

Sivakumar Vs. The Commissioner of Municipal Administration, Chennai and Others

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Court : Chennai Madurai

Decided On : Jul-04-2016

Judge : M. Venugopal

Appeal No. : W.P(MD)No. 10514 of 2016 & W.M.P.(MD)Nos. 8194 & 8195 of 2016

Appellant : Sivakumar

Respondent : The Commissioner of Municipal Administration, Chennai and Others

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the 3rd respondent proceedings in Na.Ka.No.109/2016/E1 dated 27.05.2016 on the file of the 3rd respondent and quash the same as illegal consequently directing the Respondents to open the tender bid submitted by the Petitioner, dated 11.03.2016, in respect of Tamil Nadu Urban Road Infrastructure Project (TURIP) 2016-2017 to be implemented in 3rd Respondent Municipality and proceed with the same in accordance with law.)

1. Heard both sides.

2. By consent of both sides, the main Writ Petition itself is taken up for final disposal.

3. According to the Petitioner, he is a registered contractor of the Third Respondent / Municipality. It is the case of the Petitioner that on 11.03.2016, the Third Respondent / Commissioner, Keelakarai Municipality, Ramanathapuram District, floated E-Tender, under the Scheme called, 'Tamil Nadu Urban Road Infrastructure Project (TURIP) 2016 - 2017'. Further, he had submitted the Tender schedule to the Third Respondent within the time stipulated, through online.

4. The plea of the Petitioner is that the Tender process was already completed in the month of March 2016 and six bidders had submitted the Tender schedule, including himself. While that be the case, due to Election for the Tamil Nadu State Assembly, the opening of the bids were postponed after Election. As the Election was over now, the Third Respondent had informed to all the bidders, including himself, on 23.05.2016 that their bids would be opened on 27.05.2016 at about 3.30 p.m.

5. At this juncture, the Learned Counsel for the Petitioner urges before this Court that all the bidders (including the Petitioner) had waited for opening of their bids. However, the Third Respondent had informed the bidders that the Second Respondent / District Collector, Ramanathapuram, instructed not to open the bids and instead, it was directed to cancel the earlier Tender, dated 11.03.2016 and also directed to call for fresh Tender.

6. The real grievance of the Petitioner is that even though it was informed by the Third Respondent on 23.05.2016 that the Tender would be opened on 27.05.2016, on 24.05.2016, the Third Respondent had informed that the date of opening of the Tender was postponed without date and hence, they made representations to the Respondents. However, since no action has been taken by the Respondents on the representations, the Petitioner filed a Writ Petition in W.P.(MD)No.9719 of 2016, praying for an order by this Court in directing the Respondents to consider his representation and to open the bid, as already informed.

7. This Court was pleased to direct the Respondents to file counter to W.P.(MD)No.9719 of 2016, on or before 09.06.2016 and directed the Registry, to post the Writ Petition, on 10.06.2016. As a matter of fact, on 10.06.2016, the case was disposed of 'as one of an infructuous'.

8. The Learned Counsel for the Petitioner submits that to the shock and surprise and to defeat the Writ Petitioner, the Third Respondent had issued a Notice to call for fresh Re-Tender for the same work, as expected by him. Further, it is represented on behalf of the Petitioner that the entire assignment was done only to fulfill the ruling party and to facilitate the ruling party contractors to take the contract.

9. The prime contention advanced on behalf of the Petitioner is that, when there is no reason to cancel the earlier Tender, the Third Respondent / Commissioner, Keelakarai Municipality, Ramanathapuram District, only to facilitate some persons to participate in the Tender had cancelled the earlier Tender, without assigning any reason. Even the Re-Tender Notification only shows that it is a Re-Tender.

10. The Learned Counsel for the Petitioner projects a strenuous argument that the Third Respondent had cancelled the earlier Tender, which is against the natural justice and well settled principles of Law.

