

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE R.SUBBIAH

WP.No.40239 of 2015

and

M.P.No.1 of 2015

M/s.Dredging Solutions,
having registered Office
K-001, Mantri Paradise,
BG Road, Bengalure 560 076
Represented by its
duly Constituted Power of Attorney
Mr.Rajesh Malhotra ... Petitioner

Vs

1. Union of India,
Rep by its Secretary,
Ministry of Shipping,
Transport Bhavan,
No.1, Parliament Street,
New Delhi 110 001
2. Kamarajar Port Trust
(Erstwhile Ennore Port Limited)
rep by its Chairman and Managing Director,
4th Floor, DLB Building, Diabetic Centre,
Near Clive Battery,
Rajaji Salai, Chennai 600 001.
3. Indian Ports Association,
Rep by its Secretary,
1st Floor, South Tower, NBCC Place,
Bhisham Pitamah Marg, Lodi Road,
New Delhi 110 003 ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of certiorarified mandamus calling for records of the 2nd respondent in KPL/OP/CD-Ph-IV/2015 dt 11.12.2015 and quash the same and consequently allow the petitioner to participate in the Tender for "Appointment of Project Management Consultant for Capital Dredging Phase IV" pending empanelment by the 3rd respondent.

For Petitioner :Mr.Vijayanarayan, Senior Counsel
for Mr.C.Vigneswaran

For Respondent -2 : Mr.M.T.Arunan

O R D E R

The Writ Petition has been filed seeking a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in KPL/OP/CD-Ph-IV/2015 dated 11.12.2015 and quash the same and consequently allow the petitioner to participate in the Tender for Appointment of Project Management Consultant for Capital Dredging Phase IV pending empanelment by the third respondent.

2. The case of the petitioner is that in August 2014, the third respondent, vide its notification, invited Request for Qualifications (RFQ) to prepare a panel of Consultants / Transaction Advisors (TA) for different types of consultancy services which could be used by the Major Port Trusts as and when required. Pursuant to the same, several firms applied and got themselves empanelled in the list maintained by the third respondent. This list has been published by the third respondent, by its letter dated 16.03.2015. Thereafter, the third respondent issued another notification dated 26.04.2015 stating that since a number of Capital and Maintenance Dredging projects would be undertaken at all the major Ports in the next 4-5 year period, there is a need for appointment of Project Management Consultant and third party survey agencies. This notification was issued with the background that Standard Operating Procedures on dredging was prepared by an expert committee constituted by the Ministry of Shipping. As per the notification, the panel prepared by the third respondent was valid for three years and it may be used by major Ports for inviting bids as and when required for their dredging projects/works.

3. It is the further case of the petitioner that pursuant to the above notification, the petitioner applied to the third respondent for empanelment by his letter dated 24.06.2015. Though the petitioner applied at a later date than the date fixed as per the notification, the profile of the petitioner was accepted and the same was yet to be considered. In the meanwhile, the first respondent notified the Guidelines on November 2015, titled as "Guidelines on Undertaking dredging at major Port Trusts". As per Clause 3 of the Guidelines, the major Ports are entitled to engage Project Management Consultants for Capital dredging to carry out the comprehensive supervision of

the Project. Clause 3.1 of the Guidelines are extracted below for reference:-

"3.1 Capital Dredging

After the financial sanction of the capital dredging project by the competent authority, the port may engage Project Management Consultants (PMCs) if the cost of the capital dredging is more than Rs.200 Crores. The role of PMC is for comprehensive supervision of the project and the PMC shall be the Engineer for the Project. The Broad scope of the services is as under:

The PMCs shall study the survey Reports, DPR/Feasibility Report etc. available with the port, prepare the bill quantities, finalize the tender documents, assist in invitation of global bids, scrutiny and analysis of bids, presentation, recommendation for award of work, initiate actions for handing over of site and timely issue of drawings, scrutinize the dredging methods proposed by the contractor to approve the same including the contractors charts and drawings as required for execution, preparation of Implementation Methodology, regular inspection of Contractors Dredger, equipment, plant, machinery etc. to ensure whether they are as per terms and conditions of contract, assist the port in engagement of third party survey agency with steel/FRP survey boats having hull mounted transducers to carry out the contractors payments surveys, associates with third party surveys, Certification of Navigational charts, Maintenance of up to date records of dredging quantity, check and certify all request for advances, all monthly bills, interim bills, escalation bills and final bill, monitoring the progress of dredging submission of periodical progress reports and final reports on completion of services etc.

