Court.

For Petitioner : Mr.O.R.Gokul Abimanyu
For Mr.Manoharan

For 1st Respondent : Mr.K.R.Buduru Zaman
Standing Counsel

For 2nd Respondent : Mr.P.Veera Kathiravan,
Additional Advocate General

For Mr.(*)G.Mohan Kumar
Standing Counsel

For 3rd Respondent : Mr.H.Arumugam

W.P.(MD)No.21946 of 2024:-

AAR Transport Company,
Represented by its Sole Proprietor,
A.Ranjith,
S/o.Arumugam,
L1/53 TNHB Colony Podhigai Nagar,
Koodal Nagar,
Madurai – 625 018.

... Petitioner

Vs.



W.P.(MD)No.21944 of 2024:-

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office, Chennai – 107.

2.The Deputy Collector, (*)/ **Regional Manager**,
Tamil Nadu Civil Supplies Corporation,
Regional Office,
(*) **Theni** District.

3.M/s.Karthikeya Enterprises,
No.233/6, T.Kailasapalayam,
Salem Road,
Tiruchengode,
Namakkal District – 637 209.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Rc.No.B1/02605/2023, dated 21.06.2024, passed by the 2nd respondent and quash the same as illegal and consequently direct the 2nd respondent to call for fresh tenders within the time stipulated by this Court.

For Petitioner : Mr.O.R.Gokul Abimanyu
For Mr.Manoharan

For 1st Respondent : Mr.K.R.Buduru Zaman
Standing Counsel

For 2nd Respondent : Mr.P.Veera Kathiravan,
Additional Advocate General

For Mr.(*)G.Mohan Kumar
Standing Counsel

For 3rd Respondent : Mr.Ajmal Khan, Senior Counsel
Mr.V.S.Rishikesh



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W.P.(MD)No.23628 of 2024:-

A.K.M.K. Transports,
10/8, Ramani Nagar,
M.C.Road, Thanjavur,
Thanjavur District 613 202,
Represented by its Partner,
A.L.Sivakumar.

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office,
Chennai Metro Rail Administrative Office,
Poonamallee High Road,
Koyambedu,
Chennai – 600 107.

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur Office,
Thanjavur.

3.Kandasamy & Co.,
Door No.2/70, A/6, GSK Complex,
Near Old RDO Office,
Kozhinjipatti,
Andagalur Gate 637 401
Rasipuram (TK),
Namakkal District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd



W.P.(MD)No.21944 of 2024:-

respondent in proceedings nr.K.f.vz;.G3/9394/2023 dated 24.06.2024 and quash the same as illegal, arbitrary and unenforceable, consequently direct the respondents 1 and 2 to call for or issue fresh tenders.

For Petitioner : Mr.V.R.Vijaya raghavan

For 1st Respondent : Mr.K.R.Buduru Zaman
Standing Counsel

For 2nd Respondent : Mr.P.Veera Kathiravan,
Additional Advocate General

For Mr.(*)G.Mohan Kumar
Standing Counsel

For 3rd Respondent : Mr.H.Arumugam

COMMON ORDER

Challenging the proceedings of the second respondent in Rc.No.C1/0895/2023 dated 28.06.2024, Rc.No.B1/02605/2023, dated 21.06.2024, nr.K.f.vz;.G3/9394/2023 dated 24.06.2024 respectively, these Writ Petitions are filed.

2.The writ petitioner in W.P.(MD)Nos.21944 and 21946 of 2024 are one and the same.

W.P.(MD)No.21944 of 2024:-

3.The petitioner is the sole proprietor of M/s.AAR Transport Company, having its registered office at Madurai and the transport company is engaged in the business of transportation and movement of commodities for more than a decade.

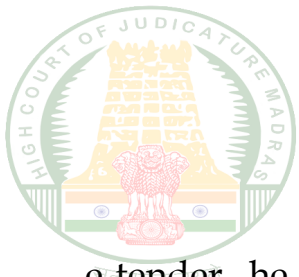


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On 09.06.2023, an e-tender notification bearing No.C1/0895/2023, was published in the official website by the second respondent, inviting bids for the appointment of transport contractors for transportation of paddy custom milled rice, coarse grains, gunnies and stocks related to procurement activities from various direct purchase centres, storage points, buffer godowns, rail head wagons to various storage points, godowns, modern rice mills etc., within the district and outside the district as entrusted by the Tamil Nadu Civil Supplies Corporation, as specified in the nature of work for the period from July 2023 to July 2025. On 02.08.2023, the office of the first respondent vide proceedings in Rc.MT10/018188/2023 bearing Circular No.32 of 2023, issued a circular outlining the directives to the tender accepting authorities to adhere to the definition of domestic enterprise as defined in Section 2(aa) of the Tamil Nadu Transparency in Tenders Act, 1998, r/w. the proviso to Section 10(2) of the Act, while evaluating the tenders submitted by the prospective tenderers.