11. Per contra, it is the submission of the Learned Counsel for the Third Respondent / Municipality that for the sanctioned work, short Tender was called for from the eligible contractors (including the Petitioner) and that some six contractors had placed their sealed Tenders, in the 'Tender Box', on the scheduled date on 11.03.2016, with EMD amount. Further, the time was fixed for submission of Tender till 3.00 p.m., on 11.03.2016. However, due to announcement of Election to State Assembly and to abide by the Election Code of Conduct and on the advice of the Second Respondent / District Collector, Ramanathapuram District, the 'Tender Box' placed in the Third Respondent Office was 'sealed in advance' at about 11.40 a.m., instead of the schedule time of 3.00 p.m., on 11.03.2016.

12. That apart, it is represented on behalf of the Third Respondent that sealing of 'Tender Box' at 11.40 a.m., and the postponement of opening of the 'Sealed

Tender Box' etc., was properly informed to the six participating contractors and to that effect a public notice was also affixed in the Notice Board on 11.03.2016 with an information that the further date would be informed latter

13. It is the version of the Third Respondent that after the election was over on 23.05.2016, another intimation letter was sent to those six participated bidders with an information that, the 'opening of the sealed Tender' would take place on 27.05.2016 at about 3.30 p.m. However, in the meanwhile, several complaints were made by some of the non-participating eligible contractors before the Second Respondent / the District Collector, Ramanathapuram District and to the First Respondent / Commissioner, Municipal Administration, Chennai, about their inability to take part due to advance closing of Tender Box at 11.40 a.m., than the scheduled time of 3.00 p.m., on 11.03.2016 and wanted an opportunity for participation in the Tender and requested for Re-Tender. Therefore, in such circumstances, on the advice of the higher authorities and with a view to provide an opportunity to all the eligible contractors, for a healthy bidding for the public interested work, it was decided to cancel the postponed 'Tender' called on 11.03.2016. Moreover, another intimation letter was served on 24.05.2016 to all the bidders, who participated on 11.03.2016 Tender call, with information of the 'stoppage of the opening of sealed Tender Box', which was proposed to open on 27.05.2016.

14. The clear-cut stand of the Third Respondent is that, after obtaining advice and consultation with the higher authority, it was decided to call for a fresh Tender (Re-Tender) with a view to avoid further litigation or delay. Accordingly, on 27.05.2016, the Third Respondent has passed a fresh proceeding for issuance of 'Re-Tender Notification' in Na.Ka.No.109/2016/E1, dated 27.05.2016. As per the Re-Tender Notification, the new date and time for submission of Tender was fixed as 3.00 p.m., on 04.07.2016.

15. In reality, the new Notification that was properly published in the news paper on 29.05.2016 and also in the State Tender Bulletin on 02.06.2016. As such, it is projected on the side of the Third Respondent that its actions are open, transparent and nothing illegal or in derogation of Law.

16. At this stage, the Learned Counsel for the Third Respondent / Municipality submits that nothing prevents the Petitioner to take part in the Re-Tender, as per the new Notification, which is scheduled to take place today i.e., on 04.07.2016 at 3.00 p.m., and as such, filing of the Petition by the Petitioner is per se not maintainable.

17. At this juncture, this Court, on perusal of the proceedings of the Third Respondent, dated 23.05.2016, is of the considered view that the Third Respondent had given information about the opening of the Tender on 27.05.2016 at about 3.30 p.m. In fact, the Petitioner was one of the recipients of the letter note. Further, on 24.05.2016, the Third Respondent / Municipality had addressed the Notice to the six persons (including the Petitioner) informing that 'presently because of certain administrative reasons the opening of the Tender was stopped (the Tender was to be opened on 27.05.2016 at 3.30 p.m.)'.

18. Added further, the Third Respondent had addressed a communication, dated 27.05.2016, to the Director, Information and Public Relation Department, Secretariat, Chennai, interalia stating that the Re-Tender was on 04.07.2016 and the notice regarding publication of Re-Tender Notice in State Tender News Edition and at State Level Bulletin may be published. Moreover, the said Tender Notification was requested to be published in one Tamil Daily, one English Daily of South Indian Edition. Besides yet, the Third Respondent / Commissioner of Municipality, on 27.05.2016 had published the E-Tendering re-notice mentioning the date of Re-Tender on 04.07.2016 at 3.00 p.m. In the said E-Tendering Re-Notice (Procurement), dated 25.07.2016, it was mentioned that 'evaluation of bids will be done, as per Tender Transparency Act, 1998 of Government of Tamil Nadu and Rules etc.,

19. It also comes to be known that on 31.05.2016, the Petitioner had addressed a communication to the Chief Secretary, Government of Tamil Nadu, Municipal Administration-cum-Water Supply Board, Chennai, wherein, he had prayed for opening of Tender expeditiously.

