

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.09.2019	PRONOUNCED ON: 01.06.2020
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CORAM

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 15815 of 2019

and

W.M.P. Nos. 15631, 15635 and 15639 of 2019

M/s. Bala Ganesh Transport,
Rep. By its Partner S. Srinivasan,
Having its office at
No. 60, 1st Street, 13th Main Road,
Nehru Nagar,
Anna Nagar,
Chennai - 600 040.

... Petitioner

-vs-

1. The Secretary to Government of India,
Ministry of Petroleum & Natural Gas,
Shastri Bhavan,
New Delhi - 110 001.
2. The Chairman,
Indian Oil Corporation Limited,
Indian Oil Bhavan,
G-9, Ali Yavar Jung Marg,
Bandra (East),
Mumbai - 400 051.
3. The General Manager,
Marketing Division,
Indian Oil Corporation Limited,
139, Nungambakkam High Road,
Chennai - 600 034.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to Tender No. SRCC/PT/134/LBP/2018-19 and Tender ID:2019_SROTN_91320_1 issued by the Second and Third Respondents and reject impugned order dated 24.05.2019 and quash the impugned order and consequently direct the Second and Third

Respondents to award the contract to the Petitioner Partnership Firm.

For Petitioner : Mr. S.S.Rajesh
For Respondents: Mr. J.Madanagopal Rao,
Central Government
Standing Counsel
(for R1)

Mr. Mohammed Fayaz Ali
(for R2 & R3)

O R D E R

Heard Mr. S.S.Rajesh, Learned Counsel appearing for the Petitioner, Mr. J.Madanagopal Rao, Learned Central Government Standing Counsel appearing for the First Respondent and Mr. Mohammed Fayaz Ali, Learned Counsel for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The chronological sequence of events leading to the filing of this Writ Petition are narrated below:-

- (i) The Petitioner is a Partnership Firm, which has been formed by its partners, by Partnership-Deed, which has been registered as Document No. 1061/2017 before the Registrar of Firms, Chennai Central.
- (ii) The Third Respondent had called for e-tender for transportation of bulk lube base oil/finished product ex-lube blending plant, Chennai to Customers (Pan India) and stock transfers to other locations through tank trucks. It has been provided in clause II(iii) of the tender conditions as follows:-

"Documents to be uploaded for meeting the pre-Qualification Criteria (PQC):

S. No.	Document advised to be uploaded in website
1.	Single page Declaration is to Digitally signed as per annexure
2.	Copy of valid Registration Certificate for each of the Tank Trucks offered.
3.	Copy of valid of MSME/Udyog, Aadhar Certificate clearly mentioning the transportation job (wherever applicable)

S. No.	Document advised to be uploaded in website
4.	Copy of registration certificate from Registrar of Firm to establish the registered partnership firm enclosing all annexure wherein names of all the partners of the said partnership firm are mentioned or certificate of Incorporation (wherever applicable)
5.	Copy of caste certificate (wherever applicable) issued by competent authority

Notwithstanding any other condition/provision in the tender documents, in case of ambiguity or incomplete documents pertaining to PGC, bidders shall be given only one opportunity with a fixed deadline after bid opening to provide complete and unambiguous documents in support of meeting the PQ criteria. In case the bidder fails to submit any document or submits incomplete document within the given time, the bidders tender will be rejected."

- (iii) The Petitioner had submitted the aforesaid tender, which has been confirmed by the Third Respondent on 13.03.2019.
- (iv) As it was noticed during scrutiny that the Petitioner had not submitted annexure Form-A from the Registrar of Firms mentioning the names of all the partners of the Partnership Firm, the Third Respondent by e-mail dated 29.04.2019 required the Petitioner to submit the same by 6.00 p.m. on 06.05.2019.
- (v) On the next day, i.e., 30.04.2019, the Petitioner had approached the Registrar of Firms for obtaining the certified copy of Form-A, at which point of time, it was informed that the Petitioner was required to apply for creation of user id under the firm registration, for which an application was made with all required documents.
- (v) According to the Petitioner, 01.05.2019 (Wednesday) was a Government Holiday and on 02.05.2019 (Thursday) and 03.05.2019 (Friday), there were some technical issues with the web portal and the user id could not be created by the Registrar of Firms, who sent a SMS on 07.05.2019 to the Petitioner stating that login with one-time password could be made, but it did not fructify till 10.05.2019 (Friday), when the Registration Department of the Government of Tamil Nadu sent confirmation message. It is also claimed by the Petitioner that it had informed the Third Respondent by letter dated 06.05.2019 regarding that action taken for obtaining annexure Form-A from the Registrar of Firms and had then submitted physical copy of the Registration Certificate of the Partnership Firm for perusal in the meanwhile.

