

(1994) 07 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 11154 of 1994

K. Soosalrathnam

APPELLANT

Vs

The Divisional Engineer, National Highways Circle, Tirunelveli
and others

RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 2
General Clauses Act, 1897 — Section 10

Citation : AIR 1995 Mad 90

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : F.B. Benjamin George, for the Appellant; G. veerabadran, Govt. Advocate and N. Thiagarajan, for the Respondent

Judgement

1. This writ petition seeks to quash the tender notification No. 5 of 1994 dated 7-5-1994 issued by the 2nd respondent and consequently to direct

the 1st respondent to call for fresh tenders and award the work in question to the lowest bidder.

2. The material allegations in the supporting affidavit by the petitioner are as follows:-- He is a registered contractor under class I category with the

National Highways Department throughout the State. The 2nd respondent floated the tender in the above referred to notification for purposes of

two works under the National Highways Circle, Tirunelveli and Madurai-2 respectively. As per the said notification tender documents have to be

received from the 1st respondent from 13-6-1994 to 21-6-1994, on paying a sum of Rs. 3,000/- towards tender cost and Rs. 173/- towards

sales tax in the treasury account. The petitioner intended to participate in the said tender pertaining to Item No. 1 of the tender notification and paid

the tender cost in the treasury account on 16-6-1994 and approached the 1st respondent on 16-6-1994 itself for receiving the tender schedules.

However, the 1st respondent refused to issue the tender schedules and stated that the contractor to whom the work has to be awarded has been

selected by the higher authorities and, therefore, tender schedules will not be issued to other contractors. Immediately thereafter, the petitioner has

sent application with the remittance copy of the challan to the 1st respondent. The 1st respondent, on seeing the petitioner's address in the cover,

refused to receive the cover and returned the same on 20-6-1994. The last date for receiving the tender schedules, viz., 21-6-1994 was a holiday,

on account of Moharam. Since the tender schedules were not received till 22-6-1994, the petitioner once again approached the 1st respondent for

receiving them on 22-6-1994. But, the 1st respondent once again refused to issue tender schedules and stated that the last date for receiving the

tender schedules was pre-poned to 20-6-1994. Though the tender schedules have been opened on 23-6-1994, the same are yet to be confirmed.

By the arbitrary and illegal act of the respondents 1 to 4, the petitioner has been deprived of the opportunity of participating in the above tender.

3. In the counter filed by the 1st respondent, the material allegations are as follows:-- The statement of the petitioner that he approached the 1st

respondent on 16-6-1994 and the 1st respondent refused to issue tender schedules, is not correct. The further statement of the petitioner about the

refusal to issue tender schedules to him is also beyond truth. The Statement of the petitioner that on seeing his address in the cover, the 1st

respondent refused to receive the same, is not correct. Since there are two different National Highways Divisional Engineer's office in

Palayamkottai, that is, one execution division and another one, planning division, "Tapal" said to have been sent by the petitioner might have been

returned for want of sufficient address. In the abovesaid notification, the Superintending Engineer (NH) Tirunelveli has prescribed the dates for

the sale of tender schedules during working hours on all working days between 13-6-1994 to 21-6-1994. Subsequently due to the declaration of

public holiday on 21-6-1994 by the Government and due to declaration of 22-6-1994 also as a local holiday for Tirunelveli and Palayam-kottai

Taluk by the Collector of Tirunelveli in view of the car festival, tender schedules were issued up to 20-6-1994, being the last working day. The

statement of the petitioner that he again approached the 1st respondent, who again refused to issue the tender schedules, is false. Since 22-6-1994

was declared as a local holiday, the petitioner could not have met the 1st respondent on that date.

4. No doubt, a reply affidavit was filed by the petitioner. But, there is no necessity to traverse the same. C.M.P. No. 17415 of 1994 was filed by

one R.C. Anantharaj for impleading himself in the writ petition as the 5th respondent. According to his affidavit in support of the said W.M.P.,

pursuant to the abovesaid notification he obtained tender schedules and submitted his tender for the abovesaid item No. 1 work, on the prescribed

date, viz., 23-6-1994. Further, according to the said affidavit, the tenders received were opened on the same date (23-6-1994) and it was

announced by the 3rd respondent that his tender was the lowest. Therefore, according to him, he is entitled to execute the said work under item

No. 1. Therefore, he filed the abovesaid W.M.P. The said W.M.P., after hearing all the Counsel, was allowed on 18-7-1994 by me. Thereafter

he was allowed to file a counter affidavit to the main writ petition.

