

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.10.2019

PRONOUNCED ON: 01.06.2020

CORAM

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 23823 of 2019
and

W.M.P. Nos. 23678, 26105 and 26144 of 2019

Mr. Manjeet Kappor,
Proprietor,
M/s. Manjeet Plastic Industries,
30/56, West Punjabi Bagh,
New Delhi - 110 026. Petitioner

-vs-

1. Tamil Nadu Textbook and Educational Services Corporation,
Rep. by its Managing Director,
68, E.V.K. Sampath Maaligai,
D.P.I. Campus, College Road,
Chennai,
Tamil Nadu - 600 006.
2. M/s. XO Footwear Private Limited,
Rep. by its Managing Director,
A-122, Mangolpuri,
Industrial Area Phase-II,
Delhi - 110 034.
3. M/s. Infinity Footwear Private Limited,
Rep. by its Managing Director,
313/36-B, Main Road,
Chara Mandi, Inderlok,
New Delhi - 110 015.
4. M/s. Sumaja Electro Infra,
Rep. by its Managing Director,
H.No. 14, G.F.,
Blk - B-5, Model Town,
Delhi North,
Delhi - 110 009.

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5. M/s. M B Rubber Private Limited,
Rep. by its Managing Director,
195, Gagan Vihar,
Delhi - 110 051.
 6. M/s. H B Rubber Private Limited,
Rep. by its Managing Director,
195, Gagan Vihar,
Delhi - 110 051.
 7. M/s. Charanpaaduka Industries Private Limited,
Rep. by its Managing Director,
11/371, 1st Floor, Sundervihar,
Outer Ring Road,
Delhi - 83.
 8. M/s. B.N.G. Fashion Gear Private Limited,
Rep. by its Managing Director,
319-320, Sector 17,
Footwear Park, HSIIDC,
Bahadurgarh,
Haryana - 124 507.
 9. M/s. Liberty Shoes,
Rep. by its Managing Director,
Liberty Puram,
13th Milestone Gt Karnal Road,
Kutail Po Bastara,
Karnal Haryana.
 10. M/s. Lawreshwar Polymers,
Rep. by its Managing Director,
A-243 (A) Road No. 6,
V.K.I. Area, Jaipur,
Rajasthan - 302 013.
- ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First Respondent herein to consider the representation of the Petitioner dated 09.07.2019, consequentially direct the First Respondent to take appropriate action including rejection of the bids submitted by Second to Tenth Respondents who had submitted their samples with marks in it, violating tender condition No. 4.15.2(1) in the tender bearing reference Rc. No. 558/PUR-II/2019 floated by the First Respondent for supply and delivery of school bags to the school children in Tamil Nadu on annual rate contract basis for the year 2019-2020.

For Petitioner: Mr. Avninder Singh assisted by
Mr. K. Newlin Frederick

For Respondents: Mr. Vijay Narayan, Advocate General
assisted by Mr. C. Munusamy,
Special Government Pleader (Education)
(for R1)

Mr. T.N.C. Kaushik (for R2)

Mr. K.V. Sajeevkumar (for R3)

Mr. R. Thiyagarajan, Senior Counsel
assisted by
Mr. V.R. Kamalanathan (for R4)

Mr. M. Palanimuthu (for R5)

Mr. P.S. Raman, Senior Counsel
assisted by
Mr. S. Thiruvengadam (for R6)

Mr. G. Masilamani, Senior Counsel
assisted by Mr. V. Kumaravelan (for
R7)

Mr. V. Ayyadurai, Senior Counsel
assisted by Mr. M. Baskar (for R9)

Mr. Bharadwajaramasubramaniam R.
(for R10)

O R D E R

Heard Mr. Avninder Singh, Learned Counsel for Mr. K.Newlin Frederick, Learned Counsel for the Petitioner, Mr. Vijay Narayan, Learned Advocate General assisted by Mr. C.Munusamy, Learned Special Government Pleader (Education) appearing for the First Respondent, Mr. T.N.C.Kaushik, Learned Counsel appearing for the Second Respondent, Mr. K.V.Sajeevkumar, Learned Counsel appearing for the Third Respondent, Mr. R.Thiyagarajan, Learned Senior Counsel assisted by Mr. V.R Kamalanathan, Learned Counsel appearing for the Fourth Respondent, Mr. M.Palanimuthu, Learned Counsel appearing for the Fifth Respondent, Mr. P.S.Raman, Learned Senior Counsel assisted by Mr. S.Thiruvengadam, Learned Counsel appearing for Sixth Respondent, Mr. G.Masilamani, Learned Senior Counsel assisted by Mr. V.Kumaravelan, Learned

