IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.02.2020

Pronounced on : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos.24412 & 27267 of 2019
and
W.M.P.Nos.24145, 33240, 26692 & 26695 of 2019

1. M/s.Padmavathi Hospitality & Facilities Management Services
Rep by its Partner and Authorized representative
Mr.Pradeep Kanumuri
.. Petitioner in W.P.No.24412 of 2019

2. Agile Security Force Pvt. Ltd.,
Rep. by its Chief Operating Officer,
Mr.John S.Selwyn,
.. Petitioner in W.P.No.27267 of 2019

..Vs..

1.The Tamil Nadu Medical Service Corporation
(A Government of Tamil Nadu undertaking)
No.417, Pantheon Road, Egmore, Chennai - 600 008.

2.The Director of Medical Education
Directorate of Medical Education,
Kilpauk, Chennai - 10.

3.The Assistant Commissioner, GST
Chennai North Commissionerate,
No.2054, I Block, Newry Towers, 12th Main Road,
2nd Avenue, Anna Nagar, Chennai - 600 040.

4.M/s.Krystal Integrated Services Pvt. Ltd.,

5.The Assistant Commissioner (CT),
State GST, Koyambedu GST Circle, CMDA
Administration Building, 2nd Floor, Koyambedu,
Chennai - 600 107.

6.Tamil Nadu Advance Ruling Authority,
PAPJM Buildings, II Floor, No.1, Greams Road,
Chennai.
.. Respondents in W.P.No.24412 of 2019

R5, R6 impleaded as per order dated 14.11.2019 made in W.M.P.No.32267 of 2019 in W.P.No.24412 of 2019 by PDAJ.

1.The Tamil Nadu Medical Service Corporation
(A Government of Tamil Nadu undertaking)
No.417, Pantheon Road, Egmore, Chennai - 600 008.

2.The Director of Medical Education
Directorate of Medical Education,
Kilpauk, Chennai - 10.

3.M/s.Padmavathi Hospitality and Facilities Management Services,
No.2-B, 2nd Floor, J.V.L.Towers,
New No.51, Old No.117, Nelson Manickam Road,
Aminjikarai,
Chennai - 600 029.

4.M/s.Krystal Integrated Services Private Ltd.,
No.15, Krystal House, Dr.Manikakar Road,
Sion East, Mumbai - 400 022.

.. Respondents in W.P.No.27267 of 2019

PRAYER in W.P.No.24412 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 1st respondent to reject the bid of the 4th respondent and consequently award the contract in Tender No.432/outsourcing/DME/TNMSC/Engg/2019 dated 19.02.2019 to the petitioner herein for all Zones namely, Zone 1-5.

PRAYER in W.P.No.27267 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to reject the bids of the 3rd and 4th respondents and consequently direct the 1st respondent to award the contract in relating to Tender No.432/outsourcing/DME/TNMSC/Engg/2019 dated 19.02.2019 to the petitioner for Zones I to V.

For Petitioner : Mr.A.R.L.Sundaresan
Senior Counsel
for Mr.Nithyaesh & Vaibhav
(in W.P.No.24412 of 2019)

Mr.Jeyash Dolia
for M/s.Aiyar & Dolia.
(in W.P.No.27267 of 2019)

For respondents : Mr.S.R.Rajagopalan, AAG
Assisted by Mr.R.A.S.Sakthivel AGP
for R.Shivakumar & Suresh
(for R.1)
Mr.J.Purushothaman, GA
(for R.2)
Mr.Santhanaraman
(for R.3 & R.6)
Mr.A.L.Somayaji, SC
(for R.4)
Mr.Mohammed Shafi
(for R.5)
[in both the WPs]

COMMON ORDER

W.P.24412 of 2019:

Writ Petition filed in the nature of Mandamus to direct the 1st respondent, namely, The Tamil Nadu Medical Service Corporation (A Government of Tamil Nadu undertaking), to reject the bid of the 4th respondent namely, M/s.Krystal Integrated Services Pvt. Ltd., Mumbai, and consequently award the contract in Tender No.432/outsourcing/DME/TNMSC/Engg/2019 dated 19.02.2019 to the petitioner for all the zones namely, zones 1 to 5.

W.P.No.27267 of 2019:

2. Writ Petition filed in the nature of Mandamus, to direct the 1st respondent namely, the Tamil Nadu Medical Service Corporation Ltd., (A Government of Tamil Nadu Undertaking), to reject the bids of the 3rd respondent, M/s.Padmavathi Hospitality and Facilities Management Services, Chennai, (Writ Petitioner in W.P.No.24412 of 2019) and the 4th respondent, M/s.Krystal Integrated Services Pvt. Ltd., Mumbai, consequently, direct the 1st respondent to award the contract relating to Tender No.432/outsourcing/DME/TNMSC/Engg/2019 dated 19.02.2019 to the petitioner for Zones 1 to 5.

