

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/3/2016

C O R A M

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.6232 of 2016

SHM Shipcare
rep. By its authorised signatory
Mr.S.Muralidharan
Mumbai 10. Petitioner

Vs

1. The Commissioner of Fisheries
DMS campus
Teynampet
Chennai 06.
2. Unicare Emergency Equipment Pvt ltd
No.6/3, 2nd Floor
Avenue Road
Nungambakkam
Chennai 34. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in connection with the impugned order passed in RC.No.274/FIMSUL-II/2015 dated 1/2/2016 and quash the same and further direct the first respondent to award contract in favour of the petitioner pursuant to the successful bid held on 11/8/2015.

For Petitioner Mr.N.Sivakumar

For respondents ... Mr.Jayaprakash Narayanan
Special Government Pleader
for R.1

Mr.A.Selvendran for R.2

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O R D E R

With the consent of the learned counsel appearing on either side, this writ petition is taken up for final disposal.

2. Heard Mr.S.Sivakumar, learned counsel for the petitioner, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader for the first respondent and Mr.A.Selvendran, learned counsel for the second respondent.

3. This writ petition has been filed praying to quash the impugned order, passed by the first respondent, in RC.No.274/FIMSUL-II/2015, dated 1/2/2016 and further direct the first respondent, to award contract in favour of the petitioner, pursuant to the successful bid held on 11/8/2015.

4. The short facts which are necessary for the disposal of the writ petition is as follows:-

The Government of India has received a credit from the World Bank towards the cost of Coastal Disaster Risk Reduction Project (CDRRP) and the State Government is the implementing authority and in order to implement the project, the first respondent has invited bids for the supply of 10,000 lifebuoys, vide invitation for bids (IFB) in IFB No.12/CDRRP-FIMSUL-II/GOODS/(2014-15) dated 10/7/2015.

5. The petitioner has been declared as lowest bidder/successful bidder, since the petitioner alone has quoted for the lowest value, i.e., Rs.99,00,000/-. But the first respondent, instead of accepting the lowest price, finalised the contract with the second respondent for an amount of Rs.1,40,06,250/-, resulting in a loss of Rs.41,06,250/- to the public exchequer.

6. It is stated in the affidavit filed in support of the petition that after entering into a contract with the second respondent, on 23/12/2015, the first respondent had passed an impugned order stating that the petitioner has submitted two International certificates one from RINA and another certificate from Germanischer Lloyd and so far as the certificate obtained from RINA is concerned, it is not a recognised classification society, as per the circular issued by the Ministry of Shipping notice 3 of 2007. But the first respondent has failed to consider the latest Notification/gazette of India, 2011 wherein the certificate issued by the RINA has been approved by the Ministry of Shipping.

7. It is further stated in the affidavit that the first respondent, in a hurried manner, entered into a contract, with the second respondent, on 23/12/2015, prior to the publication

of award. Only after entering into the contract with the second respondent, the first respondent, passed the impugned order, dated 1/2/2016 which would show the mala fide attitude of the first respondent. Thus the petitioner sought for quashing of impugned order.

8. The first respondent has filed a counter affidavit, stating that the Fisheries Department has taken steps, to supply good quality lifebuoys and the primary intention of safeguarding the precious lives of the marine fishermen, who indulges in fishing in the open sea by complying with the safety standards. Hence the tender was awarded to the qualified bidder based on stringent evaluation done by the Tender Committee members and the Indian Registrar of Shipping was also verified before award of the contract.

9. It is further stated in the counter affidavit that the petitioner's bid was considered according to the World Bank procurement procedures and guidelines and scrutinised by the Tender Committee constituted for the purpose. The petitioner M/s.SHM Shipcare, Mumbai, who is an authorised representative of a firm namely, M/s.JIAXING RONGSHENG LIFE SAVING EQUIPMENTS CO.LTD, was unable to produce the relevant documents/certificates as called for in the bid document and hence the bid stands rejected. Moreover, the reasons for awarding the tender have been clearly recorded by the Tender Committee.

10. This petition has been filed based on the petitioner's own assumptions, hiding several facts including the fact that he has not submitted a valid certificate for Lifebuoy and trying to suppress facts by interpreting information in favour of the petitioner which are actually devoid of facts.

11. The second respondent has filed a counter affidavit, stating that to implement the Sea Safety Programme, the first respondent invited tenders under the National Competitive Bidding procedure, as per World Bank guidelines. The second respondent had satisfied all the criteria mentioned in the tender and became the successful bidder.