4.Further the second respondent issued a Corrigendum in e-tender No.C1/895/2023, wherein the bid submission end date and bid open date was modified. The bid submission end date was on 31.07.2023 and opening date was on 01.08.2023. The petitioner transport company applied for the said tender on 29.07.2023, by uploading all the documents necessary for the e-tender in the concerned e-procurement website. However, after the submission of the petitioner's



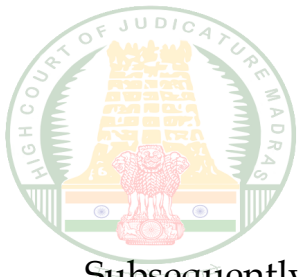
W.P.(MD)No.21944 of 2024:-

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e-tender, he was not provided with any updates with regard to the tender with respect to the Virudhunagar Region. While being so, during the last week of July 2024, the petitioner came to know that the third respondent was carrying out the transportation activities for the second respondent in Virudhunagar region. On enquiry with the second respondent office, the petitioner was informed that the second respondent had passed the impugned work order in Rc.No.C1/0895/2023 dated 28.06.2024, in favour of the third respondent, for the movement of commodities for the period of 2 years in Virudhunagar region and the third respondent had also given consent letter accepting as transport contractor for Virudhunagar region. Challenging the same, this Writ Petition came to be filed.

W.P.(MD)No.21946 of 2024:-

5.The second respondent in their official website published an e-tender notification bearing No.B1/02605/2023 on 09.06.2023, for the Theni region for the appointment of transport contractors for transport of paddy custom milled rice, coarse grains, gunnies and stocks related to procurement activities from various direct purchase centres/storage points/buffer godowns/rail head wagons to various storage points/godowns/modern rice mills, etc., within the district and outside the district as entrusted by the Tamil Nadu Civil Supplies Corporation, as specified in the nature of work for the period from July 2023 to June 2025.



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Subsequently, the second respondent issued a Corrigendum bearing the bid submission end date and the bid open date was modified. The bid submission end date was on 09.08.2023 and bid opening date was on 10.08.2023. The petitioner transport company submitted his e-tender documents on 29.07.2023, by uploading all the necessary documents in the concerned e-procurement website. However, during the last week of July 2024, the petitioner was shocked to understand that the third respondent was carrying out the transportation activities for the second respondent in the Theni region. On enquiry with the second respondent office, the petitioner was informed that the second respondent had passed the impugned work order in B1/02605/2023 dated 21.06.2024, in favour of the third respondent, for the movement of commodities for the period of two years at Theni region and the third respondent had also given consent letter for accepting himself as the transport contractor for Theni region. Though the petitioner is a qualified person to be selected as a transport contractor for the particular area, he was not provided with any updates with regard to the tender. Hence, challenging the impugned order dated 21.06.2024, this Writ Petition is filed.

W.P.(MD)No.23628 of 2024:-

6.The petitioner is a transport contractor. An e-tender notification was published by the second respondent on 09.06.2023, for selection of eligible transport

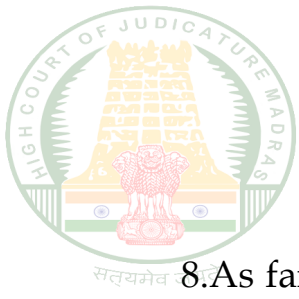


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contractors for transportation of paddy etc. The last date to submit the bid was 09.08.2023. The petitioner duly submitted his bid/tender before the last date with all necessary documents through the concerned e-website. On 24.06.2024, the second respondent passed an order, declaring the third respondent as a successful tenderer and transport contractor for the Thanjavur area. On 08.07.2024, the petitioner's tender summary/report was uploaded rejecting the petitioner's tender due to technical reasons. Challenging the impugned proceedings of the second respondent bearing No.G3/9394/2023 dated 24.06.2024, declaring the third respondent as successful tenderer issuing work order to him, this Writ Petition is filed.

7.The learned counsel for the petitioner in W.P.(MD)Nos.21944 of 2024 and 21946 of 2024 submitted that, the various provisions of Tamil Nadu Transparency in Tenders Act, 1998, were flouted in awarding the contract to the third respondent for the purpose of passing the impugned orders. As far as the Writ Petition in W.P. (MD)No.21944 of 2024 is concerned, the bid opening date was on 01.08.2023. Neither the date of rejection of other tenderers including the petitioners for technical reasons was disclosed by the respondents concerned at any point of time nor the rejected tenderers were intimated in this regard. However, it is shocking to understand that the impugned work order came to be issued in favor of the third respondent on 28.06.2024, violating all the relevant tender Rules and Act.



