

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19621 of 2018

Surya Chandra Industries
Government of Supplier and Contractor
D.No.9/108, Kothapeta (VI)
Proddatur 516 360, Kadapa District
Andhra Pradesh
rep.by its Power Agent/Authorized Representative
Chikoti Kashi Viswanatham Guptha ... Petitioner

-vs-

1. State of Tamil Nadu
rep.by its Chief Secretary
Department of Health & Family Welfare
Fort St.George
Chennai 600 009
2. The General Manager (Drugs)
Tamil Nadu Medical Services Corporation Limited
No.417, Pantheon Road
Egmore, Chennai 600 008
3. The Central Vigilance Commissioner
Central Vigilance Commission
Satarkata Bhavan, A Block
GPO Complex, INA
New Delhi 110 023 ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for records pertaining to the Tender for the supply of Amma Baby Care Kits to TNMSC vide Ref.No.004/M(P)/ ABC-Kit/TNMSC/2018 dated 29.06.2018 issued by the second respondent and quash the same as illegal, arbitrary, erroneous and against principles of natural justice and consequently direct the second respondent to strictly abide by the Tender Guidelines and circulars issued till date, in respect of procurement of service and products by the third respondent in any Tender Notification forthwith.

For Petitioner :: Mr.G.V.Anjaneya Babu
For Respondents :: Mrs.P.Rajalakshmi
 Additional Government Pleader
 for R1 & 2

ORDER

The second respondent has floated a tender on 29.6.2018 calling for bids for supply of Amma Baby Care Kits for a period of two years from the date of acceptance of the tender. After coming to know about the tender floated by the second respondent, the petitioner, downloading the said tender form from the website, found certain terms and conditions in the nature of pre-qualification discriminatory and contrary to the guidelines and memorandum issued by the Central Vigilance Commission, the third respondent herein. Therefore, finding that the terms and conditions mentioned in the tender notification were not in compliance with the mandatory prescription and the guidelines issued by the third respondent, after the pre-tender meeting attended by the petitioner and others, a representation dated 12.7.2018 was submitted to the second respondent in writing drawing the attention of the second respondent to the illogical terms in the tender form with a request to take appropriate steps to modify the unreasonable terms and conditions to suit the prospective bidders. Again the petitioner has submitted another representation on 24.7.2018 pointing out the need and the necessity for modification of the tender conditions in tune with the mandatory guidelines issued by the Central Vigilance Commission as well under the Tamil Nadu Transparency in Tenders Act, 1998. The grievance of the petitioner is that none of his representations were considered. Thereafter, the second respondent also issued a corrigendum on 28.7.2018, which cannot be issued without considering the representation of the petitioner.

2. When the matter was taken up on 31.7.2018, this Court, taking note of the fact that the representation of the petitioner dated 12.7.2018 and another reminder dated 24.7.2018 were not supported with any acknowledgment or proof for despatching the same to the second respondent, sought for production of acknowledgment or receipt for sending the same. Accordingly, the learned counsel for the petitioner sought a day's time to produce the same. Accepting his request, this Court directed the matter to be listed today. Today, when the matter was taken up, the learned counsel is unable to produce any proof for sending the aforementioned representations. Therefore, it is not open to him to say that when he had sent two representations on 12.7.2018 and 24.7.2018, the second respondent ought not to have issued the corrigendum on 28.7.2018.

3. Finding no proof whatsoever for presenting the aforementioned two representations viz., 12.7.2018 and 24.7.2018, this Court is unable to entertain the writ petition. Secondly, when the technical bid was already opened at 11.00 AM on 31.7.2018, the petitioner ought not to have come before this Court after opening of the technical bid. Therefore, the writ petition stands dismissed, as the prayer has become infructuous. Consequently, W.M.P.Nos.23055 & 23047 of 2018 are also dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

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Department of Health & Family Welfare
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Chennai 600 009
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3. The Central Vigilance Commissioner
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New Delhi 110 023

+1cc to Mr.R.NagaSundaram, Advocate SR.No.52604

+1cc to Government Pleader SR.No.52885

SMI/11.08.2018

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