

(2012) 01 MAD CK 0305

In the Madras High Court

Case No : Writ Petition No's. 19124 and 19138 of 2011 and M.P. No's. 1+1 of 2011

M/s. G.S. Naidu Constructions

APPELLANT

Vs

The Chairman Chennai Metropolitan Water Supply and Sewerage Board, No. 1, Pumping Station Road, Chennai-600 002, The Superintending Engineer (C and M), Chennai Metropolitan Water Supply and Sewerage Board, No. 1, Pumping Station Road, Chennai-600 002 and Sri R. Radhakrishnan

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Limitation Act, 1963 — Section 14

Tamil Nadu Transparency in Tenders Act, 1998 — Section 10, 10(7), 11

Citation : (2012) 01 MAD CK 0305

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : T.P. Prabakaran, for the Appellant; Poonam R. Chopra, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. The petitioner has approached this Court for issuance of a writ in the nature of Certiorari, to quash the allotment of work order in favour of respondent no.3 for operation and maintenance of sewerage treatment plant at Kodungaiyur Zone - I & II.

2. The case of the petitioner is that in pursuance to the tender notice, the petitioner submitted his tender at 27.2% less than the price fixed by the respondents 1 & 2.

3. Whereas respondent no.3 had submitted the tender at 13.60% less than the Government rates. It is the case of the petitioner that though the petitioner was

the lowest Tenderer, his tender was not considered and work was allotted to respondent no.3.

4. The petitioner, being aggrieved by the order, filed W.P.No.6472 of 2011. The writ petition was disposed of by this Court on 28.04.2011. The operative part of the order reads as under:

1. This writ petition is filed to direct the respondent to issue a work order to the petitioner firm for the work of operation and maintenance of Sewerage treatment plant at Kodungaiyur Zone-I for three years in pursuant to the local competitive bidding for the said work published in the web site of Chennai Metropolitan Water Supply and Sewerage Board vide reference CNT/SEW/MWB/2039/2010-11 by the respondent.

2. The petitioner prays for a direction to issue work order to the petitioner's firm for operation and maintenance of Sewerage treatment plant as mentioned in the prayer. According to the petitioner, the petitioner firm has participated in the tender and the due date for receipt of tender was 22.9.2010 and the tenders received were opened on 29.9.2010 in the presence of the parties. According to the petitioner, the petitioner firm is the lowest bidder and therefore, the tender should have been given to its firm. On failure to do so, the present writ petition has been filed.

3. The respondent was noticed and the counter affidavit has been filed by the Superintending Engineer, who states that the authorities have evaluated all the tender documents submitted by each one of the tenderer and out of six tenders, four tenders were rejected including that of the petitioner for reasons contained therein.

4. The respondent/Department states that they have followed the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Rules in the tender proceedings.

5. In view of the specific stand taken in the counter affidavit, the respondent/authority undertakes to comply with the requirements of Section 10(7) of the Tamil Nadu Transparency in Tenders Act, 1998, which reads as follows:-

10 Evaluation and Acceptance of tender:-

.....

(7) The Tender Accepting Authority shall intimate the information regarding the name and address of the tenderer whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate tender Bulletin Officers.

6. It is open to the petitioner to challenge the rejection order as provided under the above said Act and Rules. This writ petition stands disposed of accordingly. No costs.

5. The case of the petitioner, is that the petitioner was informed that the reason for rejection of his tender was his poor performance, for which, penalty was also imposed.

6. The contention of the learned counsel for the petitioner is that performance of respondent no.3 was also poor, thus there is discrimination by respondents 1 & 2, in allotment of work order.

7. On consideration, I find that these writ petitions are not competent, as in W.P.No.6472 of 2011, this Court had permitted the petitioner to challenge the rejection order as provided under the above said Act and Rules.

8. Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998, reads as under:

11. Appeal - (1) Any tenderer aggrieved by the order passed by the Tender Accepting Authority u/s 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.

(2) In disposing of an appeal under sub-section (1), the Government may, after giving the party an opportunity of making his representations, pass such order thereon as they may deem fit.

(3) The order of the Government on such appeal shall be final.

(4) The Government may, pending the exercise of their powers under this section, pass such interlocutory orders as they may deem fit.

9. For the reason stated herein-above, the writ petitions are dismissed, as alternative statutory remedy is available to the petitioner.

10. However, keeping in view the fact that the petitioner has been bona fide prosecuting this case in this Court, in case, the petitioner files appeal within 15 days of receipt of certified copy of this order, he shall be given the benefit of Section 14 of the Limitation Act, by the appellate authority. No costs.

11. Consequently, connected miscellaneous petitions are closed.