

**(2002) 02 MAD CK 0196**

**In the Madras High Court**

**Case No :** Writ Petition No. 487 of 2002 and W.P.M.P. No's. 768 and 769 of 2002

O.S.A. Sundararaj

APPELLANT

Vs

The Chief Engineer (General), Highways and Rural Works  
Department, Chepauk, Chennai and The Superintending  
Engineer, Highways and Rural Works Department, Madurai

RESPONDENT

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**Date of Decision :** 28-02-2002

**Acts Referred:**

**Citation :** (2002) 02 MAD CK 0196

**Hon'ble Judges :** P.K. Misra, J

**Bench :** Single Bench

**Advocate :** K. Sridhar, for the Appellant; D. Krishnakumar, Special G.P., for the Respondent

**Final Decision :** Dismissed

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**Judgement**

P.K. Misra, J.—The petitioner is a class I Highways and Rural Works contractor authorised to do the contract works about Rs.25 lakhs. He has sought for a writ of declaration to declare that the pre-qualification condition No.1 under Tender Notice No.12/2001/AD1 dated 12.12.2001 is illegal and unconstitutional and void and has also prayed for a direction to the second respondent to issue tender schedule to the petitioner without insisting on condition No.1.

2. For convenience, the aforesaid condition No.1 as published in the newspaper The New Indian Express dated 17.12.2001 is extracted here-under:-

"The bidder should have successfully completed the execution of similar single work during the last 5 years and should have executed the minimum quantities of 40% of each and every item of works involved in this contract"

It is contended that the aforesaid condition is vague, unworkable and arbitrary and is contrary to the pre-requisite qualification uniformly applied throughout the State for executing works for Highways. It has been submitted that ordinarily, in other works, it is only prescribed that the applicant should have successfully

completed at-least one contract (Highways Road Work) of at -least 40% of the value of proposed contract within the last five years, but, in the present case, it has been insisted that the applicant should have completed the entire work. It has been submitted that by making a departure from the established norms, the respondents have arbitrarily shut out many contractors like the petitioner. It has been further submitted that in the impugned condition No.1, it has not been indicated the items of work and as such, it is vague and arbitrary. The petitioner has submitted that though he has completed many works successfully, by virtue of inclusion of arbitrary clause in the said condition No.1, he is unreasonably deprived of the right to participate in the tender.

3. A counter affidavit has been filed on behalf of the second respondent, wherein it is indicated that the Board of Engineers in Highways Department constituted by the Government had discussed the matters relating to the standard specification and had decided in the meeting dated 25.01.2001 and formulated a standard pre-qualification document which has been followed by the Department since February, 2001 and accordingly, a minimum criteria for pre-qualification has been prescribed. It is denied that no new criteria has been included. It is further submitted that the petitioner had never sought for the tender papers. It has been stated that in the tender papers, it has been inter alia indicated about the general experience in the aforesaid papers, which is extracted here-under:-

"The applicant shall meet the following minimum criteria:

i) . . .

ii) The applicant in the same name and style, as prime contractor should have successfully completed at least one contract (Highway road and/or Bridge works/ Airport contract) of at least 40% of the value of proposed contract within the last five years.

iii) . . .

It has been further submitted that the petitioner who is aggrieved by the condition reflected in the Newspaper should have either sought for clarification from the Department or should have filed the writ petition immediately without waiting for the eleventh hour. It is also submitted that the work in question has to be executed within a time bound programme and if the matter is not finalised, the finance sanction is likely to lapse after the current financial year and as such, it would not be in the interest of public to direct for re-tender or to permit the petitioner to bid at this belated stage as the other bids have been opened and only the final decision is to be taken.

4. A comparison of the condition included in the documents filed by the respondents and the condition as reflected in the Newspaper indicates some sort of distinction between two. It is rather unfortunate that the expressions used in the primary document of the Department which forms part of the tender papers and the advertisement issued in the Newspaper are dissimilar creating confusion

in the mind of the intending bidders and it is expected that the respondents would be more careful in future while coming out with the advertisements and there should not be any scope for any confusion in such matters.

However, this irregularity in the published tender notice is not a sufficient ground to quash the tender notice and does not warrant any interference in the peculiar facts and circumstances of the present case as indicated hereunder.

5. Even though the learned Counsel for the petitioner submitted that the petitioner was not allowed to take the tender papers, there is no specific categorical assertion to that effect in the writ petition. It is not the specific case of the petitioner that he had approached the respondents for supply of tender papers and such tender papers were denied. The only assertion made in paragraph No.11 of the affidavit is to the following effect:-

"I submit that last date for issue of the tender schedule is 21.01.2002 and in view of the impugned condition No.1 the petitioner is unable to obtain the tender schedule and participate in the tender".

The respondents have stated in the counter affidavit that the petitioner had not approached for obtaining the tender schedule. The petitioner has not indicated specifically as to the date on which he had approached for the tender schedule and when he was denied.

6. The notice was published on 17.12.2001 and the last date for submission of the papers had been fixed on 21.01.2002. It has not been explained as to why the petitioner had waited till 17.01.2002 for filing the writ petition. It is well settled that a writ petition has to be filed as expeditiously as possible without any avoidable delay. It is true that no specific time limit is prescribed for filing a writ petition and the question of delay always depends upon the facts and circumstances of each case. In a given case filing of a writ petition after a few days only may be considered fatal. When the notice had been published on 17.12.2001 and the last date for submission of papers was 21.01.2002, it is expected that the petitioner should have approached the Court much earlier. It is true that prima facie there is some confusion in the published notice. However, the contention of the respondents to the effect that if there is any further delay in finalising the contract the financial sanction may lapse, cannot be overlooked. Even assuming that there some injustice has been caused to the petitioner in his individual capacity, the larger interest of the Society has to be kept in mind. There is sufficient justification in the submission of the learned Counsel for the respondents that any interference by this Court at this stage is likely to jeopardise the entire work as the amount earmarked for the project may lapse.

7. For the aforesaid reasons, I am not inclined to issue any direction as prayed for by the petitioner. Accordingly, this writ petition is dismissed without any order as to costs. Consequently, connected W.P.M. Ps are also dismissed.