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8. As far as Writ Petition in W.P.(MD)No.21946 of 2024 is concerned, the same is with respect to the tender for the selection of transport contractors in the area of Theni and the date of opening the bid was 10.08.2023. Even in the instant case, the respondents have not chosen to communicate the rejection of the other tenderers including the petitioner and the reason for the same, however, proceeded to pass the impugned work order dated 21.06.2024, in favor of the third respondent. The learned counsel for the petitioner categorically submitted that the provisions of Tamil Nadu Transparency in Tenders Act, 1998, are not at all followed before awarding contract to the third respondent. There is a complete violation of the provisions of the Act and hence, the contract ultimately awarded to the third respondent is vitiated by law. He submitted that the combined reading of Rule 26 of the Tamil Nadu Transparency in Tender Rules, 2000 and Clause 28 of the tender notification, would make it clear that the evaluation of tenders and awarding of contracts should be completed within a period of 90 days. Though the tender was opened on 10.08.2023 at 11 a.m., the contract was awarded only on 21.06.2024. The contract ought to have been awarded within 90 days from 10.08.2023 and the same was not done. Even assuming that the second respondent has got an extension for a further period of 180 days, the second respondent even in that case, has awarded the contract belatedly, this itself would make the tender invalid and pressed for



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quashing the impugned order dated 21.06.2024 in W.P.(MD)No.21946 of 2024.

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9.As far as the Writ Petition in W.P.(MD)No.21944 of 2024 is concerned, even in that case the tender was opened on 10.08.2023, however the impugned work order was issued in favor of the third respondent on 28.06.2024, violating the mandates of Rule 26 of the Tamil Nadu Transparency in Tender Rules, 2000, r/w Clause 28 of the tender notification and on similar grounds, he pressed for allowing the Writ Petition.

10.The learned counsel for the petitioner in W.P.(MD)No.23628 of 2024 submitted that the last date for submitting the tender bid was on 09.08.2023 and the tender bid was opened on 10.08.2023. During the technical bid opening on 10.08.2023, all the tenders except that of the third respondent came to be rejected without any rhyme or reason and the respondents did not choose to communicate the reason for rejection of the various tenderers to the respective tenderers. However, the tender summary/report was uploaded only on 08.07.2024, after the impugned order came to be passed in favor of the third respondent on 24.06.2024. The price bid was opened on 21.08.2023 and the impugned work order in favor of the third respondent came to be issued on 24.06.2024, that is, after 180 days from the date of opening the tender bid on 10.08.2023. Though the tender document contemplates to cover only the period from 01.07.2023 to June 2025, the work order



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was given to the successful bidder, that is, the third respondent for a prolonged period. Without publication of fresh tender and without notifying the uncovered period, the impugned work order came to be issued in favor of the third respondent. It is not only the case that the tender has been awarded beyond a period of 90 days from the date of opening the technical bid but also that the schedule of rates has been violated in the grant of contract in favor of the third respondent. As per the e-tender, the basic rate for transportation was fixed at Rs.288/- per metric ton subject to variation of amount at 10 percent or 20 percent above or below. However, the rate quoted by the third respondent was phenomenal and beyond imagination prior to the issuance of contract to the third respondent, the department had transported goods successfully spending Rs.330/- per metric tons and no loss had occasioned to the department during the said period of transportation of goods. However, a phenomenal slab rate of Rs.598/- flat rate for 0 to 8 kilometers for transportation of one metric ton per kilometer has been fixed in favor of the third respondent. The e-tender as well as the evaluation process lacks transparency and the Civil Supplies Corporation, Thanjavur region will lose Rs.175 Crores per month because of the impugned order dated 24.06.2024, by award of contract in favor of the third respondent and on that basis, pressed for allowing the Writ Petition by quashing the impugned work order in favor of the third respondent.



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11. The learned Additional Advocate General appearing for the 2nd respondent submitted that, as far as Writ Petition in W.P.(MD)No.21944 of 2024 is concerned, the e-tender notification dated 09.06.2023, under two cover system was issued fixing the last date for submission of bid as 11.07.2023 and the date of opening as 12.07.2023. The estimated approximate value of the contract was Rs.7,88,63,245/-. The pre-bid meeting was convened on 16.06.2023 and after considering the various inputs, Corrigendum to tender notification were issued and the last date of submission of bid was revised as 09.08.2023 and the bid opening date was revised as 10.08.2023. As many as six bidders participated by submitting their bids for the Virudhunagar region, including the third respondent and the writ petitioner. Since the said e-tender was under two cover system, the technical bids submitted by the respective bidders were opened for evaluation on 10.08.2023, in the presence of the respective bidders or their representatives. On completion of the evaluation by the duly constituted tender scrutiny committee, the technical bids submitted by four bidders, including the writ petitioner was rejected, as they failed to fulfil the pre-qualification eligibility criteria as provided under Clause 6 of the tender notification and other conditions. The technical bids submitted by two bidders including the bid of the third respondent was accepted. The summary details of the technical bid evaluation of all the bidders was duly published in the e-procurement website on



