

(2005) 03 MAD CK 0047

In the Madras High Court

Case No : Writ Petition No. 19778 of 2004

Durai Manickam

APPELLANT

Vs

The Commissioner, Sakkottai Panchayat Union

RESPONDENT

Date of Decision : 14-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 03 MAD CK 0047

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : AR. L. Sundaresan, for the Appellant; N. Subbarayalu, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—By consent of parties, the writ petition itself is taken up for disposal.

2. The petitioner seeks to challenge the proceedings of the respondent in Na.Ka.A7/2613/04 dated 1.7.2004, to quash the same and to direct the

respondent to consider the petitioner's tender schedule for the work of repairing the western portion of the office of Sakkottai Panchayat Union.

3. By the impugned proceedings, the respondent have called for retender for carrying out certain repair work in the Panchayat Union Office.

According to the petitioner, when the tender was called for earlier, the petitioner submitted his tender and that as far as the Earnest Money Deposit

was concerned, he furnished a demand draft instead of National Savings Certificate or Kisan Vikas Certificate. Since the said action of the

petitioner was not in accordance with the tender conditions dated 16.6.2004 and no other contractor also submitted the Earnest Money Deposit in

the prescribed format, the respondent was obliged to call for re-tender by the impugned proceedings dated 1.7.2004.

4. Mr. AR. L. Sundaresan, learned counsel appearing for the petitioner would contend that inasmuch as the demand draft is a document which can

be easily encashed when compared to National Savings Certificate or Kisan Vikas Certificate, the rejection of the petitioner's tender on that

ground cannot be accepted and therefore, the re-tender should not be allowed to take place.

5. Condition No. 6 of the tender conditions dated 16.6.2004 is to the following effect:

(Vernacular portion deleted)

6. The petitioner having opted to submit his tender in accordance with the above referred to tender condition, unless and until the petitioner had

submitted his tender satisfying all the conditions including condition No. 6 as referred to above, it cannot lie in the mouth of the petitioner to

contend that the respondent Panchayat Union could have accepted the demand draft. In fact, under the said condition, it has been specifically

stipulated that neither cash nor the bankers cheque would be accepted towards Earnest Money Deposit. In spite of such specific stipulation, the

petitioner not having satisfied such condition imposed, the non acceptance of the petitioner's tender pursuant to the earlier notification cannot be

found fault with. There is absolutely no legality in the stand of the petitioner in approaching this Court for preventing the respondent from carrying

out the retender process pursuant to the impugned proceedings dated 1.7.2004.

7. In this regard, the reliance placed upon by the petitioner in the judgment of the Hon'ble Supreme Court in M/s. Poddar Steel Corporation Vs.

M/s. Ganesh Engineering Works and others, has absolutely no application to the facts of this case. That was a case where after the tender was

awarded to a successful tenderer, the successful tenderer offered a bankers cheque to the satisfaction of the principal, while the condition imposed

was that the Earnest Money Deposit should be paid in cash. Considering the said situation, the Hon'ble Supreme Court took a view that deposit

of cash as well as bankers cheque stand on the same footing and therefore, on that score, the successful tenderer's bid and the acceptance of it,

cannot be interfered with.

8. The facts and the circumstances involved in that case has absolutely no comparison to the facts of this case. Here the petitioner wants the

condition itself to be varied which cannot be done in a writ petition under Article 226 of the Constitution of India, in the absence of such condition

being highly onerous or such a condition is impossible of compliance.

9. In the above circumstances, I do not find any justification or even bona fide in the stand of the petitioner in seeking to challenge the impugned

proceedings of the respondent. I only feel that by the imprudent action of the petitioner in approaching this Court by filing this writ petition and also

by stalling the re-tender process for nearly nine months by obtaining interim orders, the petitioner has caused a serious prejudice to the respondent.

I, therefore, feel it appropriate to impose cost while dismissing the writ petition. The writ petition therefore fails and the same is dismissed with a

cost of Rs. 2,000/- to be payable to the respondent within two weeks from the date of receipt of a copy of this order. Consequently, WPMP No.

23783 of 2004 and WVMP No. 2046 of 2004 are dismissed.