12. It is further stated in the counter affidavit that only after authenticating the certificates produced by the second respondent and after examining the quality of the products of the second respondent, the first respondent had confirmed the price bid raised by the second respondent.

13. In the counter it has been further stated that the first respondent had sent a representation to the second respondent to produce sample lifebuoys for technical

verification and after examining the lifebuoys produced by the second respondent, the first respondent, gave a Letter of Acceptance to the second respondent. Moreover, the second respondent had passed the quality test and also cleared the technical benchmarks. Therefore, by a Letter of Acceptance, dated 7/12/2015, the first respondent, informed the second respondent that the contract price sent by the second respondent is accepted and lieu of the same, the second respondent had also furnished performance security of Rs.7,00,313/- which is as per the conditions of the contract.

14. I have heard the submissions made by the counsel for the petitioner and the Special Government Pleader appearing for the first respondent and the counsel appearing for the second respondent.

15. After hearing the submissions made on either side and upon hearing the submissions made on either side, I am of the opinion that the Tender committee mainly by taking the safety of fishermen indulging in fishing in open sea into consideration has awarded the tender in favour of the second respondent, since the certificate issued by the second respondent from Indian Register of Shipping was substantially responsive. Hence, I do not find any infirmity in the order passed by the first respondent. From the materials available on record, I find that a perusal to the tender awarded in favour of second respondent, he has already supplied major portion of lifebuoy, pursuant to the supply order issued by the first respondent.

16. In view of the above and also considering the fact that the scheme is nearing completion, this Court is of the considered view that at this juncture, nothing survives for adjudication in this matter and this Court does not find any merit in this writ petition and the same is liable to be dismissed.

17. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

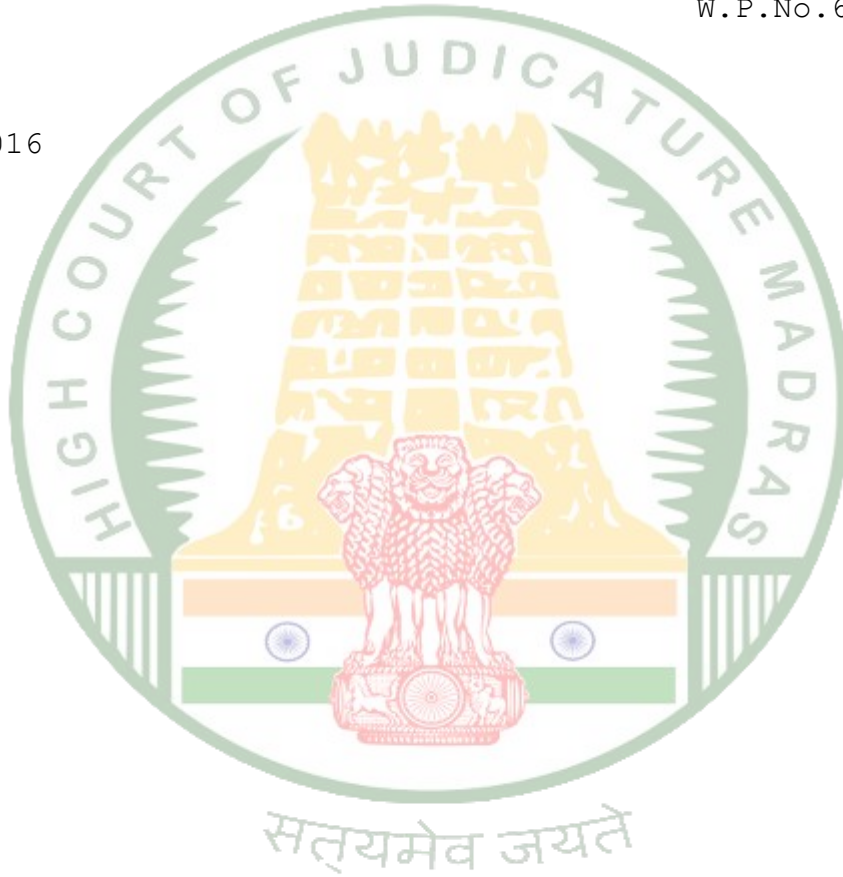
To

1. The Commissioner of Fisheries
DMS campus
Teynampet
Chennai 06.

+1 cc to Mr.S.Sivakumar Advocate sr.16783
+1 cc to Mr.A.Selvendran Advocate sr.16544

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