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19.08.2023 and an automated e-mail was also sent to the e-mail address provided by the petitioner forthwith. Hence, the submission made by the petitioner's counsel that he was not provided with any update with regard to the rejection of his tender is absolutely false. The scrutiny committee's report clearly enumerates the shortcomings of the writ petitioner, which failed to meet the pre qualification criteria as mandated by the tender notification.

12.As far as the writ petition in W.P.(MD)No.21946 of 2024 is concerned, the learned Additional Advocate General submitted that the e-tender notification dated 09.06.2023, under two cover system was issued fixing the last date for submission of bid as 11.07.2023 and the date of opening as 12.07.2023. The estimated approximate value of the contract was Rs.3,02,72,832/-. The pre-bid meeting in this regard was convened as early as on 16.06.2023 and after considering the various inputs from the various stakeholders, Corrigendum to tender notification were issued and the last date for submission of bid was revised as 09.08.2023 and the bid opening date was further revised as 10.08.2023. Five bidders including the petitioner as well as the third respondent participated and submitted their bids for the Theni region. The technical bids submitted by these bidders were opened for evaluation on 10.08.2023, in the presence of the bidders/representatives. On completion of the evaluation by the duly constituted tender scrutiny committee, the technical bid submitted by three



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bidders, including that of the petitioner was rejected as they failed to fulfill the prerequisite qualification eligibility criteria as provided under Clause 6 of the tender notification and the other conditions. The technical bid submitted by two bidders was accepted, which including the bid of the third respondent.

13.The learned Additional Advocate General further submitted that as far as W.P.(MD)No.23628 of 2024 is concerned, the e-tender notification dated 09.06.2023 and a two cover system was issued fixing the last date for submission of bid as 11.07.2023 and the date of opening as 12.07.2023. The estimated approximate value of contract was Rs.28,34,79,840/-. Pre-bid meeting in this regard was convened on 16.06.2023 and after consulting the various stakeholders, Corrigendum to tender notification was issued and the last date for submission of bid was revised as 09.08.2023 and the bid opening date was further revised as 10.08.2023. Nine bidders, including that of the petitioner and the third respondent participated by submitting their bids for the region of Thanjavur. The technical bid submitted by the nine bidders were opened for evaluation on 10.08.2023, in the presence of bidders/representatives. On completion of the evaluation by the newly duly constituted tender scrutiny committee, the technical bid submitted by seven bidders including that of the petitioner was rejected as they failed to fulfil the pre-qualification eligibility criteria as provided under Clause 6 of the tender notification



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and other conditions. However, the technical bid submitted by two bidders, including that of the third respondent was accepted. In furtherance to that the summary details of the technical bid evaluation was duly published in e-procurement website on 18.08.2023 and an automated e-mail was also sent to the e-mail address provided by the petitioner forthwith intimating the rejection of his bid.

14.The learned Additional Advocate General further submitted that there are two stages in tender evaluation namely, the initial examination to determine substantial responsiveness and the determination of lowest value as per Rules 28 and 29. Submission of a responsive bid is a condition precedent to consider the financial bid submitted by the writ petitioner. The writ petitioner having not qualified himself in the pre-qualifying round itself, further he do not have any *locus standi* to challenge the tender, which was awarded in due compliance of Tamil Nadu Tender Transparency in Tender Act, 1998 and Rules 2000. Though it is claimed by the writ petitioner that, the tender has been awarded beyond a period of 180 days, the reality is not so. The learned Additional Advocate General insisted that the total period for evaluation of tender till award of contract should be completed “ordinarily” within the extended period of 180 days in terms of Rule 26. Proviso to Rule 14 and proviso to Rule 26 uses the word “ordinarily”, which denotes that the tendering authority should follow such rules with reasonable adherence and that



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the evaluation and the award of contract shall be completed as far as may be practicable within the period, for which the tenders are held valid. However, in the instant *lis*, the tender should be considered as “extraordinary situation”, due to the intervention of model code of conduct for the parliamentary election, which was enforced from 16.03.2024 to 16.06.2024. During this period, the finalization of the bids and the award of tender could not be processed and this period of 83 days should be excluded. As such, the contract was awarded within the duly extended period of 151 days, which comes within the extended period of 180 days as contemplated under Rule 26. Further categorically contending that the Courts have consistently held that decisions of the tender inviting authority should not generally be questioned, unless there is *malafide* intent or arbitrariness. In the instant case, the petitioner has miserably failed to establish any *iota* of malafideness or arbitrariness and on that basis, he pressed for dismissal of all the three Writ Petitions.

