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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2019

Pronounced on : 20.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.32963 of 2019

Manjeet Kapoor
Proprietor M/s. Manjeet Plastic Industries,
30/56 West Punjabi Bagh,
New Delhi - 110026.

.. Petitioner

..Vs..

Tamil Nadu Textbook and Educational Services Corp.
Rep.by its Managing Director,
68, E.V.K.Sampath Maaligai,
D.P.I.Campus, College Road,
Chennai, Tamil Nadu - 600 006.

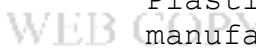
.. Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent herein to disclose the outcome of the technical/financial/price bid with reasons including the lab reports and / or technical committee report of the Technical Bid submitted in tender viz a viz the petitioner and the successful tenderers in the tender bearing reference number 288/PUR-I/2019 for supply and delivery of Footwear (Velcro Sandal for Boys and Girls) to the School Children in Tamil Nadu on annual rate contract basis for the year 2019-2020.

For Petitioner	: Mr.Avninder Singh
For respondent	: Mr.C.Munusamy Spl. Govt. Pleader, Education.

O R D E R

This Writ Petition has been filed in the nature of Mandamus seeking direction against the respondent namely, the Tamil Nadu Textbook and Educational Services Corporation represented by its Managing Director, to disclose the outcome of the technical/financial/price bid with reasons including the lab reports and / or technical committee report of the Technical Bid submitted by the petitioner in Ref. No. 288/PUR-I/2019 for supply and delivery of Footwear (Velcro Sandal for Boys and



2. The petitioner, Manjeet Kapoor, Proprietor M/s.Manjeet Plastic Industries of New Delhi, claims to be in the manufacturing of Footwear and School Bags for children for over 40 years and also claims that he has earned reputation in the said field. He also claims that he has successfully completed projects of similar nature for many Government Organizations including that of the respondent. He has a manufacturing unit at Haryana and has undertaken supplies to various institutions.

4. At that juncture, one of the bidders namely, Diamond Footcare Udyog Pvt., Ltd., had filed W.P.No.23785 of 2019 alleging that a cartel had been formed and consequently, seeking a direction against the respondent to consider their representation and also to disqualify the bidders who had formed the cartel. Initially an interim order was granted by this Court, but subsequently, on 23.10.2019 this Court permitted the respondent to proceed further in the tender and to open the price bid. The petitioner had preferred a RTI application dated 08.10.2019 relating to the tender, since, the respondent had failed to disclose the requested information pertaining to the



tender, it was stated that the Court had recorded the submissions of the learned Advocate General that an Expert Committee is the most suitable committee to assess and take decision on the difference of opinion on the recommendations from the two laboratories with respect to the quality test of the samples and after considering all the aspects, the respondent was directed to open the tender bids. The petitioner also relied on Rule 32-A (4) of the Tamil Nadu Transparency in Tender Rules, 2000 which reads as follows:

"(4) At the conclusion of the first stage, the Tender Accepting Authority shall pre-quality the tenderers that fulfill the eligibility criteria, and promptly notify each tenderer whether or not it has been pre-qualified and shall upon request communicate to the tenderers that have not been pre-qualified the reasons therefor:

Provided that if the Tender Accepting Authority is of the view that the number of pre-qualified Tenderers is too small to have an effective competition, the authority may decide not to proceed further with the Tender.

(5) In the second stage, the Tender Accepting Authority shall invite financial tenders from the pre-qualified and short-listed tenderers."

5. It was stated that each tenderer had to be notified whether they are qualified or not and reasons should be given to ensure transparency and fairness. It had been stated in the writ petition that the respondent had not answered or given the requisite details with respect to the representations made by the petitioner dated 30.10.2019. It was stated that the entire process was not in consonance with law and due procedure as laid down by the Tamil Nadu Transparency in Tender Rules, 2000. It was also stated that the Ministry of Finance, Department of Expenditure, Government of India by its General Financial Rules, 2005, had notified certain provisions to be followed in tender procurement process and particularly reference has been drawn to Rules 160 and 174 which reads as follows:

"Rule 160. Transparency, competition, fairness and elimination of arbitrariness in the procurement process:

(ii) Suitable provision should be kept in the bidding document to enable a bidder to question the bidding documents, bidding process and/or rejection of its bid.

