

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.4.2012

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.1618 of 2012 and W.P.No.1619 of 2012

M/s.TSR Constructions

Rep. by its Partner

Mr.R.Jeevanandham

New No.6, Avarankattu Street

Thiruvannamalai ... petitioner in both the writ
petitions

Vs.

1. The Municipal Commissioner
Thiruvannamalai Municipality
Thiruvannamalai

2. M/s.Arunai Constructions
No.136/52, Mathalankulam Street
Thiruvannamalai

... Respondents in both the writ
petitions

W.P.No.1618 of 2012:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings dated 7.1.2012, on the file of the first respondent herein, quash the same and consequently direct the first respondent herein to consider the tender submitted by the petitioner for the work of providing BT surface at Muthu Vinayagam Muthu Vinayagam Koil Street, Karkana 2,3,4,5 Street, Kilnathur to By Pass Road, (Meenakshi Theatre, Vediappan Street, VOC Nagar, 8, 9 and 11th street, Aduthotti Street and Lakshmipuram Street, (Package I) in Ward No.2,15,19,18,25, 35 in Thiruvannamalai Municipality, under the Tamil Nadu Urban Roads Infrastructure Project 2011-2012.

W.P.No.1619 of 2012:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings dated 7.1.2012, on the file of the first respondent herein, quash the same and consequently direct the first respondent herein to consider the tender submitted by the petitioner for the work of providing BT surface at Kalkuthrai Dharka Street, New Karkana Main Road, Thiruvalluvar Nagar, Mariamman 12th Street and Surya Nagar, Thenpalani Nagar and Vettavalam Road to Circuit House (Package II) in Ward No.31, 15,37,32,39 in Thiruvannamalai Municipality, under the Tamil Nadu Urban Roads Infrastructure Project 2011-2012.

For petitioner : Mr.R.Muthukumarasamy

Senior Advocate for
Mr.K.Govi Ganesan

For Respondents: Mr.A.Navaneethakrishnan

Advocate General for Mr.Bala Ramesh for R1
A.E.Kalaichelvan for R2

C O M M O N O R D E R

Since, the issues involved in both the writ petitions are similar in nature, they have been taken up together and a common order is being passed.

2. Heard Mr.R.Muthukumarasamy, the learned senior counsel appearing for the petitioner, as well as Mr.A.Navaneethakrishnan, the learned Advocate General appearing on behalf of the first respondents and Mr.A.E.Kalaichelvan, the learned counsel appearing on behalf of the second respondent.

3. It has been stated that the petitioner is a registered partnership firm, with registration No.59 of 2000, on the file of the Registration of Firms, Tiruvannamalai.

4. It has been further stated, in W.P.No.1618 of 2012, that the first respondent herein had invited bids, for providing BT Surface, at Muthu Vinayagam Koil Street, Karkana 2,3,4,5 Street, Kilnathur to By Pass Road, (Meenakshi Theatre, Vediappan Street, VOC Nagar, 8, 9 and 11th street, Aduthotti Street and Lakshmipuram Street, (Package I), in Ward No.2, 15,19,18,25,35, in Thiruvannamalai Municipality,

under the Tamil Nadu Urban Roads Infrastructure Project 2011-2012. The value of the work was Rs.263.26 lakhs and the Earnest Money Deposit amount had been fixed at 2,63,260/-.

5. It has been further stated, in W.P.No.1619 of 2012, that the first respondent herein had invited bids for providing BT Surface at Kalkuthrai Dharka Street, New Karkana Main Road, Thiruvalluvar Nagar, Mariamman 12th Street and Surya Nagar, Thenpalani Nagar and Vettavalam Road to Circuit House (Package II), in Ward No.31, 15,37,32,39, in Thiruvannamalai Municipality, under the Tamil Nadu Urban Roads Infrastructure Project 2011-2012. The value of the work was Rs.214.80 lakhs and the Earnest Money Deposit amount had been fixed at 2,14,800/-.