5. The material allegations in his counter affidavit to the writ petition are as follows:--The prayer in the writ petition is not at all maintainable since

the abovesaid tender notification is at best only notice, which cannot be quashed by a writ of certiorari. Further, since the petitioner is only an

intending participant for the abovesaid item No.1, he has no right at all to maintain the writ petition.

6. In the light of the above referred to averments in the respective affidavit, learned Counsel for the petitioner, learned Counsel for the 1st

respondent and learned Counsel for the 5th respondent made their submissions and I have considered their submissions. I am of the view that a

very short point is involved in the present writ petition and that, is whether the tender schedules have been refused to the petitioner unlawfully

despite his effort to get the said schedules within the time he could legally avail of, No doubt, admittedly, the tender notification states that the

tender schedules could be obtained between 13-6-1994 and 21-6-1994. However, though originally 21-6-1994 was a working day as on 7-5-

1994, the date of notification, subsequently the Government has declared 21-6-1994 as a holiday on account of Moharam. It is also found from

the counter affidavit of the 1st respondent himself that even 22-6-1994 was a local holiday for Tirunelveli and Palayamkottai towns. If that is so, as

per the principles underlying Section 10 of General Clauses Act, it should be taken that the last date for receiving the tender schedules by the

intending bidders gets extended to the next working day, viz., 23-6-1994 and the 1st respondent cannot contend that the tender schedules can be

issued only up to 20-6-1994, the last working day prior to the abovesaid date 21-6-1994. No doubt, learned Counsel for the 1st respondent laid

emphasis on the undermentioned passage in the above referred to notification dated 7-5-1994:--

So, according to learned Counsel for the 1st respondent if the original last date fixed, viz., 21-6-1994 becomes a holiday, subsequently the

intending bidders could get the schedules only up to the previous working day, viz., 20-6-1994. But, I am unable to agree. Though Section 10 of

the General Clauses Act, cannot in terms apply to the present case the last date for obtaining the schedules should get extended to the next

working day if the last date originally fixed becomes a holiday subsequently, on the general principles underlying the said section. It has also been

held in C.F. Angadi Vs. Y.S. Hirannayya, , C.F. Angadi v. Y.S. Hirannayya, that similar rule can be applied on general principles.

6-A. At any rate, even before 21-6-1994, according to paragraph 4 of the affidavit in support of the writ petition, the petitioner paid the tender

cost in the treasury account on 16-6-1994 and ""approached the 1st Respondent on 16-6-1994 itself for receiving the tender schedules. However,

the first respondent refused to issue the tender schedules, and stated that the contractor to whom the work has to be awarded has been selected

and identified by the Higher authorities and therefore the tender schedules will not be issued to other contractors."" As against the allegations in

paragraph 4, all that the counter affidavit of the 1st respondent says is as follows: --

With reference to the averments in para 4 it is stated that the statement of the petitioner that he approached the first respondent on 16-6-1994

and the first Respondent refused to issue tender schedule is not correct. The Petitioner is hereby called upon to strict proof for the said allegation.

The further statement of the Petitioner about the refusal to issue Tender Schedule to him is also beyond truth.

It is clear to me that this is only an evasive denial. As against the abovesaid allegation in paragraph 4 of the supporting affidavit, the 1st respondent

has not specifically and positively asserted that the petitioner did not approach him at all on 16-6-1994 or on any other date for receiving the

tender schedules. If really the petitioner had not met the 1st respondent on 16-6-1994 for receiving the tender schedules, the 1st respondent could

have easily asserted in his affidavit that he did not approach him at all on 16-6-1994 or any other date and if that is so, he could have also asserted

positively that since the 1st respondent did not approach him at all, the question of refusal by him does not arise at all. Order 8 Rule 5, C.P.C.

specifically provides that every allegation of fact, if not denied specifically or by necessary implication, shall be taken to be admitted except as

against the person under disability. The same principles would apply here also. Further, there is also no denial of the allegation that the tender cost

was paid on 16-6-1994 in the treasury account.

