

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P. No.27000 of 2015
& M.P.Nos.1 and 2 of 2015

Biyar Rubber Pvt. Ltd.,
Represented by its Director,
Mr.Nischith B. Shetty,
Plot No.212A, 8th Main, 3rd Phase,
Peenya Industrial Area,
Bangalore - 560 058. ... Petitioner

versus

- 1.The Director and Nodal Officer,
Institute of Road Transport,
Tharamani, Chennai - 600 113.
- 2.Tolins Tyre Pvt. Ltd.,
111/25 8 M.C.Road, Mattoor,
Kalady, Kerala - 683 574.
- 3.Hitech Rubbers,
E34A, SIDCO Industrial Estate,
Kuruchi, Coimbatore - 641 021. ... Respondents

PRAYER : Writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent made under Letter No.02/PCTR/CP/IRT/2005 dated 23.07.2015 and quash the same and direct the first respondent to consider all the eligible tenders de nova/afresh after inviting the petitioner for negotiation and to award the contract to the petitioner.

For Petitioner : Mr.M.Palani

For Respondent No.1 : Mrs.Kala Ramesh

For Respondent No.2 : Mr.S.P.Arthi

For Respondent No.3 : Mr.Rishi S.Ahuja

O R D E R

The respondents called for tenders for supply of retrading materials like precured tread rubber, bonding gum and black vulcanising cement to the State Transport Undertakings in Tamil Nadu. Chapter 2 of the tender document deals with the instruction to tenderers. In that IT-5, deals with Evaluation of Tender, while certain clauses speak about the consequences of non-compliance. Clause a and b deal with ASRTU rate contract, which is as follows:

"[a] The regular ASRTU rate contract shall be enclosed along with the technical bid. All the tenderers should fulfill all the tender condition in the tender documents.

[b] The tenderer shall also enclose latest ASRTU rate contract order. Purchase Order copies from STUs and invoice copies in respect of supplies made to the STUs in India duly attested by a gazetted officer."

2.IT-8 deals with Supply Performance, of which, clause a and b are relevant, which is apposite to repose the same for better appreciation;

"[a] The tenderers past experience in supply of R.T.Materials like Pre-cured Tread Rubber, Bonding Gum and Black Vulcanizing Cement to Tamilnadu STUs will be taken into account while evaluating the tender.

[b] The supply performance i.e., timely supply to STUs, adherence to schedules, achieving the guaranteed Kms to STUs in the past will also be taken into account while evaluating the tender."

3.IT-22 deals with Performance Guarantee. IT-23 is pertinent to other conditions. Condition No.12 of clause-a of IT-23 is as follows;

"12.Copy of the rate contract circular issued by ASRTU, in case the tenderer is under ASRTU Rate Contract."

4.The petitioner's bid was rejected as against the private respondents. After rejection, the decision made was informed to the Managing Director, Tamil Nadu State Transport Corporation Limited, Tirunelveli, without making the said party as a party, since the official respondent is the nodal agency. The order dated 23.07.2015 is put into challenge before this Court.

5.Learned counsel appearing for the petitioner submitted that IT-5 dealing with the Evaluation of Tender to mandate a regular ASRTU rate contract. The petitioner is a ASRTU rate contractor as against the private respondents. As per Rule 25 of the Tamil Nadu Transparency in Tenders Rules, 2000, "the Tender Accepting Authority must ensure strict compliance of evaluation of tenders indicated in the tender documents". Secondly, it is submitted that the petitioner was not informed of the reason for rejection as required under guidelines issued by ASRTU. The third submission of the petitioner is that it has to satisfy all the parameters in the testing done by the Rubber Research Institute of India. Therefore, it is submitted that the Writ Petition will have to be allowed.

6.Learned counsel appearing for the respondents submitted that IT-5 with reference to clause-a and b are not mandatory. This can be seen from the wordings used in clause-a and b as against clause-c to h and IT-23, [a]-12 makes its position very clear. It requires a copy of the rate contract circular issued by ASRTU. Thus, the said clause is not mandatory. Therefore, there is no violation of Rule 25 of the Tamil Nadu Transparency in Tenders Rules, 2000. The petitioner has failed in the test conducted by the Rubber Research Institute of India. The document pertaining to the petitioner clearly specifies that Angle Tear Test is not possible with PCTR, while the document pertaining to the other tenderers indicate the requirement and the result. The document produced by the petitioner in this regard on the ground of being not possible with PCTR would nonsuit the petitioner. The records available would show that the petitioner did not satisfy the minimum guarantee performance. Though the petitioner supplied low quality, in view of the stay of the earlier proceedings, out of necessity, it was continued. Therefore, no interference is required.

7.The power of judicial review in a matter like this is very limited. The official respondent is only a nodal agency. The Corporation concerned has not been made as a party in this proceedings.

8.A perusal of the IT-5 clause a and b would show that ASRTU rate contract is not a mandatory condition. Perhaps, the reason is even the petitioner was allowed to participate in the tender not being a regular ASRTU contractor. He is only a trial rate contractor. A combinable reading of IT-5 clause a and b on the one hand and IT-5 clause c to h and IT-23, [a]-12 on the other hand would make its position very clear. Therefore, the arguments made qua, the lack of qualification on the part of the private respondents is rejected.

9.There were series of correspondences between the petitioner and respondents. Furthermore, the petitioner has rushed to this Court by challenging the impugned order, dated

23.07.2015, which is a communication sent to the Transport Corporation. Even as per Rule 27 of the Tamil Nadu Transparency in Tenders Rules, 2000, "the confidentiality of the process of tender evaluation is to be maintained until orders on the tenders are passed". Therefore, this Court does not find any violation as such. Even otherwise that can be termed at best as a procedural violation not going into the root of the matter. The said issue is also irrelevant, since the present Writ Petition is dealt with on merits.

10.Coming to the other contentions raised, the Report pertaining to the petitioner clearly indicates that Angle Tear Test is not possible with PCTR. It was given by the Rubber Research Institute of India, which is a Central Government Undertaking. The documents cannot be found fault with. It is for the petitioner to satisfy the reason assigned in the said document especially when all others have complied with it because of the Angle Tear Test being not possible with PCTR. There was no evaluation with respect to it. The documents filed by the respondents would indicate that they have considered the past performance of the petitioner. The contentions that if the performance was not satisfactory, the supply ought not to have accepted cannot be the basis when the records indicate the inadequacy of the performance for the purpose of dealing the tender, the same cannot be found fault with.

11.For the foregoing reasons, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

sri

To

The Director and Nodal Officer,
Institute of Road Transport,
Tharamani, Chennai - 600 113.

- 1 cc to Mr.M. Palani, Advocate, Sr. 69128
- 1 cc to M/s. Kala Ramesh, Advocate, sr. 68988
- 1 cc to Mr. Rishi S. Ahuja, Advocate, Sr. 69617
- 1 cc to Mr.S.P. Aarthi, Advocate, Sr. 69618

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RSY (CO)
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