Rule 174. Evaluation of Technical Bids:

Technical bids should be analyzed and evaluated



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by a Consultancy Evaluation Committee (CEC) constituted by the Ministry or Department. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analyzed and evaluated by it"

6. It was also stated that the Central Vigilance Commission, Government of India had issued an Office Order for transparency in tendering system by Office Order No.72/12/04 dated 10.12.2004. The relevant portion to the said order is as follows:

"In order to maintain transparency and fairness, it would be appropriate that organizations should evolve a practice of finalizing the acceptability of the bidding firms in respect of the qualifying criteria before or during holding technical negotiations with him. Obtaining revised price bids from the firms, which do not meet the qualification criteria, would be incorrect. Therefore the exercise of shortlisting of the qualifying firms must be completed prior to seeking the revised price bids. Moreover, the intimation of rejection to the firms whose bids have been evaluation but found not to meet the qualification criteria, along with the return of the un-opened price bid, will enhance transparency and plug the loop-holes in the tendering system. All organizations/departments are advised to frame a policy accordingly".

7. It was further stated that Sections 10 and 11 of the Tamil Nadu Transparency in Tenders Act, 1998, would be rendered null if the information on the technical evaluation was not shared with the tenders. Sections 10 and 11 of the Tamil Nadu Tenders Act, 1998 are as follows:

Sec.10. Evaluation and Acceptance of Tender.-

(1) The Tender Accepting Authority shall cause an objective evaluation of the tenders taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market rate for procurement and comparison of the tenders in accordance with the procedure and criteria specified in the tender document.

(2) After evaluation and comparison of tenders as specified in sub-section (1), the Tender Accepting Authority shall accept the lowest tender ascertained on the basis of objective and quantifiable factors specified in the tender document and giving relative weights among them.

(3) Notwithstanding anything contained in sub-



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section (2), if the Tender Accepting Authority decides that the price of the lowest tender is higher with reference to the prevailing market rate or the schedule of rates, 9[the said authority] may negotiate for a reduction of price with that tenderer.

(4) If at any time before the acceptance of tender, the Tender Accepting Authority receives information that a tenderer who has submitted tender has been banned by any Procuring Entity, 9 [the said authority] shall not accept the tender of that tenderer even if it may be the lowest tender.

(5) In case where two or more tenderers quoted the same price, the Tender Accepting Authority shall split the procurement among such tenderers taking into consideration the experience and credentials of such tenderers. Where such splitting is not possible or could not be done equally, 9[the said authority] shall record reasons for the same.

(6) If the Tender Accepting Authority proposes to accept the tender as per the provisions of this section, 9[the said authority] shall pass orders accepting the tender together with reasons for such acceptance. 10[Provided that if the tenderer is unable to supply the entire quantity required, the Tender Accepting Authority may follow the fixed rate contract procedure as may be prescribed.]

(7) The Tender Accepting Authority shall intimate the information regarding the name and address of the tenderer whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate Tender Bulletin Officers.

Sec.11. Appeal.- (1) Any tenderer aggrieved by the order passed by the Tender Accepting Authority under section 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.

(2) In disposing of an appeal under sub-section (1), the Government may, after giving the party an opportunity of making his representations, pass such order thereon as they may deem fit.

(3) The order of the Government on such appeal shall be final.

(4) The Government may, pending the exercise of



their powers under this section pass such interlocutory orders as they may deem fit.

8. It was under these circumstances, that the writ petition was filed in the nature of Mandamus seeking disclosure of the outcome of the technical and financial price bid with reasons and Technical Committee report of the Technical Bid of the petitioner.

9. When the writ petition came up for hearing, Mr.R.Govindasamy, learned Special Government Pleader, who had taken notice on behalf of the respondent, brought to the attention of this Court, the letter written by the Managing Director of the respondent/Corporation dated 28.11.2019 in R.C.No.288/Pur-1/2019 and addressed the petitioner herein. The entire letter is extracted below for ready reference:

"Tmt.S.Jayandhi, I.A.S.,
Managing Director
R.C.No.2888/Pur-1/2019. Date:28.11.2019.

To:
M/s.Manjeet Plastic Industries.,
30/56, West Punjabi Bagh,
New Delhi - 110026.
Sir/Madam,

Sub: Tamil Nadu Textbook and
Educational Services Corporation -
Supply and delivery of Footwear
(Velcro Sandal) to the students
studying in 1st to 10th Standards in
Government and Government Aided
Schools in Tamil Nadu for the year
2019-20 Finalisation of tender -
Details of Tender Activities uploaded
in the website - Intimation sent -
reg.