Affidavit filed in support of W.P.No.24412 of 2019:

3. In the affidavit filed by the Partner and Authorized representative of the Writ Petitioner, M/s.Padamavathi Hospitality & Facilities Management Services, it had been stated that the 1st respondent, Tamil Nadu Medical Service Corporation Limited had floated a Tender for outsourcing of house keeping and security services vide bid reference No.432/outsourcing/DME/TNMSC/Engg/2019 dated 19.02.2019 for 94 Government hospitals, schools and college for nursing under the

control of the Directorate of Medical Education. It was claimed that the tender document stated that the price bids will have to be submitted for five different zones, namely zones 1 to 5.

4. The petitioner offered their bid for all the five zones. The price bids were opened on 04.07.2019. The 4th respondent emerged as successful bidder for Zone 1 to Zone 4. The petitioner emerged as successful bidder for Zone 5. The petitioner claimed that the 4th respondent had submitted his bid without including the Goods and Service Taxes (GST). The 4th respondent had submitted their bid by stating GST as 'zero'. The petitioner gave a representation on 11.07.2019, claiming that the petitioner is the lowest bidder and the 4th respondent had not included tax and duties and consequently must be considered as disqualified. It was claimed that if the 4th respondent was disqualified, the petitioner would emerge successful even in zone 1 to zone 4. The petitioner claimed that the tender document itself, in particular Form F clearly stated that when the bid is submitted, applicable taxes would also have to be included. It was stated that though 6 bidders had participated, only the 4th respondent had submitted their bid without including GST. The 1st respondent had issued a communication to the petitioner dated 14.08.2019, whereby they informed that the 4th respondent had been called for negotiation and the 4th respondent had revised their price for Zone 1 to Zone 4 by submitting revised bid with GST as '0 %'. The 4th respondent claimed that the 4th respondent had justified non-inclusion of GST placing reliance on Government of India Notification in GST No.12 of 2017 dated 28.06.2017 read with amendment dated 25.01.2018. The petitioner claimed that this procedure adopted by the 1st respondent was illegal. However by the said communication dated 14.08.2019, the petitioner was called to submit their response on or before 16.08.2019. The petitioner then issued a communication dated 16.08.2019, once again protesting at the procedure adopted by the 1st respondent. The 1st respondent issued a reply on 17.08.2019 claiming that they have followed all the procedures under the Tamil Nadu Transparency in Tender Act, 1998 and Rules framed thereunder. The 1st respondent stated that time was extended till 20.08.2019 to the petitioner to submit their reply insofar as the issue relating to GST is concerned. However, without submitting any further reply, the petitioner had filed this writ petition for the relief as stated above.

5. The petitioner also filed an additional affidavit, claiming that another bidder M/s.Neat and Clean Services Squared had originally emerged as the successful bidder for Zone 5, but was disqualified for not submitting their bid along with service tax and it was only because of such disqualification that the petitioner had emerged as the successful bidder for Zone 5. However, it was pointed out that the 1st respondent had not similarly disqualified the 4th respondent.

Counter affidavit of the 1st respondent:

6. In the counter affidavit filed by the 1st respondent, it had been stated that the 1st respondent is the Nodal Agency for procurement and distribution of Drugs,Surgical and Suture items for about 11,000 Government Medical Institutions all over Tamil Nadu, and also having the responsibility of finalizing the Agencies for providing House Keeping, Security and other related services for the Government Medical Institutions in the State of Tamil Nadu. The 1st respondent had floated an open tender in reference No.432/outsourcing/DME/TNMSC/Engg/2019 dated 19.02.2019, for providing service of house keeping, bio medical waste management, security and pest control services in 94 Government Medical Institutions under the control of Director of Medical Education. The number of institutions was later increased to 95. The institutions were divided into five zones namely, Zone 1 to Zone 5. The security amount to be deposited for each zone was Rs.10,00,000/-. It was stated that seven bidders had participated in the tender.

7. The Writ Petitioner had quoted their bid for all Five zones. The 4th respondent had also quoted their bit for Five zones. Similarly, the Writ Petitioner in W.P.No.27267 of 2019, had also quoted their bid for all the Five zones. After approval of the evaluation report by the Sub-committee of the Board, the evaluation report was published in the website on 02.07.2019. The price bids of the shortlisted bidders were opened on 04.07.2017. The 4th respondent, M/s.Krystal Integrated Services Pvt. Ltd., Mumbai, had quoted GST as 'zero' for all the Five zones, for which they had submitted bids. They emerged the successful bidder in Zone 1 to Zone 4. The Writ Petitioner, M/s.Padmavathi Hospitality & Facilities Management Services, Chennai, emerged the successful bidder for Zone 5. It was stated that the 4th respondent had furnished along with their price bid, an explanatory note citing the notification No.12/2017 - Central Tax (Rate) dated 28.06.2017, claiming that GST is not applicable for the services rendered.