6. It had been further stated that the qualifications for the bidder had been stipulated in clause 4 of the terms and conditions of the tender notification. The petitioner firm is having all the necessary qualifications, as prescribed in the terms and conditions of the tender notification. Accordingly, the petitioner firm had sent its tenders, to the first respondent, by E-Mail, as it was an E-Tender. The tenders submitted by the petitioner had been acknowledged by the first respondent, vide letter, dated 28.12.2011. Thereafter, a separate I.D. number (I.D.No.15215) had been allotted to the petitioner. The bids made by the petitioner had been opened, on 28.12.2011, at 3.30 p.m., by the duly constituted committee. While the bids of the petitioner were being processed, it had been informed that the petitioner was not eligible to participate in the bids. The only reason stated by the respondents for rejecting the bids of the petitioner, during the technical evaluation, is that the petitioner had been 'Black Listed'.

7. It has been further stated that no information had been issued about the 'black listing' of the petitioner earlier. Further, no prior notice had been issued before the alleged 'black listing' of the petitioner. as such, even if an order had been passed 'black listing' the petitioner, it cannot be held to be valid in the eye of law. Since, the petitioner is in the category of Class-I contractors, it is qualified to participate in the bid in question. However, due to the alleged 'black listing', the petitioner was disqualified from participating in the bid, arbitrarily and illegally. In such circumstances, the petitioner had filed the present writ petitions, before this Court, under Article 226 of the Constitution of India.

8. In the counter affidavits filed on behalf of the first respondent, it has been stated that the petitioner firm, which has been registered as a class I contractor, had been awarded several

municipal works in the past. In fact, a work order had been issued to the petitioner firm, on 24.11.2010, for 15 road works, under the Tamil Nadu Urban Roads Infrastructure Projects 2010-2011. Out of the 29 works awarded, the petitioner had completed only 6 works, within the stipulated time, at an expenditure of Rs.96.50 lakhs. Further, the works executed by the petitioner firm had been inspected by a committee of three engineers and the State Quality Monitoring Committee, on 25.2.2011. On such inspection, it was found that the works executed by the petitioner firm was poor in quality.

9. It had also been stated that the petitioner firm had not completed the work, as contemplated in the norms of the Government. Further, the petitioner firm had not followed the guidelines prescribed under the Special Road Project 2010-2011. In fact, some of the funds allotted to the first respondent, by the government, had been directed to be returned due to the lapses caused by the petitioner firm. Further, the first respondent had passed an order, dated 1.4.2011, to recover a sum of Rs.8,55,278/-, from the amount payable to the petitioner firm, for the monetary loss caused by it. In such circumstances, the petitioner firm had been 'black listed' vide proceedings, in Na.Ka.No.E1/9786/2006, dated 24.10.2011, and the said proceedings had been duly communicated to the petitioner firm, by a local tapal sent through a special messenger and also through the courier service, on 24.10.2011. Therefore, the claims made by the petitioner cannot be countenanced. As such, the writ petitions filed by the petitioner are devoid of merits and therefore, they are liable to be dismissed.

10. In the reply affidavits, dated 11.3.2012, filed on behalf of the petitioner, it has been stated that the averments and the allegations made against the petitioner, in the counter affidavits filed on behalf of the first respondent, are incorrect and baseless. The works carried out by the contractors are supervised by the municipal authorities and the engineers concerned, who are technically qualified. The measurements of the works carried out by the contractors are recorded by the Junior Engineer/Assistant Engineer and it had been checked, measured and approved by the Municipal Engineer. If the estimate amount exceeds a certain limit, it is test checked by the Regional Executive Engineer. The payment to the contractors had been made only after the said procedures were completed. It is a part of the mandatory procedures to obtain the signatures of the contractors, in the measurements books, acknowledging its acceptance. However, in the case of the petitioner, the signatures had not been obtained in the measurement books. As such, it is clear that the allegations made by the first respondent are incorrect and false.

11. It had been further stated that no notice had been sent to the petitioner before the alleged orders had been issued, 'black listing' the petitioner. As such, the orders said to have been passed, 'black listing' the petitioner, cannot be held to be valid in the eye of law. Since, 'black listing' of a contractor would entail certain civil consequences, it could have been done only by following the procedures prescribed for the said purpose. Therefore, the contentions raised on behalf of the respondents to sustain the orders passed against the petitioner disqualifying the petitioner from participating in the bids cannot be held to be valid. A 'black listing' order cannot be validly passed without a prior notice being issued and without an opportunity of hearing being given to the affected party.