15.The learned counsel appearing for the third respondent in W.P.(MD)Nos. 21944 and 23628 of 2024 categorically submitted that the writ petitioners bid for tender being rejected on technical grounds ought to have preferred the Appeal contemplated under Section 11 of the Tamil Nadu Transparency in Tenders Act 1998. Having not preferred an Appeal under Section 11, the writ petitioners do not have any legs to stand and he cannot challenge the tenderers who qualified in the



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technical bid as for further participation in the prize bid. That apart, he insisted that the malafides alleged by the writ petitioners are not specific and non-joinder of necessary parties goes to the root of the case and he categorically contended that this is not a public interest litigation to shed crocodile tears for the loss incurred to the Government and accordingly, pressed for dismissal of the Writ Petitions.

16.The learned Senior Counsel appearing for the third respondent in W.P. (MD)No.21946 of 2024 submitted that the writ petitioner's tender bid was rejected on 12.08.2023, in the technical bid stage itself. The said rejection was based on three grounds and that was not challenged. Having not challenged the rejection, the ineligible tenderer cannot challenge the successful bidder. That apart, he also insisted that the Appeal as contemplated under the Tamil Nadu Transparency in Tenders Act, 1998, ought to have been preferred by the writ petitioner. Having not preferred the same, the Writ Petition under Article 226, is not at all maintainable. Pointing out the implementation of model code of conduct due to the ongoing parliamentary elections, the learned Senior Counsel justified the extension of time. Categorically contending that quashing the impugned orders will not be in the interest of justice, he pressed for dismissal of the Writ Petition.

17.Heard the learned counsels on either side and carefully perused the materials available on record.



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18.The Tamil Nadu Civil Supplies Corporation is a State owned public sector company registered under the Companies Act, 1956. The main functions of the Tamil Nadu Civil Supplies Corporation (TNCSC) is to procure commodities like paddy, sugar, wheat, etc and process, store, move and distribute them. Commodities are procured through direct purchase centre (DPC), directly from the farmers and some of the commodities are purchased through the market. Commodities are also received from the Food Corporation of India. The commodities are stored in various storage facilities spread across the State. The commodities are processed in 21 modern rice mills belonging to the corporation and also through private hulling agents. The commodities are distributed through 1413 public distribution system outlets and other stores and schemes. The Government of India is granting subsidy for the transportation charges incurred towards the transportation of the Food Corporation of India and Non-Food Corporation of India movement like, transportation of paddy from purchase centres to the storage point and from the storage point to the hulling centre and vice versa and transportation to public distribution system outlets.

19.The Government of India, Ministry of Consumer Affairs, Food and PD issued a Circular dated 06.05.2019, formulating new guidelines for the fixation of transportation charges with a view to simplify the same across India. As per the said

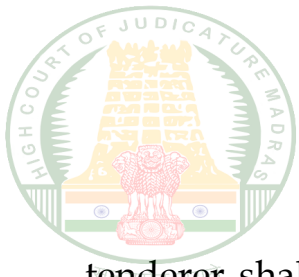


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Circular, a state level committee has to be constituted in every State with the Food Secretary of the concerned State as its Chairperson and other members. The state level committee was tasked with the responsibility of finalising schedule of rates (SOR) towards transportation charges, which should operate as guiding factor during the competitive bidding process preferably through e-tendering to be done for finalising transportation rates at district level. Accordingly, the state level committee was constituted and the schedule of rates were finalised.

20.As far as the present three Writ Petitions are concerned, three e-tender notifications were published by the official website of the second respondent for e-tender notification under two cover system, inviting bids for the appointment of transport contractors for transportation of paddy custom milled rice, coarse grains, gunnies and stocks related to procurement activities from various direct purchase centre/storage points/buffer godown/rail head wagons to various storage points/godowns/modern rice mills, etc, within the district and outside the district as interested by the Tamil Nadu Civil Supplies Corporation, as specified in the nature of work for a period of two years specified in the respective tender notifications. These notifications were with respect to the regions of Virudhunagar, Theni and Thanjavur respectively. Clause 28 of the tender notification provides for validity of the odd offer and the same makes it clear that the offer made by the



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tenderer shall be valid for acceptance for a minimum of 90 days from the date of opening of the tender. It is further mandated that non-compliance of the above condition would disqualify the tenderer and such tender would be rejected. Rule 26 of the Tamil Nadu Transparency in Tender Rules, 2000, is extracted as follows:-

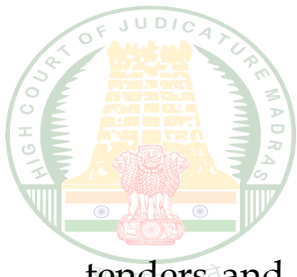
"26. Time taken for evaluation and extension of tender validity – (1) The evaluation of tenders and award of contract shall be completed, as far as may be practicable, within the period for which the tenders are held valid.

