

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.21957 of 2018
and W.M.P.No.25746 of 2018

Apple Weighinfra Limited
I-1, New Madhavpura Market,
Shahibaug Road,
Admedabad 380 004
Represented by its Director,
Mr.Shah Mitesh Rameshchandra

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep by its Principal Secretary to Government,
Social Welfare and Nutritious
Meal Programme Department,
Fort St.George, Chennai 600 009.

2. Nitiraj Engineers Ltd,
Rep by its Director,
306 A, Bhabha Building,
N.M.Joshi Marg,
Delisle Road, Near Police Station,
Mumbai 400 011

.. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the impugned order passed in the E-Tender uploaded in the Government E-Market place website, vide tender bid reference No.GEM/2018/B/33422, dated 21.06.2018 rejecting the petitioner's technical bid and quash the same and consequently, direct the first respondent to open the financial bid of the petitioner.

For Petitioner : Mr.P.Selvaraj

For Respondent-1 : Mr.E.Balamurugan
Special Government Pleader

For Respondent-2 : Mr.P.J.Sriganesh

ORDER

The Writ Petition has been filed seeking to call for the records pertaining to the impugned order passed in the e-tender bid reference No.GEM/2018/B/33422, dated 21.06.2018, to quash the same and consequently to direct the first respondent to open the financial bid of the petitioner.

2. The petitioner-Company being one of the leading manufacturers of weighing scales of various types of executing various turnkeys and infrastructure products, is a Company registered under the Registration Act. The first respondent had held e-tender for procurement of Infantometer-ICDS, Stadiometer-ICDS, Infant Weighing Scales and Spring Type ICDS Metre and Mother and Child Weighing Scale in the Government e-Marketplace website vide Bid No.GEM/2018/B/33422 dated 21.06.2018. The said tender also involved two stages of bid processes, namely, technical bid and financial bid. The last date of tender was on 09.07.2018. The petitioner and three others had participated in the said tender. Admittedly, the petitioner had some difficulties in uploading the documents after the maximum size of 2MB and they could not upload the documents relating to proof of experience. It is stated that they have mailed the first respondent on this issue. Though it is stated that there were some communication on 'whatsapp', the petitioner was disqualified in the technical bid. The reason for rejection is that the petitioner had enclosed the proof of experience only for two years, whereas the required experience is for five years. Excepting the second respondent, all the bidders were disqualified in the technical bid. The petitioner has sent a letter on 20.07.2018 stating that disqualification in the technical bid is without offering an opportunity of hearing. It is also alleged that the second respondent had qualified in the technical bid of the first respondent without any basis, as the second respondent does not have requisite experience in the field of supply of Infantometer etc.

3. The second respondent has filed the counter and contended that when it is admitted that already the second respondent was declared as a successful bidder on 20.07.2018, the petitioner ought to have challenged the award of contract. It is stated that the second respondent, pursuant to the award of the contract, had furnished the performance Bank Guarantee as stipulated in the tender conditions and had also entered into a contract on 09.08.2018 and also started supply of samples to the first respondent by investing several Crores of Rupees.

4. Though it is well known from the case of Tata Cellular - vs- Union of India [1994 6 SCC 651] that the Hon'ble Supreme Court has held that the principles of judicial review would

apply to the exercise of contractual powers by the Government bodies in order to prevent arbitrariness or favoritism, however there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State. The right to refuse the lowest or any other tender is always available to the Government.

5. The said law is evolved in the course of time and the Hon'ble Supreme Court in the recent decision in 2018 (5) SCC 462 [Municipal Corporation, Ujjain and another-vs-BVG India Limited and Others] has held as follows:

"Under the scope of judicial review, the High Court could not ordinarily interfere with the judgment of the expert consultant on the issues of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non performance of the bidder".

6. Applying the above principles and as already a decision has been taken by the Hon'ble Apex Court on this issue, the Court cannot interfere with the impugned order. This Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made. When the contract has already been given in favour of the second respondent, quashing of the same, would result in administrative burden on the first respondent.

7. In view of the above discussion, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

srn
To

सत्यमेव जयते Sub Assistant Registrar

The Principal Secretary to Government,
State of Tamil Nadu
Social Welfare and Nutritious
Meal Programme Department,
Fort St.George, Chennai 600 009.

+1 cc to Mr.P.J.Rishikesh, Advocate, S.R.No.88594
+1 cc to the Government Pleader, S.R.No.88949

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KJ(CO) ::SSM(29/01/2019)