- (vii) The Petitioner on 10.05.2019 (Friday) and 13.05.2019 (Monday) made online payment for issuance of certified copy of Form-A and had submitted the required stamps for the same, and that document was obtained on 14.05.2019.
- (viii) Since the web portal for uploading the document was closed on the expiry of the time limit on 06.05.2019, the Third Respondent could not accept the said document after that date leading to rejection of the bid made by the Petitioner, which was informed by e-mail dated 24.05.2019.

Aggrieved thereby, the Petitioner has filed this Writ Petition on 03.06.2019 challenging the said rejection of its bid and for consequential direction to award the contract to the Petitioner.

3. The grievance sought to be ventilated by the Petitioner is that the Partnership-Deed contains all the details of the partners, which has been registered, and since the tender document did not specifically mention Form-A, it was not uploaded at the time of submitting the bid, and that on receipt of e-mail dated 29.04.2019 from the Third Respondent, prompt action was taken to apply for the same from the Registrar of Firms, and in such circumstances, the Petitioner ought not to have been penalized by rejecting its bid in the tender on account of inevitable delay that has occurred in producing the document for reasons beyond its control. On that premise, it is ventured to persuade that as on the last date for submitting the document, i.e., 06.05.2019, the names of the partners of the Partnership Firm of the Petitioner had been entered in the Register maintained by the Registrar of Firms and the production of Form-A was only to prove the said fact and that the failure to produce the same within the last date, but before finalization of the tender, would suffice for inclusion of the Petitioner in the list of successful bidders and could not cause any prejudice to the Third Respondent or other participants in the tender.

4. On the other hand, referring to clause II(iii) of the conditions of tender extracted supra, it is highlighted by the Third Respondent defending the impugned action that it has been specifically mentioned that annexure wherein names of all the partners of the Partnership Firm has to be uploaded along with registration certificate from the Registrar of Firms to establish the registered partnership firm while submitting the bid, and the communication sent by e-mail dated 29.04.2019 was another opportunity provided to submit the same before the fixed time limit on 06.05.2019 and the Petitioner, who has failed to avail that benefit, cannot fault the Third Respondent for the rejection of its bid in accordance with that stipulated condition. It is also emphasized that a perusal of

the copy of Form-A now produced shows that it was applied on 13.05.2019 after the last date ended on 06.05.2019. It is brought to notice that Letters of Intent have been issued to 25 successful bidders on 31.05.2019 who have met the tender requirements on 06.05.2019 and the Writ Petition filed thereafter was infructuous even at that time.

5. Having due regard to the rival submissions made, it must be remembered at the outset that a partnership firm does not have any independent legal existence and it is merely a compendious name of the partners constituting it at a given point of time. Inasmuch as the re-constitution of Partnership Firm is a permissible activity in carrying on business by partnership, Chapter VII of the Indian Partnership Act, 1932, contains legal provisions for registering the Partnership Firm with the details of its partners at the time of the formation and also record changes of incoming, continuing and outgoing partners with details by giving notice to the concerned Registrar of Firms from time to time in that regard. In other words, Form-A, which is only a reflection of entries made in the records of the details of the partners of a registered Partnership Firm, is an essential document that a Partnership Firm is expected to maintain updated at all times for its business purposes, and as such, the Petitioner cannot feign ignorance of its requirement for participating in any public tender, as in this case. As rightly contended by the Third Respondent, the failure of the Petitioner to upload Form-A, which is the annexure wherein the names of all the partners of the partnership firm are mentioned, at the time of submitting the bid despite its specific requirement in clause II(iii) of the tender conditions and the fact that the Petitioner had applied for a copy of Form-A only on 13.05.2019, after the expiry of the extended last date on 06.05.2019, would suffice to expose that the Petitioner had not been diligent and has to blame itself for its lackadaisical approach. It also cannot be lost sight of the fact that the time limit fixed in a tender are sacrosanct inasmuch as delay caused in finalizing the tender for accommodating any participant in the tender for attaining pre-bid qualification would not only escalate costs, but also give room for avoidable complaints of favouritism and arbitrariness.