(2) The Tender Accepting Authority (may) seek extension of the validity of tenders for the completion of evaluation :

[Provided that sum total of all extensions shall ordinarily not exceed 180 (one hundred and eighty) days.]

(3) In case the evaluation of tenders and award of contract is not completed within extended validity period, all the tenders shall be deemed to have become invalid and fresh tenders may be called for."

21.A careful reading of Rule 26(1), (2) and (3) would show that if the evaluation of tenders and award of contract could not be completed within the period for which the tenders are held valid, the tender accepting authority may seek extension of validity of tenders for completion of evaluation and the sum total of all the extensions shall not ordinarily exceed 180 days. In the instant cases, Clause 28 of the tender notifications make it clear that the validity of the tender would be only 90 days. Since the tender accepting authority could not conclude the evaluation of



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tenders and award contract within the said minimum period of 90 days as per the tender notification, further extension of validity of tender could be sought by the tender accepting authority only to a further total number of 180 days. The date of opening of technical bid in all the three cases were 10.08.2023. The period of 90 days, that is, the period of validity of the offers made by the various tenderers in terms of Clause 28 of the tender notification would expire on 07.11.2023. Since, the tender inviting authority could not complete the evaluation process within the said date, further extension could be sought for by the said authorities to a maximum of 180 days, that is, till 05.05.2024.

22.However, the learned Additional Advocate General submitted that the proviso to Rule 26(2) of the Tamil Nadu Transparency in Tenders Rules, 2000, makes it clear that the extension to an extent of 180 days are ordinarily provided. However, in the extraordinary circumstances, the same could be extended further. In the instant cases, an extraordinary situation emanated because of the intervention of the model code of conduct for parliamentary elections, which was from 16.03.2024 to 06.06.2024, during which the finalization of the bids and award of tender could not be processed. Hence, this period of 83 days has to be excluded, while calculating 90 plus 180 days. If the said period of 83 days is excluded in all the 3 cases, the tender has been evaluated and work order was awarded to the successful tenderer



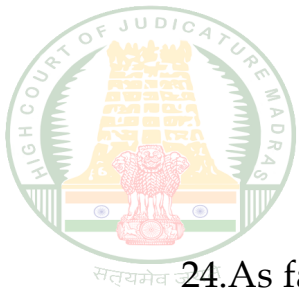
W.P.(MD)No.21944 of 2024:-

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within the period of 90 plus 180 days, that is, on 151, 144 and 147 days respectively, as far as W.P.(MD)Nos.21944 of 2024, 21946 of 2024 and 23628 of 2024 respectively.

The further contention of the learned counsel for the petitioner is that Clause 23 of the tender notification dealing with period of contract mandates that all the 3 contracts are valid for a period of 2 years, that is, from July 2023 to June 2025 and such reasonable extension of time up to a maximum of 6 months, if any, specified by TNCSC or till the finalization of new tenderers, whichever is earlier on the same rates, terms and conditions. The extension of time up to a maximum of 6 months has been left to the discretion of TNCSC.

23.However, a careful perusal of the materials available on record would make it clear that all the 3 tenders has been awarded to the successful tenderer, that is, the third respondent with effect from 28.06.2024, 21.06.2024 and 24.06.2024 respectively, for a period of 2 years, in all the aforesaid Writ Petitions. No doubt, the said exercise has clearly violated the mandates of Clause 23 of the terms of the tender notifications. Since the period of contract in Clause 23 of the tender notification has specified the month and year for a period of 2 years, that is, from July 2023 to June 2025, the work order ought to have been issued to the third respondent only for the period from July 2023 to July 2025, subject to the reasonable extension at the discretion of TNCSC for a maximum of 6 months.