7. Subsequently ""immediately"" after 16-6-1994, the petitioner has sent his application from Nagercoil asking for schedules, by registered post, that

has reached the Divisional Engineer, National Highways, Palayamcottai on 20-6-1994 as shown by the postal seals on the postal cover. In this

connection, in paragraph 5 of the counter affidavit of the 1st respondent it is averred as follows:--

Since there are two different National Highways Divisional Engineer's Offices available in Palayamcotta i.e., one Execution Division and another

one Planning Division, the Tapal said to have been sentt by the petitioner might be returned for want of sufficient address as notified in the tender

notice dated 7-5-1994"".

8. But, first of all, it must be noted that the above referred to tender notification dated 7-5-1994 did not specifically refer to the two divisions of the

abovesaid Division, Engineer's office. It only says that tender schedules could be obtained from Divisional Engineer (National Highways)

Tirunclveli. While so, I do not think that the 1st respondent is justified in having returned the abovesaid registered cover, which reached him on 20-

6-1994. Learned Counsel for the 5th respondent in this connection no doubt

pointed out that the tender notification, though did not mention the above referred to two divisions of the office of the Divisional Engineer (National Highways), mentioned the address from which the tender schedules could be obtained, as Divisional Engineer, (National Highways), Tirunelveli at 59A, Tiruvanandapuram Road (at Tirunelveli), But, it must be noted that the 1st respondent in his counter affidavit has not positively averred that the abovesaid registered letter of the petitioner did not reach the said address, viz., 59A, Tiruvanandapuram Road. So, it has to be taken that the registered letter reached that address.

9. The endorsement on the returned postal cover as shown by its copy filed in the typedset, reads as follows:--

(Mailer in vernacular omitted -- Ed.)

This very endorsement also shows that the above referred to office of execution division of Divisional Engineer's office has, with some ulterior

motive, returned the postal cover, even though it reached only the above referred to execution division. Simply because the term "execution

division" has not been mentioned in the postal cover, normally no one would return the said post. That is more so, when as already mentioned the

tender notification itself only says that tender schedule could be obtained from "Divisional Engineer (National Highways), Tirunelveli". It did not

specify whether the abovesaid Divisional Engineer is of execution division or planning division. In this connection, I am also reminded of the

observation of the Supreme Court in S.K. Verma Vs. Mahesh Chandra and Another, and The Trustees of Port of Bombay Vs. The Premier

Automobiles Ltd. and Another, . In the latter case, the observation runs thus:

Public institutions convict themselves of untrustworthiness out of their own mouth by resorting to such defences.

9A. No doubt, the tender notification says that tender schedules would not be sent by post. But, after receiving the registered letter on 18-6-1994

or at least on 20-6-1994, the 1st respondent could have informed the petitioner that he should come personally and receive the tender schedules at

least on 23-6-1994 since it is said that both 21-6-1994 and 22-6-1994 turned out to be holidays.

10. All said and done, it is clear to me that the petitioner has done whatever could be done in the situation in his efforts to obtain the tender

schedules and the respondents are not justified in having not given him the tender schedules.

11. Lastly, I may deal with one other submission of learned Counsel for the 5th respondent, that is, since the petitioner was only an intending

participant for Item 1 of the said notification, he has no right to maintain the writ petition since he is not a person actually aggrieved. This contention

has absolutely no merit. When tender schedules have been refused illegally to an intending participant, there can be no doubt that he is an aggrieved

party. The decision cited by the said learned Counsel in this regard, viz., K.V. Sivaprakasam v. The Deputy Commissioner, H.R. & C.E. (Admn.)

Department 1993 Writ LR 52 Mad has no application to the present case. There, the challenge was against the award of the contract to the sole

applicant for the tender and the writ petitioner was not an applicant for the tender at all. Only in that context the writ petition was dismissed.

12. The net result is, the above referred to impugned notification dated 7-5-1994 is quashed and the writ petition is allowed. However, in the

circumstances of the case, there will be no order as to costs. It is open to the National Highways to call for fresh tenders.

13. Petition allowed.