

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.12426 of 2017
and W.M.P.Nos.13187 & 13188 of 2017

M/s. Sri Sakra Computer Offset Printing
Represented by its Proprietor K.Gnanavel
No:40/80, Double Street,
Kolinjivadi,
Dharapuram-638 673.
Tirupur District.

...Petitioner

Vs.

1. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George, Rajaji Salai,
Chennai-600 009.
2. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Rural Development and Panchayat Raj
Department, Fort St. George,
Chennai-600 009.
3. The Director,
District Rural Development Agency,
Panagal House, 4th Floor (DRDA),
Chennai.
4. The District Collector/Chairman/DRDA,
Tirunelveli, Tirunelveli District.
5. The District Collector/Chairman/DRDA,
Tirunelveli, Tirunelveli District.
6. ACE TECH Machinery Components
India Pvt. Ltd. Rep by its Proprietor,
S.F.No.306, Kadathur,
Kunnathur Village, Coimbatore-641 107.

7. GECO Special Machiners,
Rep by its Proprietor,
25-H, Rajaji Nagar,
Trichy Road,
Singanallur, Coimbatore-641 005.
8. KCP Engineers Pvt. Ltd.
Rep by its Proprietor,
17A, Nethaji Main Road,
Udayampalayam, Coimbatore-28.
9. Ravi Metal Works
Rep. by its Proprietor Mr.S.Ravikumar
56/7, Vivekanandha Street,
Thiru Nagar, Vellore District - 632006. ..Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus or any other appropriate writ order or direction, to call for the records of 2nd respondent made in notification 793/2015/JDO-1 dated 04.04.2017 in so far as Clause 3 (7) (Technical Bid Pre Qualification) is concerned and quash the same and consequently direct the 2nd respondent to extend the time for submitting the tenders by a reasonable period permitting the eligible tenderers to participate in the same including the petitioner for supply of G.I.Metal Street garbage collection bin-1100 literes for village panchayats, pursuant to the notification dated 04.04.2017 issued by the 2nd respondent and select the best tenderer on merits.

For Petitioner : Mr.M.Senthamizhselvan
For Respondents : Mr.K.Venkataramani,
Additional Advocate General
Assisted by Mr.P.V.Selvakumar,
Additional Government Pleader
(For R1 to R5)
Mr.M.Balaji (For R9),
No Appearance (For R6 to R8)

O R D E R

The petitioner who could not participate in the e-tender floated in view of the express mandate of clause 3(7), which says a bidder should have supplied a minimum of 1000 nos of GI Metal Bins of 1100 litres capacity in a single agreement for any Government Department/organisation, local bodies in any of the preceding 3 years and whose tender was rejected in one case has come forward to file the writ petition challenging the same.

2.The learned senior counsel appearing for the petitioner submitted that the said clause 3 (7) is bordering an extreme arbitrariness apart from being unreasonable as except the private respondents nobody else would be qualified otherwise. They are the successful tenderers who supplied a minimum of 1000 nos of GI Metal Bins of 1100 litres capacity in a single agreement which was floated only in the last year. This averment has not been denied or disputed in the counter affidavit filed. Therefore, there is no attempt of fair play involved.

3.The Additional Advocate General appearing for the respondents 1 to 5 would submit that for other Districts, the entire process is over including the issuance of work order. The petitioner did not request the Executive Engineer to inspect his factory premises to show his capacities to manufacture the products. In so far as the 5th respondent is concerned, the petitioner has not participated in the tender process and sought clarification. In so far as the 5th respondent is concerned, the work order has already been issued and for the 4th respondent, the same could not be done in view of the Status Quo. He would fairly submit that in so far as clause 3(7) is concerned, appropriate direction would be given henceforth for the fresh notification/e-tenders to re-visit it so as to make it broad based by allowing all the tenderers to participate.

4.One more submission is made by the learned Additional Advocate General based upon the counter affidavit that the petitioner has been blacklisted by order dated 02.02.2016. Though it has been challenged, there is no interim order keeping in abeyance and therefore as per clause 10(4) of the Tamil Nadu Transparency in Tenders Act, 1998, he is non-suited from being considered as bidder.

5.By way of reply, the learned senior counsel appearing for the petitioner would submit that such blacklisting cannot be for eternity as held by the Apex Court in M/s.Kulja Industries Limited vs. Chief General Manager W.T. Proj. BSNL and others in Civil Appeal No.8944 of 2013 dated 04.10.2013 and therefore, the said factum cannot be put against the petitioner.

6.Considering the submissions made, this Court of the view that atleast for the tenders which is the subject matter of the writ petition, the petitioner has become ineligible. As on today, the order of blacklisting stays. Though the order does not restrict it to any period, it is in operation having been issued only last year. The contention of the learned senior counsel that it is only an act of non-supply which is occasioned due to enforcing circumstances and therefore the blacklisting cannot be pressed into service does not merit acceptance. We

are not concerned with the factors leading to the blacklisting but the order of blacklisting.

7.It appears that in all other Districts, the entire process is over or almost nearing completion. At present, we are concerned with only two Districts, namely, respondent 4 and 5. The petitioner has not put into challenge the tender condition for other Districts. Even in this case the work order has been issued qua the 5th respondent and about to be issued in respect of the 4th respondent is concerned. The petitioner has challenged the tender condition after a period of one month, by which time many developments have taken place.

8.However, this Court finds considerable force on the core issue raised by the learned senior counsel appearing for the petitioner. The averment that only the private respondents alone have become eligible having attained the status of successful tenderers floated only in the last year has not been denied or disputed. Resultantly, only these persons will become eligible to participate. Such a condition would certainly be bordering of arbitrariness and unreasonableness on the face of it. While there may be an object behind it, when a condition completely takes away the participation of other tenderers without any rationale, the same cannot be sustained. Clause 3 (7) speaks about the compliance in being the successful tenderers in any one of the preceding three years. When such a compliance is not practically possible as the tenders have been floated only last year, then such a clause would become redundant in the eye of law. To put it differently, there are no three years available for compliance except the preceding last year. Therefore, a direction is issued to the respondents 1 to 3 to have a re-look on this clause, namely, Clause 3(7) which is under challenge before this Court in this writ petition. Such a exercise has to be done within a period of eight weeks from the date receipt of a copy of this order, making in clear that the direction issued will not have any application to those cases in which the e-tenders have already been floated.

9.Subject to the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

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+1cc to P.V.Selvakumar, Advocate in sr.no.43578
+1cc to M.Senthamizhselvan, Advocate in sr.no.43713

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NR(CO)
NR 23/06/2017