8. The 1st respondent had taken an opinion of a GST consultant M/s.Sanjiv Shah & Associate, Chartered Accountants, Chennai. They had also given an opinion that house keeping and security service provided at the Medical College and Hospital, Schools of Nursing etc., which are controlled by the Directorate of Medical Education Health and Family Welfare Department, Government of Tamil Nadu is exempted vide entry No.3 of the Notification No. 12 of 2017 - CT (Rate) dated 28.06.2017.

Thereafter, on 08.08.2019, the 4th respondent was called for price negotiation for Zone 1 to Zone 4 and the petitioner was called for price negotiation for Zone 5. Both offered their revised prices. It was stated that still the 4th respondent emerged the successful bidder for Zone 1 to Zone 4 and the petitioner emerged the successful bidder for Zone 5. The 1st respondent gave a working sheet relating to the prices quoted by the 4th respondent. It was stated that the 1st respondent as the Tender Inviting Authority and also as the Tender Accepting Authority, had taken a decision with respect to applicability or non-applicability of GST without deviating from any of the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Rules thereunder and also the terms of the tender. It is claimed that substantial reduction for the price in Zone 1 to Zone 4 had been obtained. It is also stated that the procedure adopted was not contrary to Rule 29(d) of the Tamil Nadu Transparency in Tenders Rules and Section 10 of the Tamil Nadu Transparency in Tenders Act, 1998. It was also stated that the 1st respondent was in the process of negotiations and the tender process had not yet been completed and not yet been approved by the Tender Accepting Authority, which is the Board of Directors of the 1st respondent. It was stated that the petitioner had come to Court at pre-mature stage and they can approach the Appellate Authority under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998, after notification of the award based on the orders to be passed by the Tender Accepting Authority. It was therefore stated that the Writ Petition should be dismissed.

Counter affidavit of 3rd respondent:

9. The Assistant Commissioner of GST & Central Excise, Legal Section, 3rd respondent had filed counter affidavit stating that the tax payer is under the Administrative control of State GST Office and therefore stated that the 3rd respondent may be deleted from the list of respondents.

10. An Additional counter affidavit has also been filed in which it has been stated that since Section 97 of the Central Goods and Services Act, 2017 provided a statutory authority for obtaining Advance Ruling with respect to determination of the liability to pay tax on any goods or service or both, the 3rd respondent is not competent to give any opinion whether GST is applicable or not.

Counter affidavit of the 4th respondent:

11. In the counter affidavit of the 4th respondent, it had been stated that the Writ Petition is not maintainable, since if the petitioner is aggrieved by any order passed by the 1st respondent under Section 10 of the Tamil Nadu Transparency in Tenders Act, 1998, the petitioner must file an Appeal to the

Government under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998, within 10 days from the date of receipt of the order. It is stated that the bid has not been awarded by the 1st respondent which was still at the evaluation stage. It had been stated that since, the Writ Petition had been filed before completing the tender evaluation, it is not maintainable. It had been stated that the 4th respondent had submitted their bid by stating that GST as 'zero'. It is their stand that house keeping and security service exempted from GST. It had been stated that they had submitted the lowest tender amount for Zone 1 to Zone 4. It had been stated that the 1st respondent had followed all procedures while choosing the 4th respondent as the lowest tenderer for Zone 1 to Zone 4. It was also stated that GST Notification No.12/2017-CT (Rate) dated 28.06.2017 as amended by entry No.3 (Pure services) and 3A (Composite supply of goods and services), grants specific exemption for house keeping and security service from payment of GST). It was also stated that even if GST is to be paid, it was the responsibility of the 4th respondent to pay the GST. Therefore, it was stated that the 1st respondent was justified in holding that the 4th respondent was the lowest bidder for Zone 1 to Zone 4. It was therefore stated that the Writ Petition should be dismissed.

Memo filed by the 1st respondent:

12. In the memo dated 10.09.2019, filed during the pendency of the Writ Petition, the 1st respondent had stated that the tenure of the contract awarded to the Writ Petitioner, M/s.Padmavathi Hospitality & Facilities Management Service, in the previous tender had expired on 30.04.2019 and it was extended till 31.07.2019. It was further stated that further extension till 30.10.2019 was placed before the Government and further orders are awaited. It was stated that the petitioner is the successful bidder insofar as the Zone 5 is concerned and the letter of award of contract was issued on 07.09.2019 to the successful tenderer. A further memo was filed by the 1st respondent on 30.10.2019 stating that the extension of the existing contract in favour of the petitioner for 67 institutions, would cost an additional expenditure of Rs.4.63 Crores. After taking into consideration, the competitive rate offered by the 4th respondent, it was stated that the 28 institutions who were added in the present tender would be deprived of the house keeping and security service till the contract is commenced based on the present tender.