Counsel appearing for the Seventh Respondent, Mr. V. Ayyadurai, Learned Senior Counsel assisted by Mr. M.Baskar, Learned Counsel appearing for the Ninth Respondent and Mr. Bharadwajaramasubramaniam. R, Learned Counsel appearing for the Tenth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent, viz., Tamil Nadu Textbook and Educational Services Corporation, by advertisement dated 05.03.2019 called for tenders to implement the scheme of supply of 71.87 lakh cost free school bags to school children studying in Government and Government Aided Schools in Tamil Nadu for the year 2019-2020 on annual rate contract basis to the designated locations within a period of 120 days from the date of issuance of purchase order as per the provisions of the Tamil Nadu Transparency in Tenders Act, 1998, and the Tamil Nadu Transparency in Tenders Rules, 2000. In the two cover system followed in that tender process, the Tenderers were required to simultaneously submit two covers, viz., first cover containing the earnest money deposit and the details of their capability to undertake the tender, which will be opened first (called as 'technical bid' in the common parlance), and the second cover containing the price quotation, which will be opened only if the Tenderer is found to be qualified to execute the tender (called as 'price bid' in the common parlance). The time schedule for the aforesaid tender has been provided in the following table:-

1	Sale period of tender document	31.05.2019 upto 05.00 p.m.
2	Last Date & Time for submission of tender	03.06.2019 upto 03.00 p.m.
3	Date & time of opening of Technical Bids	03.06.2019 at 03.30 p.m.

It would be necessary here to refer to clauses 4.1, 4.15.2 (1) and 4.17 of the tender document, which are extracted below:-

"4.1. General Instructions:

The Bidders are requested to go through the instructions, terms, conditions and specifications given in the Tender Document carefully. Omissions or failure to furnish any or all the required information in the Tender Document shall result in rejection of their bid.

...

4.15.2. Documents to be furnished in the Part - A Cover in sequence indicated below (Technical Bid):

...

- (1) 3 Samples of School Bag in each size i.e, Small, Medium & Large. (Samples with any marks / printings will not be accepted).

...

4.17. Mode of Submission of samples and Raw Materials

4.17.1 The tenderer shall submit the sample School Bag and the raw materials to be used for manufacturing as indicated below along with the Tender.

4.17.2 The tenderers shall produce three samples of school Bag in each size (i.e.) Small, Medium and Large manufactured as per the specifications given in the Tender Document along with Part- A cover (Technical Bid). The tenderers shall also produce the raw materials as per Annexure III along with Part A cover (Technical Bid). Samples with any marks / printings will not be accepted.

4.17.3 Tenders received without samples and raw material as per Annexure-III shall also be summarily rejected."

3. The technical bid in the aforesaid tender was opened on 03.06.2019 and the Petitioner was one of the 21 bidders. The Petitioner made a representation dated 09.07.2019 to the First Respondent stating that at the time of opening the technical bids, it was noticed that the samples submitted by the Second to Tenth Respondents contained the photographs of the former and present Hon'ble Chief Ministers of Tamil Nadu, which was in violation of clause 4.15.2(1) of the tender conditions and that instead of rejecting the same on that ground, the First Respondent by letter dated 08.07.2019 sent by e-mail to all the bidders, required them to submit these new samples in each size (small, medium and large) as per the specifications in the tender conditions without Government Logo/Hon'ble Chief Minister's photo/Company name/Brand name/any other marking and printing on or before 16.07.2019 for further evaluation. In such circumstances, the Petitioner requested the First Respondent to withdraw the letter dated 08.07.2019 and proceed with the processing of the tender without insisting on such samples while scrutinizing samples that had been submitted strictly in conformity with the tender conditions, especially clause 4.15.2 (1) of the tender conditions. The Petitioner had subsequently sent another representation dated 17.07.2019 reiterating the earlier contentions and further contended that the Second to

Tenth Respondents had formed a cartel, which was maneuvering to bag the contract by excluding the other bidders, and requested that the samples shall be sent to quality test to a reputed and reliable Testing Agency with utmost pre-caution as otherwise it may hamper the reputation of the First Respondent.

