

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.1746 of 2017

And

W.M.P.Nos.1731 and 1732 of 2017

Amar Darma Natural Resources Pvt. Ltd.
Represented by its Director
Mr.Saurabh Prakash Petitioner

Vs.

NLC India Limited
Rep. by its General Manager
Having its Registered Office at:
First Floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex, of Food Corporation of India,
Chetpet, Chennai - 600 031. Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring the provision restricting the bidders to have mining experience in "India Only" as part of the 'Technical Criteria' under Clause 2.1 of the Tender Document No.CO CONTS / 0033D/ MDO/TALABIRA-II & III / 2016 dated 05.11.2016 issued by the Respondent as arbitrary, irrational, unfair, and unreasonable.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.AL.Ganthimathi

For Respondent : Mr.N.Nithyanandam

O R D E R

1.Issue Notice. Mr.N.Nithyanandam, learned counsel, accepts notice on behalf of the respondent. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.This writ petition is directed to lay challenge to an International Competitive Bidding notice dated 05.11.2016.

3.To be noted, via the impugned notice, bids were invited for Selection of Mine Developer cum Operator for Talabira-II &

III Coal Block (20 MTPA) in Jharsuguda and Sambalpur Districts of Odisha State, on a turnkey basis.

4.The petitioner is aggrieved on account of incorporation of Clause 2.1 in the tender documents. According to the learned Senior Counsel appearing for the petitioner, even though the impugned notice claims to invite bids from International Competitors, it has incorporated Clause 2.1 in the tender documents; a condition, which stipulates that the bidder should have experience of having operated a open cast mine in India.

5.Learned Senior Counsel says that this is contrary to what the impugned notice professes, while inviting bids from International Bidders. In other words, if, international bidders were being invited to participate in the tender, then, according to the learned Senior Counsel, insistence on experience in having operated an open cast mine in India was meaningless.

6. However, on the Learned Senior Counsel being queried, he conceded that the petitioner by itself had no experience either in India or outside India of having operated an open cast mine. Learned Senior counsel further conceded that even though it is averred in paragraph 5 of the affidavit accompanying the petition that it is a Joint Venture Company, having mining experience outside India, neither the details of the joint venture partner had been culled out nor were the particulars of the shareholders set out concerning their experience in open cast mining.

7.Having regard to these circumstances, in my view, the petitioner would have no locus standi to challenge the impugned condition contained in Clause 2.1 of the tender document. The writ petition appears to be a proxy battle for an entity hidden in the shadow of the petitioner.

8.The writ petition is accordingly dismissed. Consequently, the connected pending applications are also closed. However, there shall be no order as to costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The NLC India Limited
General Manager
Having its Registered Office at:

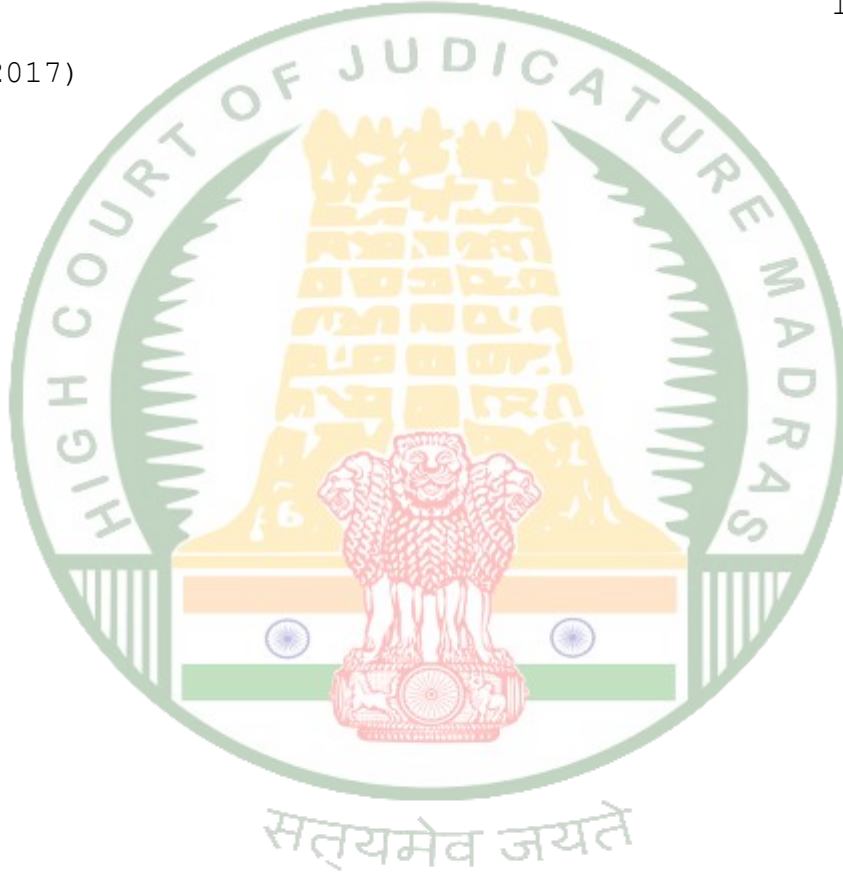
First Floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex, of Food Corporation of India,
Chetpet, Chennai - 600 031.

+1cc to M/S. Nithianandam Advocate SR. 4752

+1cc to M/S. AL. Ganthimathi Advocate SR. 4609

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RK(CO)
VR(17/02/2017)



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