

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.8533 of 2016

M/s.Easternbulk Trading & Shipping Private Limited,
having its registered office at
2nd Floor, Dean Estate,
No.42, Moore Street,
Parry's, Chennai-600 001,
represented by its Deputy General Manager
Mr.Mohammed Irfan ... Petitioner

Vs.

- 1.Tamil Nadu Cements Corporation Ltd.,
L.L.A Building, Second Floor,
735, Anna Salai, Chennai-600 002,
Tamil Nadu, India.
- 2.Jakhotia Enterprises,
Jakhotia Arcade,
3-6-315 Lane Adjacent to HDFC House,
Basheerbagh, Hyderabad-500 029,
Telengana, India. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, declaring the award of the Tender dated 06.10.2015 issued by the 1st respondent as null and void and the same did not follow a transparent procedure and consequently, to pass an order directing the 1st respondent to award the Tender dated 06.10.2015 to the petitioner.

For Petitioner : Mr.R.Lakshmiratan
For respondents : Mr.A.Sivaji (For R1)
Mr.C.S.K.Sathish (For R2)

* * * * *

ORDER

This writ petition has been filed by the petitioner praying to declare the award of the Tender dated 06.10.2015 issued by the 1st respondent as null and void and consequently, to direct the 1st respondent to award the Tender dated 06.10.2015 in favour of the petitioner.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows_

2-1.The petitioner has been actively engaged in import and trading of industrial minerals like limestone, gypsum, dolomite, plaster of paris, burnt lime, asbestors fibre and clinker. The supplies are made to various industrial sectors like cement industry, paper industry and chemical industry. Most of these minerals are imported from Oman, Philippines and UAE. The petitioner has an average turnover of Rs.75,00,00,000/- per annum during the last two years.

2-2.While so, on 06.10.2015 the 1st respondent issued a Tender Notification calling for tenders, for the procurement of 40,000 MTS of Clinker. The petitioner is one of the three companies, who participated in the open tender for clinker supply for the 1st respondent. Under the Tender conditions, it was categorically specified that the Tenderer should meet certain eligibility criteria for participation in the Tender and proof of such eligibility should be submitted along with the Technical Bid. The petitioner-company was invited by the 1st respondent and during the opening of the price bid on 06.11.2015, it was intimated to the petitioner that only two companies viz., the petitioner and the 2nd respondent were eligible as per the technical qualifications listed out in the tender. All the bids submitted pursuant to the Tender dated 06.10.2015 were open and therefore, accessible to anyone interested in examining the same. The petitioner examined the bid submitted by the 2nd respondent. Upon examination of the technical qualification of the 2nd respondent, the petitioner was shocked to note that the 2nd respondent did not meet any of the mandatory technical qualifications listed out in the tender. The 2nd respondent had failed to submit a BIS (Bureau of Indian Standard) or equivalent certification of their clinker manufacturer. Further, the 2nd respondent also filed to fulfil the condition that proof should be submitted in respect of their past supply of clinker to any company in the past two years. The said two qualifications are mandatory during the Technical Bid; but, the 2nd respondent does not fulfil both the criteria. Hence, the petitioner made objections to the 1st respondent. But, ignoring the objections of the petitioner, the 1st respondent has wrongly awarded the tender in favor of the 2nd respondent. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3.The respondents have filed counters, denying the allegations made by the petitioner. It has been stated by the respondents that the petitioner has deliberately made misleading averments regarding the eligibility criteria prescribed for the "authorized agents of cement manufacturer". Moreover, the present writ petition has been filed, after two months from the award of the tender in favour of the 2nd respondent. In fact, on 30.01.2016 the 1st respondent has issued Letter of Intent and on 02.03.2016, issued purchase order to the 2nd respondent. Hence, now nothing survives in

the present writ petition. Thus, the respondents sought for dismissal of the writ petition.

4. Heard both sides and perused the materials available on record.

5. From a perusal of the materials available on record, I find that the Letter of Intent was issued in favour of the 2nd respondent on 30.01.2016 and purchase order was also issued on 02.03.2016. The present writ petition has been filed only on 04.03.2016. Hence, at this stage, nothing survives in this writ petition and the same is liable to be dismissed. However, if the petitioner has any grievance, he is at liberty to file an appeal under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998.

In fine, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ssv

To

1. Tamil Nadu Cements Corporation Ltd.,
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2. Jakhotia Enterprises,
Jakhotia Arcade,
3-6-315 Lane Adjacent to DHFC House,
Basheerbagh, Hyderabad-500 029,
Telengana, India.

+1 cc to Mr. R. Lakshmirajan, Advocate, sr.19426
+1 cc to Mr. A. Sivaji, Advocate, sr.19471
+1 cc to Mr. C. S. K. Satish, Advocate, sr.19909

W.P.No.8533 of 2016

vgi co
kra 26.04.2016