4. At that stage, the Petitioner has on 06.08.2019 filed this Writ Petition for a direction to the First Respondent to consider the representation dated 09.07.2019 made by the Petitioner and consequently direct the First Respondent to take appropriate action including rejection of the bids submitted by Second to Tenth Respondents, who had submitted their samples with marks in it, violating tender condition No. 4.15.2(1) in the tender bearing reference Rc. No. 558/ PUR-II/2019 floated by the First Respondent for supply and delivery of school bags to the school children in Tamil Nadu on annual rate contract basis for the year 2019-2020.

5. When the matter came up for admission before this Court on 14.08.2019, the following self-explanatory order in W.M.P. No. 23678 of 2019 in this Writ Petition was passed:-

"4. Learned Counsel for the Petitioner contends that clauses 4.15.2(1) and 4.17.2 of the instructions to the bidders in the tender floated by the First Respondent unequivocally declares that samples with any marks/printings will not be accepted, but the Second to Tenth Respondents, who have formed a cartel, had submitted samples with certain marks/printings, which has been videographed during scrutiny. It is complained that instead of disqualifying those persons on that ground, the First Respondent by e-mail dated 08.07.2019 communicated to all tenderers, requested them to submit three new samples without Government Logo/Hon'ble C.M.'s photo/Company name/ Brand name/ any other marking and printing on or before 16.07.2019 for further evaluation in blatant violation of Rules 17(1) and 21 of the Tamil Nadu Transparency in Tenders Rules, 2000, by effecting changes after the technical bid was opened on 03.06.2019 and made public.

5. It is further submitted by the Learned Counsel for the Petitioner that in terms of clause 4.21.1 of the instructions to the bidders in the said tender, the samples have to be tested in any of the Government Laboratory/reputed institutions, but the First Respondent, with the intention to unduly favour the Second to Tenth Respondents, is clandestinely attempting to get the same tested at an undisclosed laboratory to suit their convenience without any fairness or transparency in the process.

6. Learned Additional Advocate General appearing for the First Respondent in reply to the same, claims that the laboratory in which samples are sent for testing is a matter of confidentiality and the Petitioner cannot have any grievance in that regard.

7. Having regard to the aforesaid submissions made, the First Respondent shall provide the name and credentials of the laboratory in which the samples are intended to be sent for testing in a sealed cover to this Court on the next hearing.

8. There shall be an order of interim injunction restraining the First Respondent from opening the financial bid till the next hearing."

Further, this Court on 05.09.2019, passed the following order in W.M.P. No. 23678 of 2019 in this Writ Petition:-

"In pursuance of the order dated 14.08.2019 passed by this Court, Learned Advocate General appearing for the First Respondent has produced a sealed cover containing the names of two laboratories along with their credentials to which the samples of the bidders are proposed to be sent for testing. After opening the said cover and perusing the contents of the information furnished, the same has been returned to him.

2. Learned Advocate General relying on Rule 27 of the Tamil Nadu Transparency in Tenders Rules, 2000, submits that the identity of the laboratories to which samples are to be sent for testing have to be kept confidential till the tender process is completed. It is further represented that all the samples of the bidders would be sent to the two laboratories and their reports received in that regard would be placed in a sealed cover and produced before this Court on the next hearing.

3. Recording the aforesaid submissions made, the order of interim injunction earlier granted on 14.08.2019 restraining the First Respondent from opening the financial bid shall continue till the next hearing.

Post the matter on 16.09.2019."

When the matter came up for hearing on 16.09.2019, the following order was passed:-

"....

2. It is represented today by the Learned Special Government Pleader appearing for the First Respondent

that in pursuance of the aforesaid order passed by this Court that one of the accredited laboratories has received the samples on 06.09.2019 and requested time for atleast 20 working days to send the test reports of all samples by 04.10.2019.

3. It is submitted by the Learned Counsel appearing for both sides that legal submissions on other respects of the matter could be heard in the meanwhile.

4. Having regard to the aforesaid submissions made, the interim order earlier granted on 14.08.2019 restraining the First Respondent from opening the financial bid shall continue till the next hearing.

Post the matter on 18.09.2019 at the end of the list."

This Court on 18.09.2019, passed the following order:-

"2. It is common ground that having regard to large volume of procurement of the school bags, the award of the contract in the tender would not be confined to the lowest tenderer and the same would also be distributed to other tenderers, who qualify in the technical bid, if they are willing to match the price of the lowest tenderer in the financial bid.