4. It is further stated by the petitioner that the second respondent, by its notification dated 08.12.2015, has published a tender titled as "Appointment of Project Management Consultant for Capital Dredging - Phase IV for providing Deep Draft at Kamarajar Port" vide Tender No.KPL/OP/CD-IV/PMC/DEC.15". As per the tender instructions, the firms and consortiums empanelled by the Indian Ports Association, the third respondent herein, can alone apply for the tender issued by the second respondent. Though the petitioner as early as 24th June 2015, has expressed

its interest for being empanelled in the list of Project Management Consultants for the major Port Trusts and has submitted a detailed representation along with all necessary documents for empanelment, the same was kept in abeyance. Though the petitioner has submitted its interest for empanelling itself as a PMC as early 24th June 2015, without considering the eligibility of the petitioner, the second respondent, in violation of the Guidelines of the first respondent, started to receive bids from the other empanelled consultants. The petitioner applied for the tender, dated 08.12.2015 by letter to the second respondent, dated 09.12.2015 to allow the petitioner to participate in the tender, pending empanelment by the third respondent. The petitioner informed the second respondent that the advisor to the third respondent, in a meeting, informed that the Committee is in the process of empanelment and at present, there are no empanelled Project Management Consultants for dredging works as per the Guidelines of Government of India issued in 2015 and further informed that till a list of consultants are empanelled, there would be open tenders from the public. Hence, the second respondent ought not to have issued the tender, when the approving authority for consultants has not prepared any lists as per 2015 Guidelines. In spite of the same, the second respondent, by the impugned order, dated 11.12.2015, refused to allow the petitioner to participate in the tender on the ground that the petitioner was not one among the consultants empanelled by the third respondent in its letter dated 16.03.2015. Even though by subsequent letter dated 15.12.2015, after discussions with the advisors of the third respondent, the petitioner informed that the list ought to be reviewed as per the Guidelines of the first respondent to include the petitioner, there was no response. Hence, the petitioner has come forward with the present writ petition for the relief stated above.

5. Pending Writ Petition, an interim order was also granted by this Court on 21.12.2015 permitting the petitioner to participate in the tender process and the finalisation of the tenders shall not be made until further orders and it was also observed by this Court that the said order will not create any equity in favour of the petitioner.

6. Now, the second respondent has filed a counter affidavit, wherein, in paragraph 4, it has been stated as follows:-

"4. It is submitted that however as directed by the Hon'ble High Court, the second respondent has received the petitioner's bid along with three more bid collected through empanelled list for appointment of PMC for Capital Dredging of Phase - IV. The Price bids are yet to be opened. In view

of the above, it is requested to dispose of the petition so that KPL can be permitted to open Tender where the petitioner can also participate. The bid of the petitioner along with other bids is still kept in sealed cover".

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent.

8. Upon hearing the learned counsel appearing on either side and in view of the above contents in the counter affidavit, I am of the opinion that the impugned order is liable to be set aside. Accordingly, the impugned order is set aside and the second respondent is at liberty to go for a fresh open tender and the petitioner may also participate in the said tender.

9. With the above observations, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

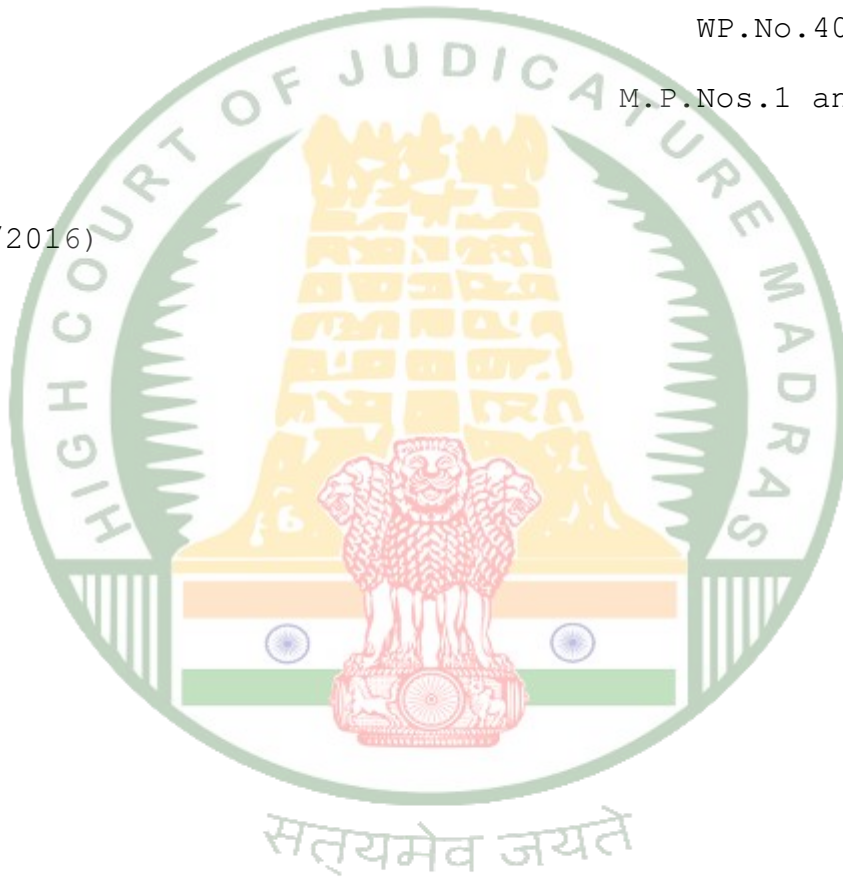
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2. The Chairman and Managing Director,
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New Delhi 110 003.

+1cc to Mr.M.T.Arunan, Advocate, S.R.No.8677
+1cc to Mr.C.Vigneswaran, Advocate, S.R.No.8738

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srg(12/02/2016)



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