13. During the pendency of the Writ Petition, the 5th respondent, the Assistant Commissioner (CT), State GST, Chennai and the 6th respondent, the Tamil Nadu Advance Ruling Authority, Chennai, were impleaded by an order dated 14.11.2019 in W.M.P.No.32267 of 2019 in W.P.No.24412 of 2019. The said respondents did not file any counter affidavit.

Affidavit filed in support of W.P.No.27267 of 2019:

14. In the affidavit filed by M/s.Agile Security Force Pvt. Ltd., having its Branch Office at Chennai, John Selwyn Samraj, Chief Operating Officer, stated that the Writ Petitioner had participated in the tender floated by the 1st respondent for outsourcing of Housekeeping and Security service in 94 Government Hospitals and Schools and Colleges for Nursing (increased to 95) under the control of the 2nd respondent namely, the Director of Medical Education, Chennai.

15. The Hospitals / Schools / Colleges were divided into Five zones namely, Zone 1 to Zone 5. The petitioner had also submitted the bid for all the Five zones. It was stated that the petitioner possessed the requisite experience in the field of Facility Management. They had also deposited Rs.50,00,000/- as EMD for all the Five zones. It was also stated that the Writ Petitioner's representative participated in the opening of the price bid on 04.07.2019. The petitioner emerged as the 3rd lowest bidder. The petitioner claimed that the 4th respondent, M/s.Krystal Integrated Services Pvt. Ltd., had submitted their bid without including GST and by stating GST as 'zero'. It was also claimed that the 3rd respondent namely, M/s.Padmavathi Hospitality and Facilities Management Services, had not remitted Provident Fund in respect of its employees numbering 3942 and had not filed any challans in relation to the same.

16. It was further stated that the 3rd respondent had not remitted the payment towards ESI dues. It was stated that therefore the 3rd respondent must also be disqualified. It was also stated that the 3rd respondent had not activated Universal Accounting Number with Aadhar for all its employees, even after a lapse of 23 months from the date of Gazette Notification dated 04.01.2017. It was stated that since the 3rd and 4th respondents have to be disqualified, the petitioner as the 3rd successful bidder should be considered for award of the contract. The petitioner prayed that the Writ Petition should be allowed.

Counter affidavit of the 1st respondent:

17. In the counter affidavit filed by the 1st respondent, it had been stated that the 1st respondent was the Nodal Agency for procurement and distribution of Drugs,Surgical and Suture items for about 11,000 Government Medical Institutions all over Tamil Nadu, and also having the responsibility of finalizing the Agencies for providing House Keeping, Security and other related services for the Government Medical Institutions in the State of Tamil Nadu. The 1st respondent had floated an open tender in reference No.432/outsourcing/DME/TNMSC/Engg/2019 dated 19.02.2019, for providing service of house keeping, bio-medical waste

management, security and pest control services in 94 Government Medical Institutions under the control of Director of Medical Education. The number of institutions was later increased to 95. The institutions were divided into five zones namely, Zone 1 to Zone 5. The security amount to be deposited for each zone was Rs.10,00,000/-. It was stated that seven bidders had participated in the tender.

18. The Writ Petitioner had quoted their bid for all Five zones. The 4th respondent had also quoted their bid for Five zones. Similarly, the 3rd respondent had also quoted their bid for all the Five zones. After approval of the evaluation report by the Sub-committee of the Board, the evaluation report was published in the website on 02.07.2019. The price bids of the shortlisted bidders were opened on 04.07.2017. The 4th respondent, M/s.Krystal Integrated Services Pvt. Ltd., Mumbai, had quoted GST as 'zero' for all the Five zones, in which they had submitted bids. They emerged the successful bidders in Zone 1 to Zone 4. The 3rd respondent, M/s.Padmavathy Hospitality and Facilities Management Services emerged as the successful bidder for Zone 5. It was stated that the 4th respondent had furnished along with their price bid, an explanatory note citing the notification No.12/2017 - Central Tax (Rate) dated 28.06.2017, claiming that GST is not applicable for the services rendered.