20. In the instant case, on going through the contents of the Notice, dated 25.04.2016 of the Third Respondents, this Court finds that the Tender opening

was stopped owing to present administrative reasons. Subsequently, through communication, dated 27.05.2016, the Third Respondent had informed the Director, Information and Public Relation Department, Secretariat, Chennai, wherein, a request was made for publishing the Re-Tender Notification, on 04.07.2016, in State Tender Bulletin, in one Tamil Daily and in one English South India Edition.

21. Ultimately, the Third Respondent / Municipality had issued an E-Tendering re-notice giving some specifications about the Re-Tender and also made mention of that the E-Tender would take place on 04.07.2016 at 3.00 p.m. Also, it is categorically mentioned in the communication of the Third Respondent, dated 27.05.2016 to the effect that 'evaluation of bids will be done as per Tender Transparency Act, 1998 of the Government of Tamil Nadu and Rules thereunder.

22. The pivotal reason advanced on behalf of the Petitioner is that the proceedings of the Third Respondent without cancelling the earlier Tender is not correct and in fact, the proceedings of the Third Respondent, dated 27.05.2016, fixing the Re-Tender on 04.07.2016, is only to facilitate to some contractors, in an illegal manner and also violating the Law.

23. It is to be noted that Section 8 of the Tamil Nadu Transparency Act, 1998 speaks of 'opening of tender'; Section 10 deals with 'Evaluation and acceptance of tender'; Section 11 enjoins filing of an appeal by the tenderer, if he is aggrieved by the order passed by the tendering authority under Section 10 of the Act and Section 12 of the Act, specifies 'Right to reject the tender'.

24. As far as the present case is concerned, the grievance of the Petitioner is primarily that the proceedings of the Third Respondent, dated 27.05.2016, calling for the Re-Tender to be held on 04.07.2016 at 3.00 p.m., is only to facilitate to some contractors to take part and therefore, it is illegal. In this connection, this Court very pertinently points out that in the Notice, dated 24.05.2016 of the Third Respondent / Municipality, it was mentioned specifically that, 'presently only because of certain administrative reasons, the Tender opening was stopped' as such, no motive can be attributed on the part of the Third Respondent / Municipality by the Petitioner in the considered opinion of this Court. In fact, the

stoppage of opening of Tender, by means of Notice, dated 24.05.2016 of the Third Respondent / Municipality was informed to the Petitioner along with five other persons. After the communication of the Third Respondent, dated 24.05.2016, the Third Respondent / Municipality had addressed a communication to the Director, Information and Public Relation Department, Secretariat, Chennai, wherein, he had prayed for publication of the Re-Tender Notification in State Bulletin, Tender Bulletin, in one Tamil Daily and in one English South India Edition.

25. Indeed, when the Third Respondent / Municipality had stated in Roc.No.109/2016/E1, dated 27.05.2016, E-Tendering Re-notice interalia to the effect that the Re-Tender would be held at 3.00 p.m., on 04.07.2016 and evaluation of bids would be done, as per the Tender Transparency Act, 1998 of Government of Tamil Nadu and Rules thereunder, then, this Court is of the considered view that there is no prohibition in Law for the Petitioner to take part in the Re-Tender auction, scheduled to be held today i.e., on 04.07.2016 at 3.00 p.m. Viewed in that perspective, the Writ filed by the Petitioner is devoid of merits.

26. In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. It is abundantly made clear that the dismissal of the Writ Petition will not preclude the Petitioner to take part in the Re- Tender auction to be held on 04.07.2016 at 3.00 p.m., In case, the Petitioner is not willing to take part in the Re-Tender to be held on 04.07.2016 at 3.00 p.m., today, then, it is open to him to approach the concerned authorities and seek for return of the EMD amount, already deposited by him in the subject matter in issue. Consequently, connected miscellaneous petitions are also dismissed.

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