Ref: Tender No.288/Pur-1/2019,
dated 28.05.2019.

In the reference cited, the tender was floated for the Procurement of Footwear (Velcro Sandal) for the year 2019-20 to the students studying in 1st to 10th standard in Government and Government Aided Schools in Tamil Nadu. The tender has been finalised and the final rate was approved by the Board of Governors in circulation vide Resolution No.204/2019, dated 04.11.2019, subject to Writ Petition No.23785/2019 pending in Hon'ble High Court of Madras.



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The details of Tender activities has been uploaded in the following websites:

<http://www.textbookcorp.tn.nic.in>

<http://www.tenders.tn.gov.in>

This is for your information.

(Sd/-)

Managing
Director"

10. The learned Special Government Pleader also brought to the notice of this Court, about a further letter dated 04.12.2019 in R.C.No.11740/PUR-I/2019, issued by the Public Information Officer of the respondent with respect to the information sought under Section 6 of the Right to Information Act. The said letter is also extracted below for better appreciation:

"R.C.No.11740/PUR-I/2019

Dated:04.12.2019

From
General Manager and
The Public Information Officer
Tamilnadu Textbook and
Educational Service Corporation
E.V.K.Sampath Maaligai
No.68, College Road,
Chennai - 600 006.

To,
M/s.Manjeet Plastic Industries,
30/56 West Punjabi Bagh,
New Delhi - 110026.

Sir,

Sub: TNTB&ESC - Petition under Section 6 of the Right to Information Act, 2005 - providing information relating to test reports relating to Tender RC.No.288/PUR-I/2019 - Footwear - Reg.

Ref: Petition from Manjeet Plastic Industries New Delhi - 110026 dated 06.11.2019 received on 11.11.2019.

With reference to your application under Section 6 of the Right to Information Act, 2005 dated 06.11.2019, you are informed that the information sought for cannot be supplied for the following reason.

The Tender bearing RC.No.288/PUR-I/2019 is a subject matter of litigation under W.P.No.23785 of 2019 pending on the file of the Madras High Court and the information sought by you is confidential. Since the W.P.No.23785 of 2019, is pending.

If you are not satisfied by the above reply,



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you may prefer an appeal before the Appellate Authority within 30 days from the date of receipt of this reply. The details of the Appellate Authority is provided below:

Name of the Appellate Authority : Tmt. N.Latha
Designation : Member Secretary
Address : Tamil Nadu Textbook and
Educational Service Corporation,
E.V.K.Sampath Maaligai, No.68,
College Road, Chennai - 600 006.

Telephone No. : 044-2827 5851 / 2827 6397 /
2827 8244.

Email ID : mdtntbc07@hotmail.com

Website : textbookcorp.tn.gov.in"

11. The learned counsel for the petitioner took umbrage at the stand of the respondent. It was stated that the respondent had stated that the details had been uploaded in the website, but the learned counsel insisted that the petitioner should have been independently and individually informed about the reasons for the disqualification. It was also stated that the disqualification was quite contrary to the provisions under Sections 10 and 11 of the Tamil Nadu Transparency in Tenders Act, 1998. It was stated that the respondent acted malafide in rejecting tender submitted by the petitioner herein. Therefore, learned counsel urged that this Court should interfere with the entire process.

12. In this connection, the learned counsel also relied on the judgment of the Delhi High Court, in W.P.(C).No.2092 of 2012 and C.M.No.4549 of 2012, M/s.Amit Brothers V. Chief Engineer, R and D and Another. The Division Bench of the Delhi High Court had observed as follows:

"We may note that we have repeatedly emphasized in various orders/judgments that whenever a tender is rejected or tender documents are not issued and a party enquires reasons, it is necessary that the reasons be communicated to such a party to avoid unnecessary litigation as otherwise the first round of litigation is to find out the reasons and the second round of litigation is to challenge the reasons. Despite this, the authorities persist in keeping silent over such representations, which we strongly deprecate. We call upon the learned standing counsel for UOI to ensure that all the Government departments are circulated a communication to disclose reasons in such cases where enquiries are made by a contracting party to avoid unnecessary litigation



and a compliance is sort be filed within two weeks. A copy of this order be circulated along with the communication."

13. It was therefore stated that whenever the tender is rejected or tender documents are not produced, to avoid unnecessary litigation, the reasons should be disclosed by the respondents.