12. The learned Advocate General appearing on behalf of the first respondent had submitted that the petitioner firm had been 'black listed' vide proceedings, in Na.Ka.No.E1/9786/2006, dated 24.10.2011, and the said proceedings had also been duly communicated to the petitioner firm, by local post, and through the courier service, as well as by way of a special messenger, on 24.10.2011, itself. Therefore, it is not open to the petitioner firm to claim that the petitioner firm was not aware of the 'black listing' proceedings.

13. He had further submitted that the 'black listing' of the petitioner firm had been done due to the poor quality of its works and due to the defaults committed by the petitioner firm, while carrying out its earlier contract works allotted to it, under the Tamil Nadu Urban Roads Infrastructures projects 2010-2011. Heavy financial losses had been incurred by the municipalities concerned, as well as by the state Government, due to the defaults committed by the petitioner firm in the execution of works. Further, the petitioner firm had not complied with the terms and conditions of works allotted to it in the past. As such, it is not open to the petitioner firm to claim that it has a right to participate in the bids, in respect of the works relating to the first respondent municipality.

14. It has been further stated that nearly 50% of the works, in respect of which the bids had been called for, had been completed by the second respondent, after the works had been allotted to it. In such circumstances, the writ petitions filed by the petitioner are devoid of merits and therefore, they are liable to be dismissed.

15. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, it is seen that the bids made by the petitioner, in respect of the works concerned, had been rejected only on the ground that the petitioner firm had been 'black listed'. However, the particulars regarding the 'black listing' had not been furnished to the petitioner, at the stage of the rejection of its bids. Even otherwise, 'black listing' of the petitioner, vide proceedings, in Na.Ka.No.E1/9786/2006, dated 24.10.2011, had been passed, admittedly, without a prior notice having been issued to the petitioner, and without a personal hearing having been granted before such proceedings had been issued.

16. It is also not in dispute that the only reason stated by the respondents, while rejecting the bids of the petitioner, is that it had been 'black listed'. Further, no details had been furnished to the petitioner firm showing the reasons for the 'black listing' at the time of the rejection of the bids.

17. It is a well settled position in law that a prior notice has to be issued and an opportunity of hearing ought to be granted to the affected party before the proceedings are issued 'black listing' the party. However, in the present cases, the said procedure had not been followed, by the respondents, before 'black listing' the petitioner firm. As such, the 'black listing' of the petitioner, vide proceedings in Na.Ka.No.E1/9786/2006, dated 24.10.2011, cannot be sustained in the eye of law. In such circumstances this court finds it appropriate to direct the first respondent to open the price bids of the petitioner within 15 days from the date of receipt of a copy of this order. On the opening of the price bids of the petitioner, if it is found that the bids made by the petitioner is lower than that of the second respondent, such bids made by the petitioner may be considered by the first respondent. However, it is open to the first respondent to reject the same, if the first respondent finds it fit to do so, in accordance with the terms and conditions of the tender notification, dated 28.12.2011. It is also made clear that it would be open to the first respondent to initiate appropriate proceedings against the petitioner, if so advised, with regard to the 'black listing' of the petitioner, by issuing an appropriate notice and by following the procedures established by law.

18. The writ petitions are ordered accordingly. No costs. Connected M.P.Nos.1 and 1 of 2012 and M.P.Nos.2 and 2 of 2012 are closed.

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Sd/-
Asst. Registrar (CO)

//True Copy//

Sub Asst. Registrar

To:

The Municipal Commissioner
Thiruvannamalai Municipality
Thiruvannamalai

+ 1 cc to Mr. A.E. Kalaiselvan, Advocate SR No.28975

+ 1 cc to Mr. K. Govi Ganesan, Advocate SR No.29080

SGL (CO)
SR/1.6.2012.

W.P.No.1618 of 2012 and
W.P.No.1619 of 2012

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