

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

**W.P.No.39535 of 2016 &
W.M.P.No.33814 of 2016**

M/s.Jayasuriya Construction,
Rep. By its
Proprietor K.K.Moorthy @ Govindarajan,
No.155-136, Ammal Eari Road,
Dhadagapatty,
Salem-636 006.

.. Petitioner

Vs.

1.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation,
No.144, Anna Salai,
Chennai-600 002.

2.The Chief Engineer,
Mettur Thermal Power Station - II,
TANGEDCO Ltd.,
Mettur Dam-6.

3.The Superintending Engineer/Mechanical-I,
Mettur Thermal Power Station-II,
TANGEDCO Ltd,
Mettur Dam - 636 406,
Salem District.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus forbearing the respondents from permitting any other persons to lift the dry fly ash other than the petitioner issued in favour as per the tender acceptance letter in Lr.No.CE/TPS-

II/SE/Mech-I/O&AHS/EA/FAM/OT.No.51/16-17/D.3320/16 dated 22.09.2016 on the file of the second respondent.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.R.Muthukumasamy,
Advocate General
Assisted by Mr.S.K.Rameshwar

ORDER

The writ petition has been filed seeking for issuance of a writ of Mandamus, forbearing the respondents from permitting any other persons to lift the dry fly ash other than the petitioner, as per the tender acceptance letter in Lr.No.CE/MTPS-II/SE/Mech-I/O&AHS/EA/FAM/OT.No.51/16-17/D.3320 dated 22.09.2016 on the file of the second respondent.

2.Mr.S.Doraisamy, learned counsel for the petitioner would submit that the Chief Engineer/Mettur Thermal Power Station-II,TANGEDCO Ltd., Mettur Dam-6/second respondent herein, had issued a tender notification inviting bids for lifting and disposal of Dry Fly Ash 5000 MT per month from Mettur Thermal Power Station II (I X 600 MW), fixing the last date for sale of tender specification on 26.08.2016 and the last date for submission of the tender on 27.08.2016, indicating therein that the tenders would be opened on 27.08.2016 at 2.30 p.m. The petitioner had purchased the tender specification

which is having two cover system, viz., 1) Technical and Commercial bid cover and 2) Price bid cover. It is also mentioned further that the bidder should have an annual turnover of minimum of Rs.52.50 lakhs in any of the financial year from 2013 to 2016. Subsequently, the petitioner has also submitted his tender on 27.08.2016, as he has fulfilled all the requirements. As per Clause 2.3.0, the minimum sale price should be Rs.700/- per Metric Ton and the tenderers should quote over and above the minimum rate. In this bid, the petitioner has quoted Rs.750/- per MT, whereas other five tenderers who have participated in the tenders, have quoted less than the petitioner. Therefore, the petitioner was considered as the highest bidder, rejecting all other tenderers. After negotiation, his tender was also accepted and the petitioner was directed to deposit an amount equal to one month fly ash quantity in advance every month and the petitioner was requested to reply on or before 14.09.2016.

3.Finally, after depositing the amount of Rs.10 lakhs on 24.10.2016, he was permitted to lift the dry fly ash. In the mean while, without any authority, the second respondent herein has wrongly permitted two more persons viz., (1) V.G.Vision Constructions and (2) Good Time Constructions to lift the fly ash. Although they have quoted at Rs.698/- and 650/- per MT respectively, which is less than the minimum rate of Rs.700/-, for their personal gain, the respondents have wrongly allowed the above persons to lift the dry fly ash,

which is illegal. Therefore, he made a representation dated 26.10.2016 to the first respondent, but, finding no proper action been taken by the first respondent, he was constrained to file the present writ petition within a prayer cited supra.

4. Concluding his arguments, he submitted that when the petitioner was admittedly declared as the highest bidder for having quoted a sum of Rs.750/- per MT, the respondents cannot invite any of the persons whose tenders have been rejected, as they have admittedly quoted less bid amount. Thus, he contended that the action of the second respondent permitting the other persons to remove the dry fly ash would definitely affect the business of the petitioner. Therefore, he prayed for forbearing the respondents in permitting any other persons to remove dry fly ash.

5. The Learned Advocate General appearing for the respondents would submit that the apprehension made by the petitioner that after declaring the petitioner as a highest bidder in the tender process to remove the dry fly ash from the second respondent Power Station, the second respondent ought not to have allowed the other two persons without holding a public action, since it is going to cause great prejudice to the highest bidder declared by the second respondent, is wholly conceived. The reason is that although six firms

participated in the public action held on 27.08.2016, the petitioner was rightly declared as the highest bidder, as he quoted a sum of Rs.750/- per MT. But since 1,80,000 MT dry fly ash are rightly available for utilisation by the petitioner and others, the second respondent, having found after negotiation that M/s.B.S.N.& Co., and M/s.V.G.Vision have also accepted to offer Rs.750/- per MT, permitted them to remove the dry fly ash, in addition to the petitioner. When the tender specification No.CE/MTPS-II/SE/M-I/O.T.No.51/16-17 specifies for lifting and disposing of unlifted dry fly ash @ 5000 MT per month, by allowing M/s.B.S.N. & Co., and M/s.V.G.Vision after they agreed to match the petitioner's rate at Rs.750/- per MT, neither the petitioner nor M/s.B.S.N.& Co., or M/s.V.G.Vision is going to find any dearth of dry fly ash from the second respondent power station. More over, the petitioner, who is supposed to remove 5000 MT dry fly ash from the second respondent/Power Station, has not even removed more than 3500 MT of dry fly ash. Therefore, the apprehension made by the petitioner has no legs to stand.

6. This Court also finds merits on the submissions made by the learned Advocate General. The petitioner, who was declared as a highest bidder at the time of opening the tenders on 27.08.2016, was permitted to remove 5000 MT of dry fly ash from the second respondent Power Station, however, they have not even lifted more than 3500 MT of dry fly ash till the last month.

Moreover, since more than 1,80,000 MT dry fly ash are available, there will be no impediment for the petitioner to lift 5000 MT per month of Dry Fly Ash for six months, as stated by the learned Advocate General. Further, after negotiation, the other two firms have also agreed to pay at the rate of Rs.750/- per MT as quoted by the petitioner, therefore, the contention of the petitioner not to allow any one to lift dry fly ash, especially when more than 1,80,000 MT are available for lifting, is wholly unsustainable. Thus, for the reasons stated above, the writ petition fails and is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

25.01.2017

Index : Yes/No

kal

To

- 1.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution Corporation,
No.144, Anna Salai,
Chennai-600 002.
- 2.The Chief Engineer,
Mettur Thermal Power Station - II,
TANGEDCO Ltd.,
Mettur Dam-6.
- 3.The Superintending Engineer/Mechanical-I,
Mettur Thermal Power Station-II,
TANGEDCO Ltd,
Mettur Dam - 636 406,
Salem District.

T.RAJA, J

kal

**W.P.No.39535 of 2017 &
W.M.P.No.33814 of 2016**

25.01.2017

<http://www.judis.nic.in>