14. I have carefully considered the submissions made by the learned counsel for the petitioner and the learned counsel for the respondent.

15. It is true that the petitioner had submitted his bid for supply of Footwear (Velcro sandals) for the students studying in Tamil Nadu for the year 2019 - 2020. It is to be mentioned that the respondent had advertised for the tender on 28.05.2019 itself and much prior to the commencement of the academic year, but now in December - 2019 nearly after six months, litigations have stalled both the procurement of Footwear and supply of Footwear to the school children.

16. The petitioner cannot claim a right to be considered for the supply and cannot claim a right to be chosen as a supplier of Footwear. They should satisfy the conditions of the tender. The litigation in the earlier writ petition was that a cartel had been formed. The reasons for disqualifying the petitioner had been uploaded in the website as stated in the communication by the respondent dated 28.11.2019. If the petitioner was aggrieved by the same, then such rejection should have been challenged in manner known to law.

17. A Writ of Mandamus would not lie in the teeth of the orders passed by the respondent. Mandamus would lie for a direction to be issued, but when an order is passed then such order has to be challenged. A Writ of Certiorari would have to be filed to call for the records and challenge the orders. In a writ petition for certiorari, the Court could call for the records from the respondent. But in spite of remonstrations made by the Court, the learned counsel for the petitioner insisted that information should be given to the petitioner. It is a fact that information as required should be given. But, the Court can insist on production of such information only in appropriate proceedings. The writ had been filed seeking a Mandamus to consider the bid of the petitioner. The bid had been considered and rejected by the respondent. They have given the reasons in the order passed. The order can be questioned that it had been passed without an opportunity of being heard. It can also be questioned, when in the guise of opportunity, a due representation had been rejected. It can also be challenged when



reasons have not been given to justify the conclusion.

18. At any rate, the underlying factor is that, the order should be challenged. The order should be questioned and the order should be called in question in appropriate proceedings. In a Writ of Mandamus, the order of an authority cannot be questioned. The Writ of Mandamus, by its nature, is only to seek a direction to the respondent. The writ petitioner would be well advised to file an appropriate writ or any other proceedings to seek the relief. With respect to the communication under the Right to Information Act, it had been very clearly stated by the Public Information Officer that an appeal would lie before the Appellate Authority within a period of 30 days from the date of receipt of the reply. The Appellate Authority had also been given namely, Tmt.N.Latha, Member Secretary Tamil Nadu Textbook and Educational Services Corporation, E.V.K. Sampath Maaligai, No.68, College Road, Chennai - 600 006. The office number of the Authority had also been given namely, 044-2827 5851 / 2827 6397 / 2827 8244, e-mail ID of the authority had also been given namely, mdtntbc07@hotmail.com and website had also been given namely, textbookcorp.tn.gov.in. I wonder what further details should be given to the petitioner to enable him to file an appeal against the order. Even in the order seeking details of the tender activities, it had been very clearly stated that the details have been uploaded in the following websites:

- "1. <http://www.textbookcorp.tn.nic.in>
2. <http://www.tenders.tn.gov.in>"

19. With respect to the judgment of the Delhi High Court, I have no quarrel with the ratio laid down therein. But in this case, the respondent had actually given the details and had uploaded the details in the website which process cannot be faulted. It is for the petitioner to examine the reasons for their disqualification.

20. With the above observations, I find no merits in the Writ Petition and accordingly, the same is dismissed. No costs. However, liberty is granted to the petitioner to challenge the orders rejecting his technical bid in manner known to law and liberty is also granted to the petitioner to file a regular appeal before the Appellate Authority with respect to the rejection of his application seeking information under Right to Information Act. If it is so filed, then the period of the pendency of this Writ Petition may be considered, if need arises, while examining the delay, if any, in filing such appeal.



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21.In the result, the Writ Petition is dismissed. No costs.

s/d-

Assistant Registrar(CO)

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Sub-Assistant Registrar

smv

To

The Managing Director,
Tamil Nadu Textbook and Educational Services Corp.
68, E.V.K.Sampath Maaligai,
D.P.I.Campus, College Road,
Chennai, Tamil Nadu - 600 006.

+1 CC to The Govt. Pleader sr 106814

+1 CC to Mr.Avninder Singh, Advocate sr 106428

+1 CC to Mr. Abdul Saleem, Advocate sr 105860.

W.P.No.32963 of 2019

RGN(CO)
SP(23/01/2020)