3. In view of that factual position, if the samples of the respective tenderers pass the quality test satisfying the prescribed requirements in both the laboratories to which samples have been sent, the financial bids of those tenderers may be opened for evaluation and further action may proceed for allocation of work amongst the successful bidders. However, the final decision to issue work orders to the selected bidders shall await further orders of this Court.

4. The interim order passed by this Court on 14.08.2019 is modified to this extent."

This Court on 14.10.2019, passed the following order:-

"Learned Advocate General appearing for the First Respondent submits that the Technical Committee is now seized of the matter after receiving reports from the two laboratories to which the samples have been sent for quality test, and outcome would be informed on the next hearing."

During the hearing on 23.10.2019, this Court passed the following self-explanatory order in W.M.P. Nos. 23678, 26105,

26144 of 2019 in this Writ Petition:-

"2. Learned Advocate General appearing on behalf of the First Respondent submits that after examination of samples of school bags submitted by all the bidders, identical recommendations have been received from the two laboratories to which they had been sent for quality test and in view of the same, the First Respondent may be permitted to issue work orders to the selected bidders.

3. Having regard to the aforesaid subsequent developments, the interim order passed on 18.09.2019 is further modified to the effect that the First Respondent is at liberty to proceed further in the matter in accordance with law, subject to the result of the Writ Petition, which shall be mentioned in the decisions taken.

4. The Miscellaneous Petitions are disposed on the aforesaid terms."

6. The crux of the issue involved in this Writ Petition is whether the First Respondent is justified in calling any fresh samples of the school bags on 08.07.2019 instead of rejecting the samples which were not in conformity with the requirements in terms of clauses 4.15.2 (1) and 4.17 of the tender conditions, as sought by the Petitioner in his representation dated 09.07.2019 ?

7. Learned Counsel for the Petitioner relying on Section 4 of the Tamil Nadu Transparency in Tenders Act, 1998, which envisages that no tender shall be invited or accepted by any authority except in accordance with the Act and the Rules made thereunder and Rule 25 of the Tamil Nadu Transparency in Tenders Rules, 2000, which requires the Tender Accepting Authority to cause the evaluation of tenders to be carried out strictly in accordance with the evaluation criteria indicated in the documents, vehemently contends that in view of clauses 4.1, 4.15.2 (1), 4.17.2 and 4.17.3 of the tender conditions, it was not permissible for the First Respondent to have the samples of the school bags substituted after the time period for submission of bids were over.

8. At this juncture, reference must also be made to Rules 14(5) and 17(1) of the Tamil Nadu Transparency in Tenders Rules, 2000, which read as follows:-

"14. Commercial conditions.-

(5) The tender documents shall clearly indicate whether any variations in the commercial terms prescribed in the documents will be permitted and if so, to what extent such variations would be considered.

17. Clarification to tender documents.-

(1) At any time after the issue of the tender documents and before the opening of the tender, the Tender Inviting Authority may make any changes, modifications or amendments to the tender documents and shall send intimation of such change to all those who have purchased the original tender documents and upload corrigendum for the information of those who have downloaded the tender documents from the website."

It must also be pointed out that the Notice Inviting Tender itself in this case provides that the First Respondent reserves the right to amend or withdraw any of the terms and conditions in the tender document. On a conspectus of the aforesaid provisions, it is evident that it cannot be said that the Tamil Nadu Transparency in Tenders Act, 1998, and the Tamil Nadu Transparency in Tenders Rules, 2000, framed thereunder does not permit any change in the tender conditions after it has been issued, as portrayed by the Petitioner. The Hon'ble Supreme Court of India in *Maa Binda Express Carrier -vs- North East Frontier Railway* [(2014) 3 SCC 760] has clarified the position of law that the authority inviting tenders can grant relaxation for bonafide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

9. Having arrived at that conclusion, the question arises as to whether the impugned action of calling fresh samples of the school bags from all the bidders after the opening of the technical bid is not bonafide and vitiates the tender process?

10. In response to that grouse of the Petitioner, the First Respondent in the Counter-Affidavit dated 30.08.2019 has explained as follows:-

"7. It is submitted that as per condition 4.6 and 4.7 of the tender document, the prospective bidders requiring clarifications are at liberty to send their queries by letter - e-mail to the 1st Respondent Corporation up to two days prior to the Pre-Bid Meeting. It is submitted that queries received up to two days prior to the Pre-Bid Meeting are responded by the First Respondent Corporation in writing. Further clarifications are made orally during the pre-bid meeting. It is submitted that queries received after the pre-bid meeting were not entertained. It is submitted that though participation in the pre-bid meeting is not mandatory, the said meeting is provided as an opportunity to all the prospective bidders to clarify any doubts that they may have regarding the tender conditions.