6. It has been held by the Hon'ble Supreme Court of India in G.J. Fernandez -vs- State of Karnataka [(1990) 2 SCC 488] that the Tender Issuing Authority has the right to punctiliously and rigidly enforce the conditions and stipulations in a tender notice and if a tenderer does not strictly comply with that requirement, it is open to the Tender Issuing Authority to decline to consider that tenderer for the contract and if such tender comes to Court challenging such action, relief has to be declined. The Hon'ble Supreme Court of India in Maa Binda

Express Courier -vs- North - East Frontier Railway [(2014) 3 SCC 760], has lucidly explained the scope of judicial review in matters relating to award of contract by the State and its instrumentalities as follows:-

"8. submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. "

That apart, the Petitioner has not even whispered, much less established, as to how public interest has been affected by rejecting its bid in the tender in the absence of which it is not permissible to invoke the public law remedy of Writ Petition for espousing the private rights of the Petitioner, as reiterated by the Hon'ble Supreme Court of India in Bharat Coking Coal Ltd. -vs- AMR Dev Prabha (Judgment dated 18.03.2020 in Civil Appeal No. 2197 of 2020). Viewed from that perspective, there does not appear to be any infirmity in the decision-making process of the Third Respondent warranting interference by this Court in the exercise of the discretionary powers under Article 226 of the Constitution.

7. Accordingly, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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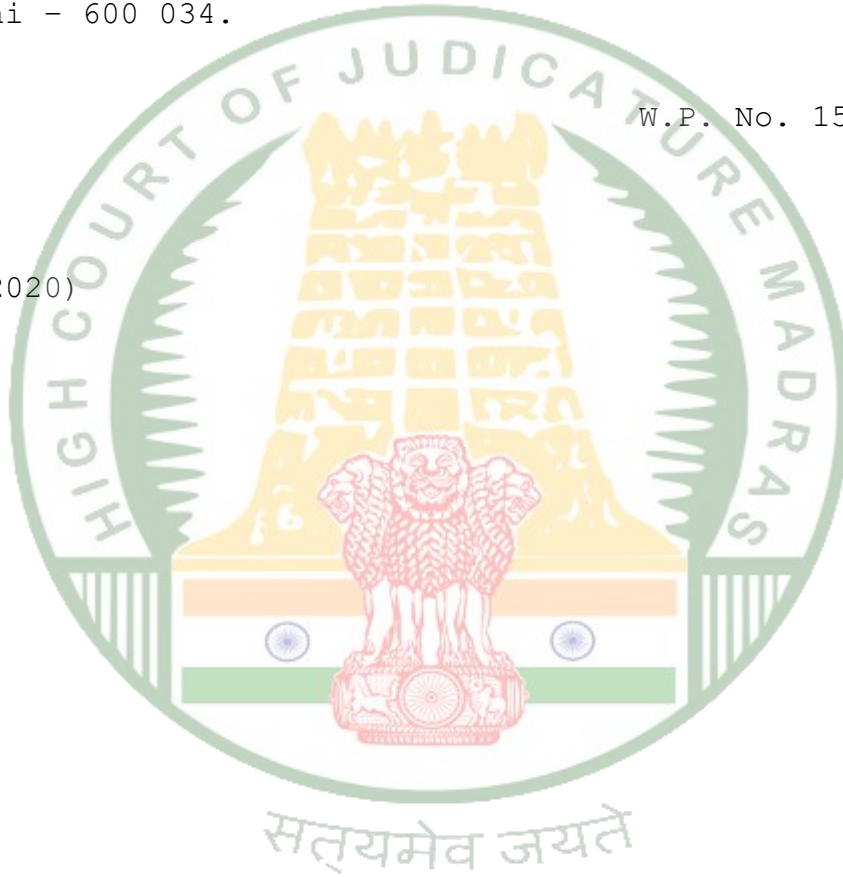
To

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MR(CO)
SP(05/06/2020)



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