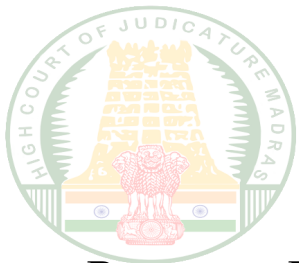


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24.As far as the allegation of the petitioners that the third respondent has been ordered to carry out the transport work at an exorbitant rate is concerned, the learned Additional Advocate General categorically submitted that the said rate was finalized only after inviting the third respondent, who was declared as L1 for negotiations for further reduction of price in terms of Clause 19 of the tender notification. In all these Petitions, the writ petitioners tender bid came to be rejected by the second respondent during the first level of evaluation, that is, at the first instance during technical evaluation itself. The contention of the writ petitioners that the same was not communicated to him can be explicitly negated as false and irrelevant because of the fact that the entire process of tender was carried out in a more transparent way because the same is an e-tender and time to time the developments of the tender evaluation process was made explicitly available in the website and on the date of rejection of technical evaluation itself, an automated e-mail has been served upon all the tenderers whose technical bid was rejected. However, suppressing the said fact, the writ petitioners have filed these Writ Petitions.

25.It is a settled proposition of law that an unsuccessful tenderer cannot further challenge the work order issued in favor of the successful tenderer without challenging the rejection. The Hon'ble Apex Court in the case of *Travancore*



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Devaswom Board v. Ayyappa Spices and Others reported in 2024 SCC Online SC

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244, has dealt with the tender matter and the relevant portion of the same is extracted as follows:-

“19. The principle that in matters of public tenders for procurement, judicial review is restrained is well established. In cases where a party invoking writ jurisdiction has been a participant in the tender process, courts should be slow and cautious in exercising the power of judicial review.....

2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.

3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, “attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted.”

26. Even in the instant case, the writ petitioners are those parties, who have participated in the tender process and having turned unsuccessful in the tender



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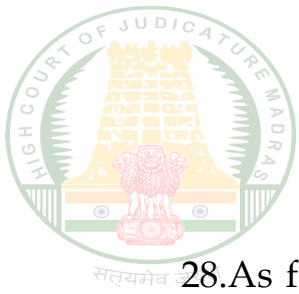
process have filed these Writ Petitions as a last resort to spoil the prospectus of the third respondent in whose favor the work order has been issued by the second respondent by the proceedings in the respective impugned orders in each of the Writ Petitions.

27.I am of the considered view that, had the writ petitioners filed the same in the style of a public interest litigation before the appropriate Bench, there would have been little scope for the petitioners to succeed in the same. However, being persons who have participated in the tender process, their scope of filing a public interest litigation is also ruled out. As far as the Writ Petition in W.P.(MD)No.21944 of 2024 is concerned, the petitioners technical bid in the first stage came to be rejected for the following reasons:-

"a.The Tenderer has not submitted the bank guarantee as per Annexure – 4 for 5% of the value of contract from the nationalized bank as per clause 6(9)(c), as petitioner do not possess of required experience as provided in clause 6(9)(a) or (b). The total value of the Contract being Rs.7,88,63,245/- and 50% of which is Rs. 3,94,31,623/- and 25% of which is Rs.1,97,15,811/-.

b.The average Annual turnover certificate submitted by the petitioner from Chartered Accountant is for Rs.15,40,492/- whereas as per clause 6(10) the minimum average annual Turnover required is for Rs.75,00,000/-.

c.Annexure 7 was not in prescribed format. Etc.,"



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28.As far as the Writ Petition in W.P.(MD)No.21946 of 2024 is concerned, the reason for rejection of the writ petitioners technical evaluation is extracted as is as follows:-

“a.The Tenderer has not submitted the documents to fulfill the experience as provided in clause 6(9) and he has also not submitted bank guarantee as per Annexure – 4 for 5% of the value of contract from the nationalized bank as per clause 6(9)(c).

b.The average Annual turnover certificate submitted by the petitioner from Chartered Accountant is for Rs.15,40,492/- whereas as per clause 6(10) the minimum average annual Turnover required is for Rs.75,00,000/-.

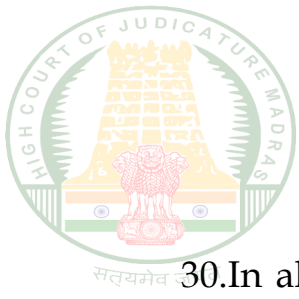
c.Annexure 7 was not in prescribed format. Etc.,”

29.As far as W.P.(MD)No.23628 of 2024, the reason for rejection of the petitioners bid in the technical evaluation is as follows:-

“a.The Tenderer Document pages, annexures and corrigendum are not signed and uploaded as per clause 13(b), 15K.

b.The Experience certificate is not in the format prescribed in Annexure 3, as per clause 6(9) and he has also not submitted bank guarantee as per Annexure – 4 for 5% of the value of contract from the nationalized bank as per clause 6(9)(c) and 13(b).

c.The average Annual Turnover certificate is uploaded without the bidder's signature as per clause 13(b). Annual Turnover Criteria as per clause 6(10) not fulfilled.”