8. It is submitted that the participants in the tender process were required to submit samples of the school bag as per the tender specification along with their Technical Bid (Part A Cover). It is submitted that as per Condition 4.17.2 of the tender document, every tenderer was to produce three samples of school Bag in each size i.e., small, medium and large manufactures as per the technical specifications provided in the Tender document and it was stipulated that the samples submitted with any marks/printings would not be accepted so as to preserve the anonymity of the samples while sending those for lab testing so that the name of the manufacturer or the Company is not revealed to that lab testing agency, in order to ensure a fair and transparent tender process.

9. It is submitted that the Pre-Bid meeting in the instant tender took place on 20.03.2019 at 3 PM and 17 prospective bidders participated in the same. It is submitted that during the Pre-Bid meeting, school bags supplied during the previous years were shown to the participants so as to provide them with an idea as to how the end product is to be achieved as per the technical specifications. At this juncture, it is pertinent to mention that the Government of Tamil Nadu supplies the School Bags every year with the Government Emblem and the photograph of the Hon'ble Chief Minister printed on the same and therefore, the samples from the previous year shown to the participants at the Pre-Bid meeting contained the Government Logo and the photograph of the Hon'ble Chief Minister.

10. It is submitted that as per tender condition 4.6 and 4.7, several queries were raised by the prospective bidders and the same were analysed by the 1st Respondent Corporation and responses in writing were provided to those. It is submitted that the queries accepted by the 1st Respondent Corporation were duly incorporated in the tender conditions by way of a written corrigendum. It is submitted that in the instant Tender, a Corrigendum of clarification/remarks on the queries raised in the Pre-Bid Meeting held on 20.03.2019 at 3 PM was published on 26.04.2019 and a total of five amendments were made to the Tender conditions and accordingly, amendments were made to conditions 4.4.1, 4.4.2, 4.4.3, 4.4.5 and 4.4.6 of the Tender documents.

11. It is submitted that the time for submission of Tender was closed at 3 PM on 03.06.2019 as per the schedule and the Technical bids were opened at 3.30 PM on the same day. It is submitted that a total of 21 bidders participated in the tender and at the time of opening of the Technical bids, it was noticed that 9 tenderers had

submitted samples similar to the ones shown at the pre-bid meeting with the Government Emblem/Hon'ble Chief Minister's photograph/Hon'ble former Chief Minister's photograph. It is submitted that all the samples were to be sent for sample testing, as per Condition 4.21 of the Tender document, to any of the Government laboratory/reputed institution so as to check their conformity with the technical specifications prescribed in the Tender document. It is submitted that it is a sine qua non that the samples being sent for lab testing shall be anonymous and incapable of being identified as to belonging to a particular manufacturer. Therefore, it is imperative that the samples being sent for lab testing are similar in appearance so as to ensure fairness in testing.

12. However, in the present tender, since there were inconsistencies in the samples submitted by the bidders wherein out of 21 samples, 9 samples were with the Government Emblem/Hon'ble Chief Minister's photograph while others were without the same, it was considered appropriate to recall the samples from the bidders without the Government Emblem/Hon'ble Chief Minister's photograph so as to maintain uniformity while submitting the same for lab testing. It is submitted that the purpose of insisting the samples without any marks is to prevent the brand name or the Company name to be known to the testing laboratory. However, since the Government Emblem/Hon'ble Chief Minister's photograph was not contemplated as a violation in the Tender condition, it would have been unfair to reject the said bidders of the said irregularity especially once when no other individual mark indicating the Company name or brand name was found in the same. It is pertinent to reiterate that except the Government Emblem/Hon'ble Chief Minister's photograph which is expected in the final produce, no other specific mark/ symbol was found anywhere in the samples submitted by the bidders. Therefore so as to maintain fairness and also to encourage more competition in the Tender process without restricting the number of bidders, which ultimately would help the Respondent Corporation to achieve a competitive rate and save further financial burden on the Government, it was considered appropriate that a uniform sample shall be sought to be submitted by the participants in the tender. Therefore, all the bidders were given opportunity to submit 3 new samples before 16.07.2019 in each size (small, medium & large) as per the Specification and tender conditions without Government Logo/Hon'ble Chief Minister's photo/Brand name/Company name/any other marking and printing through a communication dated

08.07.2019. It is submitted that in response to the said communication, all the 21 bidders including the Writ Petitioner herein have submitted their samples once again and accordingly, a re-evaluation meeting was conducted on 17.07.2019 by the Technical Scrutiny Committee (TSC) during which the samples submitted by the bidders were opened and displayed to all the participants. It is submitted that the entire meeting has been video-graphed for record purposes so as to prevent any bidder from raising any frivolous dispute in the future.