19. The 1st respondent had taken an opinion of an expert from a GST consultant M/s.Sanjiv Shah & Associate, Chartered Accountant, Chennai. They had also given an opinion that the house keeping and security services provided at the Medical College and Hospital, Schools of Nursing etc., which are controlled by the Directorate of Medical Education Health and Family Welfare Department, Government of Tamil Nadu is exempted vide entry No.3 of the Notification No. 12 of 2017 - CT (Rate) dated 28.06.2017. Thereafter, the 4th respondent was called for price negotiation for Zone 1 to Zone 4 and the 3rd respondent was called for price negotiation for Zone 5 on 08.08.2019. Both offered their revised prices. It was stated that still the 4th respondent emerged the successful bidder for Zone 1 to Zone 4 and the 3rd respondent emerged the successful bidder for Zone 5. The 1st respondent gave a working sheet relating to the prices quoted by the 4th respondent. It was stated that the 1st respondent as the Tender Inviting Authority and also as the Tender Accepting Authority, had taken a decision with respect to the applicability or non-applicability of GST without deviating from any of the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Rules thereunder and also the terms of the tender. It was claimed that substantial reduction for the price in Zone 1 to Zone 4 had been obtained. It was also stated that the procedure adopted was not contrary to Rule 29(d) of the Tamil Nadu Transparency in Tenders Rules and Section 10 of the

Tamil Nadu Transparency in Tenders Act, 1998. It was also stated that the 1st respondent was in the process of negotiations and the tender process had not yet been completed and not yet been approved by the Tender Accepting Authority, which is the Board of Directors of the 1st respondent. It was stated that the petitioner had come to Court at pre-mature stage and they can approach the Appellate Authority under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998, after notification of the award based on the orders to be passed by the Tender Accepting Authority. It was therefore stated that the Writ Petition should be dismissed.

20. The other respondents in W.P.No.27267 of 2019 did not file their counter affidavit.

21. The Assistant Commissioner (CT), State GST, Chennai and the Tamil Nadu Advance Ruling Authority, Chennai, who were impleaded as 5th and 6th respondents in W.P.No.24412 of 2019 were not impleaded as respondents in the present Writ Petition.

22. Heard arguments advanced by Mr.A.R.L.Sundaresan, learned Senior Counsel for Mr.Nithyaesh & Vaibhav learned counsel for the petitioner in W.P.No.24412 of 2019 and Mr.Jeyash Dolia learned counsel for Mr.Aiyar & Dolia learned counsel for the petitioner in W.P.No.27267 of 2019 and Mr.S.R.Rajagopalan, learned Additional Advocate General, assisted by Mr.R.A.S.Sakthivel, learned Additional Government Pleader for Mr.Shivakumar & Suresh learned counsel for R1, Mr.J.Purushothaman, learned Government Advocate for R2, Mr.Santhanaraman, learned counsel for R3 and R6 and Mr.A.L.Somayaji, learned Senior Counsel for R4 and Mr.Mohammed Shafi, learned counsel for R5.

23. Since the issues raised in both the Writ Petitions and the Writ Petitioners in both the Writ Petitions have questioned the acceptance of the Financial bid offered by the 4th respondent namely, M/s.Krystal Integrated Services Pvt. Ltd., Mumbai, in the tender floated by the 1st respondent, a common order is passed in both the Writ Petitions.

24. The 1st respondent, the Tamil Nadu Medical Service Corporation Ltd., is the Nodal Agency for procurement and distribution of Durgs, Surgical and Suture items for about 11,000 Government Medical Institutions all over Tamil Nadu. They are also the procurement agency for medical equipments. They also impart training to Pharmacists and Doctors deputed from various State Governments, the World Health Organization and from other countries like, Myanmar, Nepal and Sri Lanka. They are also entrusted with the responsibility of finalizing the agents for providing Housekeeping, Security and other related services for the Government Medical Institutions in the State.

25. The 1st respondent had floated an open tender in

reference No.432/outsourcing/DME/TNMSC/Engg/2019 dated 19.02.2019, for appointing agencies to provide service of housekeeping, bio-medical waste management, security and pest control services in 94 Government Medical Institutions (increased to 95). The Medical Institutions were divided into Five zones, namely zone 1 to zone 5. The tender was governed by the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Rules thereunder. It had been very specifically provided both in the tender document and under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998, that any tenderer aggrieved by the order of the Tender Accepting Authority under Section 10 of the Act, may appeal to the Government within 10 days from the date of receipt of the order. Section 10 of the Act, is as follows:

> 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-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."

26. Section 11 of the Act, is as follows:

"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."

27. Rule 25 of the Tamil Nadu Transparency in Tenders Rules, 2000, is as follows:

25. Tender evaluation to be in accordance with evaluation criteria.- The Tender Accepting Authority shall cause the evaluation of tenders to be carried out

strictly in accordance with the evaluation criteria indicated in the tender documents.