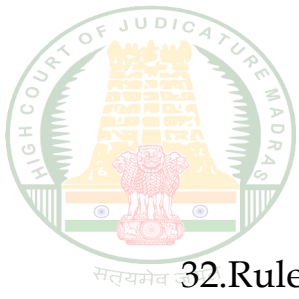
W.P.(MD)No.21944 of 2024:-

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30. In all the three cases when the annual minimum average annual turnover required as per Clause 6(10) of the tender notification is for Rs.75,00,000/-, the petitioners were not able to produce the annual turnover certificate as required by the tender notification. Hence, obviously they did not challenge the same and prefer an Appeal under Section 11 of the Tamil Nadu Tender Transparency in Tenders Act, 1998. Having not done the same, they cannot adopt an indirect method, seeking re-tender by challenging the final work order issued in favor of the third respondent, which has been done after proper evaluation in both the stages.

31. The reason for delay in evaluation of the tender has been rightly justified by the learned Additional Advocate General by attributing the delay to the implementation of model code of conduct, due to the ongoing parliamentary elections to a tune of 83 days. The same could be excluded, considering the same as extraordinary circumstances and on apt calculation, the final work order has been awarded within time. Rule 23 of the Tamil Nadu Transparency in Tender Rules, 2000, is extracted as follows:-

“23.Changes and alterations not to be permitted after tender opening.-
No changes, amendments which materially alter the tendered prices shall be permitted after the opening of the tender, except as per the procedure prescribed in sub-section (3) of section 10 of the Act.”



W.P.(MD)No.21944 of 2024:-

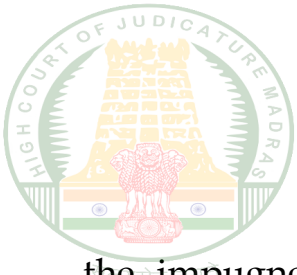
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as follows:-

32.Rule 25 of the Tamil Nadu Transparency in Tender Rules, 2000, is extracted

“25.Tender evaluation to be in accordance with evaluation criteria.- The Tender Accepting Authority shall cause the evaluation of tenders to be carried out strictly in accordance with the evaluation criteria indicated in the tender documents.”

33.A careful reading of Rules 23 and 25 of the Tamil Nadu Transparency in Tender Rules, 2000, would make it clear that no changes or amendments, which materially alter the procedure and criteria specified in the tender document are permissible. Section 10 of the Tamil Nadu Transparency in Tender Act, 1998, which provides for evaluation and acceptance of tender makes it clear that the tender accepting authority shall cause an objective evaluation of tenders taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market rate for procurement and comparison of the tenders **in accordance with the procedure and criteria specified in the tender document.** Hence, any deviation from the procedure and conditions mandated in the tender document would be invalid.

34.A careful perusal of the orders would make it clear that the work order has been issued in all the three cases with effect from the date of work order for a period of two years, when the tender documents clearly mandate that the tenders for transport contract is exclusively for the period from July 2023 to June 2025. Hence,



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the impugned work orders are hereby duly modified as far as the period of
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transport contract which would be valid till June 2025, which could be further
extended for a period of six months alone, on the discretion of the Tamil Nadu Civil
Supplies Corporation.

35. Accordingly, the Writ Petitions are **disposed of**. There shall be no order as
to Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

18.02.02025

(*)Corrected and substituted as per the order of this court dated 21.04.2025

ASSISTANT REGISTRAR(W)

// True Copy //

/04/2025

Sub Assistant Registrar
(CS - I/ II / III /IV)

Mrn

To be substituted to the order already despatched on dated 08.04.2025

To

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office, Chennai – 107.

2.The Deputy Collector,
Tamil Nadu Civil Supplies Corporation,
Regional Office,
Virudhunagar District.



W.P.(MD)No.21944 of 2024:-

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3.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office,
Chennai Metro Rail Administrative Office,
Poonamallee High Road,
Koyambedu,
Chennai – 600 107.

4.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur Office,
Thanjavur.

+2 CC to M/s.H.ARUMUGAM, Advocate (SR-11108[F] dated 20/02/2025)

+1 CC to M/s.V.K.Vijayaragavan, Advocate (SR-10490[F] dated 19/02/2025)

+1 CC to M/s.G.Mohan Kumar, Advocate (SR-10270[F] dated 19/02/2025)

W.P.(MD)Nos.21944, 21946 and 23628 of 2024
and

W.M.P.(MD)Nos.18588, 18589, 18590, 18591, 20006 and 20007
of 2024

AS - (22.04.2025) 31P/ 9C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.