

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2015

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

W.P.No.14893 of 2015
and M.P.Nos.1 and 2 of 2015

SRIT India Private Limited,
rep.by its Managing Director-cum-Chairman,
Dr.Madhu Nambiar,
No.113/1B, SRIT House,
ITPL Main Road,
Kudalahalli,
Bangalore - 560 037. ... Petitioner

Vs.

Tamil Nadu Co.operative Milk Producers
Federation Limited, rep.by its
Managing Director,
Aavin Illam,
Madhavaram Milk Colony,
Madhavaram,
Chennai - 600 051. ... Respondent

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in connection with the request for proposal (RFP) for selection of System Integrator (SI) to Implement Integrated Dairy Management System (IDMS) project under Tender Reference No.3637/IDMS/2015 dated 01.04.2015 quashing the pre-bid qualification set in the second part of Point No.5 at Page No.9 of the respondents e.publication dated 01.04.2015 that requested for Proposal (RFP) for selection of System Integrator (SI) to Implement Integrated Dairy Management System (IDMS) project under Tender Reference No.3637/IDMS/2015 as unconstitutional and directing the respondent to issue a publication afresh with necessary modification in the said second part of Point No.5 at Page No.9 of the respondent's e.publication dated 01.04.2015 for calling proposals, so as to ensure the right of the petitioner parent entity to submit consolidated financial statement in respect of its parent entity and its subsidiaries to satisfy the turnover criteria and effectively participate in the bidding process as a matter of right.

For Petitioner : Mr.G.S.Vivekanandan

For Respondent : Mr.R.Bala Ramesh

O R D E R

A tender notification under Tender Reference No.3637/IDMS/2015 dated 01.04.2015 was issued by the respondent for the purpose of selecting System Integrator (SI) to Implement Integrated Diary Management system. One of the conditions of the said tender with respect to pre-qualification criteria is that a bidder should have average annual turnover of INR 60 Crores for the last three financial years from activities relating to Information Technology. Incidentally, such bidder shall provide financial statements for their legal entities only and such financial statements should not include the values from parent organisations and subsidiaries, etc., The petitioner was also called for the pre-bid meeting. The petitioner has sought for a clarification stating that as there is no bar under the Companies Act, 2013, coupled with the decision taken by the Ministry of Corporate Affairs. For doing so, the financial statement of the parent or subsidiary organisation also will have to be included for the purpose of the bidder's financial statement. The request of the petitioner was rejected. Thereafter, the petitioner has challenged the second part of point No.5 of the e publication dated 01.04.2015 before this Court.

2. As there was no bidder pursuant to the above said tender, the process was called off and a new tender reference was issued, though incorporating the very same conditions.

3. Learned counsel appearing for the petitioner submitted that the second part of point No.5 of the respondent's e publication is contrary to the provisions of the Companies Act and the decision of the Ministry of Corporate Affairs. Therefore, the second part of point No.5 as found in the impugned tender and which has been incorporated thereafter will have to be set aside and consequently the petitioner will have to be permitted to participate.

4. Learned counsel appearing for the respondent submitted that the rationale and object enshrined under Companies Act is different, which is meant for the existence of the Company, which cannot be imparted into the tender conditions. The said condition has been imposed in order to assess the individual turnover of an entity with reference to the past performance. Therefore, no interference is required.

5. A tender condition can be challenged only on two grounds, one is on the ground of arbitrariness and the other is on the ground of malafide. This Court does not find any arbitrariness in the condition imposed. The object is to see the turnover of the bidder with reference to the past performance and for the purpose of evaluating the performance of the firm as an independent entity. This has got no connection with the Companies Act. The object and rationale behind the Companies Act is different. The said enactment deals with the rights and liabilities of the Company. This Court, while exercising

the power of judicial review, cannot insist that particular condition shall have to be removed in the tender notification. There is no malafide alleged or proved. The petitioner does not have a vested right in these matters.

6. Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.
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Sd/-
Assistant Registrar (CS-VII)

/True Copy/

Sub-Assistant Registrar

To

The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Limited,
Aavin Illam,
Madhavaram Milk Colony,
Madhavaram,
Chennai - 600 051.

+3 C.C. To MR.G.S.Vivekanandan, Advocate in SR.NO.62693

+1 C.C. To MR.R.Bala Ramesh, Advocate in SR.NO.62456

W.P.No.14893 of 2015

SKV(CO)
sd : 25/11/2015

सत्यमेव जयते

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