28. Rule 29 of the Tamil Nadu Transparency in Tenders Rules, 2000, is as follows:

"29. Determination of the lowest evaluated price.- (1) Out of the tenders found to be substantially responsive after the initial examination, the tenderers who has bid the lowest evaluated price in accordance with the evaluation criteria or the tenderers scoring the highest on the evaluation criteria specified as the case may be shall be determined.

(2) In determining the lowest evaluated price, the following factors shall be considered, namely:-

(a) the quoted price shall be corrected for arithmetical errors;

(b) in cases of discrepancy between the prices quoted in words and in figures, lower of the two shall be considered;

(c) adjustments to the price quoted shall be made for deviations in the commercial conditions such as the delivery schedules and minor variations in the payment terms which are quantifiable but deemed to be non-material in the context of the particular tender;

(d) the evaluation shall include all central duties such as customs duty and central excise duty and sales tax as a part of the price, as detailed below: -

(i) in evaluation of the price of an imported item, the price has to be determined inclusive of the customs duty;

(ii) in evaluation of the price of articles which are subject to excise duty, the price has to be determined inclusive of such excise duty;

(iii) in a tender where all the tenderers are from within the State of Tamil Nadu, or where all the tenderers are from outside the State of Tamil Nadu, the Value Added Tax shall be included for the evaluation of the price; and

(iv) In a tender where the tenderers are both from the State of Tamil Nadu as well as from outside the State of Tamil Nadu, the Value Added Tax levied under Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) shall be excluded for the evaluation of the price.

(e) in the case of purchase of equipment, the operation and maintenance and spare part costs for appropriate periods as may be specified in bid documents may be quantified, where practicable and considered.

(3) In order to secure the best possible procurement price, negotiations with tenderer determined as per 45[sub-rules (1) and (2) of this rule] are permissible subject to provisions in section 10 of the Act.

(4) In the event that two or more tenderers have made the same financial bid and the splitting of the tender is not possible in accordance with sub-section (5) of section 10 of the Act, the Tender Accepting Authority shall identify the lowest tenderer by adopting one of the following approaches, which shall be pre-specified in the Tender Documents:

(a) In case of multi-stage tenders, by taking into account the qualification score of each tenderer from the first stage and the tenderer with higher score shall be adjudged the Lowest Tenderer; or

(b) By asking the two tenderers to provide their best and final offer of the financial bid in a sealed cover and the tenderer offering the most advantageous financial bid shall be adjudged the Lowest Tenderer.

(c) In case, a tie still persists after the procedure contained in clause (a) or (b) of this sub-rule has been followed, the selected tenderer shall be identified by draw of lots, which shall be conducted, with prior notice, in the presence of the tied tenderers or their representatives who choose to be present.

29. It is seen that four bidders had quoted their rates for all the five zones. They are as follows:

Sl.No.	Name of the Bidder	Zones Quoted
1	M/s.Padmavathi Hospitality & Facilities Management Services, Chennai	All 5 zones
2	M/s.Krystal Integrated Services Pvt. Ltd., Mumbai	All 5 zones

Sl.No.	Name of the Bidder	Zones Quoted
3	M/s.Sumeet Facilities Pvt. Ltd., Chennai	All 5 zones
4	M/s.All Services Global Pvt. Ltd., Hyderabad	All 5 zones

30. There were four other bidders who had quoted for 1 or 2 or 3 out of the 5 zones. After evaluation, one of the bidders was rejected. Among the tender rules, clause 1.1.13 relates to tax and duties. It is as follows:

> "1.1.13.Taxes and Duties:
> The bidder must consider in the price all duties, royalties and applicable GST.No extra claim will be entertained during execution of the Contract, except change in GST rates as applicable."

31. The format for submission of the bid had been given in Format - F. The format is as follows:

"Format - F

Covered in the zone, (c)				
Man power cost for Zonal Level (D)				
Resource cost for Zonal Level Management (E)				
Zone No:				
Summary of man power cost for all the hospitals covered in Zone as per Format C	Summary of Resource cost equipment/consumables for all the hospitals covered in the zone as in Format C	Man Power cost for zone level management as in Format D	Resource cost for zonal level management as in format E	Total For Zone
1	2	3	4	(1+2+3+4)=5
Price in (Rs)/Year excluding service tax				
Add Proportionate cost of man power of State Level Management for Zone - (6)				
Add Proportionate cost for Resource for State Level Management for Zone - (7)				

Covered in the zone, (c)	
Grand Total cost of man power, resources for hospitals and man power and resources cost for zonal and State level management for zone (5+6+7) = (8)	
Add GST applicable - (9)	
Grand Total Including Service Tax for Zone: (8+9)= (10)	

32. The zone wise prices quoted by the Writ Petitioners in the two Writ Petitions and by the 4th respondent is given below:

Zone 1					
Sl.No	Bidder	Quoted Rate excl. GST Rs.	GST Rs.	Quoted Rate incl.GST Rs.	Position
1	M/s.Krystal Integrated Services Pvt. Ltd., Mumbai	51,89,43,718.76	0	51,89,43,718.76	L1
2	M/s.Padmavathi Hospitality & Facilities Management Services, Chennai	46,38,68,628	8,34,96,353	54,73,64,981	L2
3	M/s.Agile Security Force Pvt. Ltd., Hyderabad	54,79,62,380	9,86,33,228	64,65,95,608	L3

Zone 2					
Sl.No	Bidder	Quoted Rate excl. GST Rs.	GST Rs.	Quoted Rate incl.GST Rs.	Position
1	M/s.Krystal Integrated Services Pvt. Ltd., Mumbai	24,99,94,260.08	0	24,99,94,260.08	L1

Zone 2					
2	M/s.Padmavathi Hospitality & Facilities Management Services, Chennai	22,96,57,080.00	4,13,38,274.00	27,09,95,354.00	L2
3	M/s.Agile Security Force Pvt. Ltd., Hyderabad	26,97,94,664.00	4,85,63,039.52	31,83,57,703.52	L3

Zone 3					
Sl.No	Bidder	Quoted Rate excl. GST Rs.	GST Rs.	Quoted Rate incl.GST Rs.	Position
1	M/s.Krystal Integrated Services Pvt. Ltd., Mumbai	31,86,54,745.24	0	31,86,54,745.24	L1
2	M/s.Padmavathi Hospitality & Facilities Management Services, Chennai	27,27,37,500	4,90,92,750	32,18,30,250	L2
3	M/s.Agile Security Force Pvt. Ltd., Hyderabad	29,64,41,096	5,33,59,397	34,98,00,493	L3

Zone 4					
Sl.No	Bidder	Quoted Rate excl. GST Rs.	GST Rs.	Quoted Rate incl.GST Rs.	Position
1	M/s.Krystal Integrated Services Pvt. Ltd., Mumbai	29,94,97,221.04	0	29,94,97,221.04	L1

Zone 4					
2	M/s.Padmavathi Hospitality & Facilities Management Services, Chennai	27,24,41,748.00	4,90,39,515.00	32,14,81,263.00	L2
3	M/s.Agile Security Force Pvt. Ltd., Hyderabad	29,49,31,444.00	5,30,87,659.92	34,80,19,103.92	L3

Zone 5					
Sl.No	Bidder	Quoted Rate excl. GST Rs.	GST Rs.	Quoted Rate incl.GST Rs.	Position
1	M/s.Padmavathi Hospitality & Facilities Management Services, Chennai	39,17,23,920.00	7,05,10,306.00	46,22,34,226.00	L1
2	M/s.Krystal Integrated Services Pvt. Ltd., Mumbai	46,38,27,576.40	0	46,38,27,576.40	L2
3	M/s.Agile Security Force Pvt. Ltd., Hyderabad	41,85,58,760.00	7,53,40,576.80	49,38,99,336.80	L3

33. It had been stated that the 4th respondent, M/s.Krystal Integrated Services Pvt. Ltd., Mumbai, had relied on Notification No.12/2017 - Central Tax (Rate) dated 28.06.2017 for non-applicability of GST for the services for which the tender had been floated. It is also seen that the 1st respondent had sought a clarification from M/s M/s.Sanjiv Shah & Associate, Chartered Accountant, Chennai, GST consultant who had also given his opinion as follows:

> “t).In view of the above deliberations the housekeeping and security service provided at the Medical College and Hospitals, School of Nursing etc., which are controlled by the Directorate of Medical

Education, Health and Family Welfare Department, Government of Tamil Nadu is exempted vide entry No.3 of the Notification No.12/2017 – CT (Rate), dated 28.06.2017."

34. It is therefore seen that to the extent possible, the 1st respondent had satisfied themselves with respect to the legality of the tender submitted by the 4th respondent. The 1st respondent had thereafter called the 4th respondent for price negotiations. The 4th respondent had offered the following prices as the revised price for Zone 1 to Zone 4:

Zone	Quoted Price with GST (GST as Zero) (Rs.)	Revised price with GST (GST as zero) Rs.
M/s.Krystal Integrated Services Pvt. Ltd., Mumbai		
1	51,89,43,718.76	43,97,82,800/-
2	24,99,94,260.08	21,18,59,500/-
3	31,86,54,745.24	27,00,46,350/-
4	29,94,97,221.04	25,38,11,200/-

35. Similarly, the petitioner was also invited for price negotiation and they offered the following as their revised price for Zonal 5:

Zone	Quoted Price excl.GST @ 18%	Revised price excl. GST @ 18%
M/s.Padmavathi Hospitality & Facilities Management Services, Chennai		
5	39,17,23,920/-	39,15,11,736/-

36. The 1st respondent had also verified the revised prices with Zero GST and with GST, if it becomes applicable. It was found that in the opinion of the 1st respondent, the bid offered by the 4th respondent need not be rejected. It has also been pointed out by the learned Senior Counsel for the 4th respondent that they would take up the burden of payment of GST. At this stage, this Court is not examining whether GST is applicable or not applicable for the Service for which the tender had been floated. This Court is not prepared to examine whether the prices offered by the 4th respondent and by the petitioner for Zone 1 to Zone 4 and Zone 5 respectively are competitive prices or not. They are to be decided only by the Tender Accepting Authority. This Court cannot substitute itself for the Tender Accepting Authority. Once the Tender Accepting Authority had

decided not to reject the bid offered by the 4th respondent and had passed an order under Section 10 of the Tamil Nadu Transparency in Tenders Act, 1998, then, any aggrieved party can file an appeal as provided under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998. Both the Writ Petitioners have failed to do so. The scope of the Writ Petition cannot be expanded to determine whether the bid quoted by the 4th respondent is legal or illegal. The Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India cannot venture into a roving examination of the facts and also cannot venture into applicability of certain provisions of law or not.

37. In 2017 4 SCC 318, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) Rep.by its Chairman and Managing Director and Another V. CSEPDI-TRISHE Consortium Rep by its Managing Director and Another, the Hon'ble Supreme Court had observed as follows:

> "37. Before parting with the case we are constrained to add something. We do so with immense pain. The respondent, before finalisation 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 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."
>
> (Emphasis Supplied)

38. In 2019 SCC Online SC 494, Caretel Infotech Ltd., V. Hindustan Petroleum Corporation Limited and Others, the Hon'ble Supreme Court, observed as follows:

> 38. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and public sector enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by government and public sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the public sector.
>
> 39. In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] , this Court has expounded further on this aspect, while observing that the decision-making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision-making process is arbitrary or irrational to an extent that no responsible authority, acting reasonably and in accordance

> with law, could have reached such a decision. It has been cautioned that constitutional courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision-making process would not suffice."
>
> (Emphasis Supplied)

39. In 2019 SCC Online SC 1133, Silppi Constructions Contractors V. Union of India and Another, the Hon'ble Supreme Court, observed as follows:

> "19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the

courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.

(Emphasis Supplied)

40. The reasons and the law laid down by the Hon'ble Supreme Court are binding. I hold that both the Writ Petitioners have embarked on a speculative journey to deliberately frustrate further progress in the tender process. Both the Writ Petitions have to suffer an order of dismissal and accordingly they are dismissed.

41. It must also be stated that the learned counsel for the Writ petitioner in W.P.No.24412 of 2019, made the following endorsement in the Writ Petition on the last day when the writ petitions were reserved for orders:

“Petitioner may be permitted to withdraw with liberty”

This Court expresses its deep displeasure over such an endorsement made by the learned counsel for the petitioner. It exhibits lack of professional ethics. It is very specifically ordered that no liberty of any kind is granted for the Writ Petitioner in W.P.No.24412 of 2019.

42. Both the Writ Petitions are dismissed. Each of the Writ Petitioners are directed to pay costs of Rs.5,00,000/- (Rupees Five Lakhs only) to the Chief Justice Relief Fund, High Court of Madras. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Smv
To
1.The Tamil Nadu Medical Service Corporation
(A Government of Tamil Nadu undertaking)
No.417, Pantheon Road, Egmore, Chennai - 600 008.

2.The Director of Medical Education
Directorate of Medical Education,Kilpauk, Chennai - 10.

3.The Assistant Commissioner, GST
Chennai North Commissionerate,
No.2054, I Block, Newry Towers, 12th Main Road,
2nd Avenue, Anna Nagar, Chennai - 600 040.

4.The Assistant Commissioner (CT),
State GST, Koyambedu GST Circle, CMDA
Administration Building, 2nd Floor, Koyambedu,
Chennai - 600 107.

5.Tamil Nadu Advance Ruling Authority,
PAPJM Buildings, II Floor, No.1, Greams Road,Chennai.

Copy to:
The Section Officer, Accounts Section, High Court,Madras.

+1cc to Mr.M.Santhanaraman , Advocate SR.No. 17910
+1cc to Mr.A.Saravanan, Advocate SR.No. 17964
+2ccs to Mr.Shiva kumar,Advocate SR.No. 18043,18042

W.P.Nos.24412 & 27267 of 2019
and
W.M.P.Nos.24145, 33240, 26692 & 26695 of 2019

A.SK(03/03/2020)