13. It is submitted that the samples so received have been sent for laboratory testing as per the Tender Condition 4.21 to any of the Government laboratory / Reputed Institutions and the test results are being awaited by the 1st Respondent Corporation as on date. However, without waiting for the results whatsoever, the Petitioner herein has filed the Writ Petition challenging the Tender process without any material basis so as to scuttle the same and cause hindrance in the peaceful selection process."

The Learned Advocate General in justification of that impugned action of the First Respondent has relied on the dictum laid down by the Hon'ble Supreme Court of India in Central Coalfields Limited -vs- SLL - SML (Joint Venture Consortium) [(2016) 8 SCC 622] which reads as follows:-

"48. ... whether a term of the Notice Inviting Tender is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty -vs- International Airport Authority of India [(1979) 3 SCC 489]. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot. "

Further, it has been held by the Hon'ble Supreme Court of India in Meerut Development Authority -vs- Association of Management [(2009) 6 SCC 171] that the bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda.

11. It has been demonstrated from the aforesaid cogent

reasons stated by the First Respondent that the opportunity granted to all the bidders to submit fresh samples without any remarks in terms of the tender conditions after the opening of the technical bids, is bonafide and in conformity with law and does not in any way cause discrimination or prejudice to the Petitioner or anyone else and has actually subserved public interest. Moreover, it has been informed that identical results on the samples of the bidders have been received from the two accredited laboratories by the First Respondent after the filing of the Writ Petition, which strengthens the contention of the First Respondent that the apprehension allayed by the Petitioner that the calling of fresh samples was made with oblique design to favour the Second to Tenth Respondents, is imaginary.

12. In the view of the foregoing discussion coupled with the subsequent events after the filing of the Writ Petition, as recorded in the earlier orders which have been extracted, it unfurls that the grievance ventilated by the Petitioner in his representations dated 09.07.2019 and 17.07.2019 has been appropriately redressed, and in the absence of any infirmity established in the impugned decision-making process, there is no necessity to issue any of directions sought by the Petitioner in this Writ Petition.

13. Be that as it may, as rightly pointed out on behalf of the Respondents, the facts of the instant case reveals that it does not satisfy any of the essential tests prescribed by the Hon'ble Supreme Court of India in Jagdish Mandal -vs- State of Orissa [(2007) 14 SCC 517] for interference of the High Court in tender matters in the exercise of discretionary powers under Article 226 of the Constitution. The relevant passage reads as follows:-

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bonafide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to

protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

(i) Whether the process adopted or decision made by the authority is malafide or intended to favour someone; or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226."

14. There is also substantial force in contention of the Respondents that the Writ Petition ought not be entertained at a pre-mature stage under the pretext of the Petitioner seeking consideration of his representations made even before the technical bids of the tenderers had been finalized. Suffice here to notice that the Hon'ble Supreme Court of India in Tamil Nadu Generation and Distribution Corporation Ltd., -vs- CSEPD - Trishe Consortium [(2017) 4 SCC 318] has cautioned against the interference of Courts in on-going tender process in the following words:-

"37. Before parting with the case we are constrained to add something. We do so with immense pain. The respondent, before finalization of the financial bid submitted series of representations and seeing the silence of the owner it knocked at the doors of the writ court which directed for consideration of the representations. We are disposed to think that the High Court at that stage should have exercised caution. If the courts would exercise power of judicial review in such a manner it is most likely to cause confusion and also

bring jeopardy in public interest. An aggrieved party can approach the Court at the appropriate stage, not when the bids are being considered. We do not intend to specify. It is appreciable the owner in certain kind of tenders call the bidders for negotiations to show fairness transparently. But the present case is not a one of such nature. Once the price bid was opened, a bidder could not have submitted representations on his own and seek a mandamus from the Court to take certain aspects into consideration. We have stressed this aspect only to highlight the role of the Court keeping in mind the established principle of restraint."

15. In fine, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

To

The Managing Director,
Tamil Nadu Textbook and Educational Services Corporation,
68, E.V.K. Sampath Maaligai,
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W.P. No. 23823 of 2019

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