

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the First day of June Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE SANJIB BANERJEE, CHIEF JUSTICE

and

THE HON`BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

CMP.Nos.8884 & 8885 of 2021

in WA.Nos.1005 & 1006 of 2021

1 THE CHIEF EXECUTIVE OFFICER [PETITIONERS IN BOTH THE
NLC TAMIL NADU POWER LIMITED, PETITIONS]
HARBOUR ESTATE, TUTICORIN 628 004,
TAMIL NADU.

2 THE DEPUTY GENERAL MANAGER/
CONTRACT AND PURCHASE, OFFICE OF THE CHIEF
EXECUTIVE OFFICER, NLC TAMILNADU POWER
LIMITED HARBOUR ESTATE TUTICORIN-628004.
TAMILNADU.

Vs

M.PREMKUMAR [RESPONDENT IN BOTH THE
S/O.N.MURUGESAN, ASSISTANT MANAGER PETITIONS]
(HUMAN RESOURCES) RENAATUS PROCON PVT
LIMITED, NO.139, VIBGYOR, KODAMBAKKAM.
CHENNAI-600034.

Petition praying that in the circumstances stated therein and
in the affidavit filed therewith the High Court will be pleased to

(i)modify/clarify the interim order dated 26.03.2021 passed in
the above WA.Nos.1005 and 1006 of 2021 to facilitate the Petitioner
herein to remove the Fly Ash in terms of the tender conditions.(in
CMP.No.8884/2021 in WA.No.1005/2021)and

(ii)modify/clarify the interim order dated 26.03.2021 passed
in the above WA.Nos.1005 and 1006 of 2021 to facilitate the
Petitioner herein to remove the Fly Ash in terms of the tender
conditions.(in CMP.No.8884/2021 in WA.No.1005/2021)respectively.

Order : These petitions coming on for orders upon perusing the petition and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.N.NITHIANANDAM, Advocate for the petitioner in both the petitions and of M/S.P.J.RISHIKESH, Advocate for the respondents in both the petitions the court made the following order:-

COMMON ORDER

(Made by the Hon'ble Chief Justice)

The applications have been made by the NLC Tamil Nadu Power Limited for modification of the order dated March 26, 2021 passed at the receiving stage of the appeals.

2. The appeals were admitted upon the appellant challenging the disqualification and blacklisting of the appellant. The substance of the appellant's contention, as noticed in the relevant order, was that it was an act of God that prevented the appellant from discharging the appellant's obligations and, in such circumstances, blacklisting could not be resorted to.

3. It was in such light that the order dated March 26, 2021 came to be made, particularly paragraph 6 thereof:

"6. For the moment, notwithstanding the order of blacklisting, the appellant will be entitled to participate in the tender process and the tender process will be proceeded with by the public sector undertaking. In the event that the appellant is discovered to be otherwise qualified (where the blacklisting order will not be taken into account) and is found to be the best bidder in commercial terms, the award of any letter recognising the appellant as such may not be issued pending disposal of the appeal. If, however, the appellant is found to be disqualified on any other grounds of eligibility or the appellant's commercial bid is not found to be the best, it will be open to the respondent public sector undertaking to complete the process notwithstanding the pendency of the appeals."

4. The applicants are the relevant public sector undertaking and its official, seeking to dispose of the accumulated Fly Ash. The applicants submit that the Fly Ash which has gathered at the applicants' plant impedes the functioning thereof and it is imperative that such Fly Ash must be disposed of and removed from the plant as expeditiously as possible.

5. On the very day that the order of March 26, 2021 was passed, an e-auction was conducted. The terms of the price bidding were indicated in Clause 15.0 of the bid documents. The minimum Floor price of the Fly Ash was pegged at Rs.280/- per metric ton and the maximum at Rs.850/- per metric ton.

6. It appears that by the time the order of March 26, 2021 could be communicated to MSTC which was conducting the e-auction, the auction had commenced and MSTC was not in a position to discontinue the auction. As a result, the appellant, which had been disqualified from participating, could not participate in the e-auction. At the same time, seven of the parties who had bid offered the maximum price of Rs.850/- per metric ton.

7. The applicants say that there is sufficient Fly Ash for each of the highest bidders to take and if the appellant matches the highest price of Rs.850/- per metric ton, even the appellant can be supplied Fly Ash, subject to the appellant succeeding in getting the blacklisting off its back.

8. The situation may not be conducive at the moment for the final hearing of the appeals to be conducted as the parties and their representatives may be facing inconvenience during the strict lockdown. The matter will appear three weeks hence. It is hoped that the situation improves by then for the appeals to be taken up at least on the virtual mode and disposed of since physical hearing in this matter may not be necessary.

9. Since there is sufficient quantity of Fly Ash available, until further orders, the applicants should dispose of only such extent of Fly Ash that is immediately required to be removed from the plant in such proportion as may be permissible to the seven highest bidders. In the event the order of blacklisting made against the appellant is undone, the appellant will be entitled to also lift Fly Ash at the same price and the loss of quantity occasioned to the appellant in the interregnum has to be made up at the subsequent stage.

10. The appellant does not object to this order since provision for equitable distribution to the appellant has been made. It is recorded that, according to the applicants, the appellant is otherwise qualified and the only thing that stands in the way of the appellant being awarded a share of the Fly Ash is the appellant having been blacklisted.

Accordingly, the order dated March 26, 2021 is modified and C.M.P.Nos.8884 and 8885 of 2021 are disposed of without costs. W.A.Nos.1005 and 1006 of 2021 will appear on 22.06.2021.

-sd/-

01/06/2021

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE CHIEF EXECUTIVE OFFICER
NLC TAMIL NADU POWER LIMITED,
HARBOUR ESTATE, TUTICORIN 628 004,
TAMIL NADU.

2 THE DEPUTY GENERAL MANAGER/
CONTRACT AND PURCHASE, OFFICE OF
THE CHIEF EXECUTIVE OFFICER, NLC
TAMILNADU POWER LIMITED HARBOUR ESTATE
TUTICORIN-628004. TAMILNADU.

Order

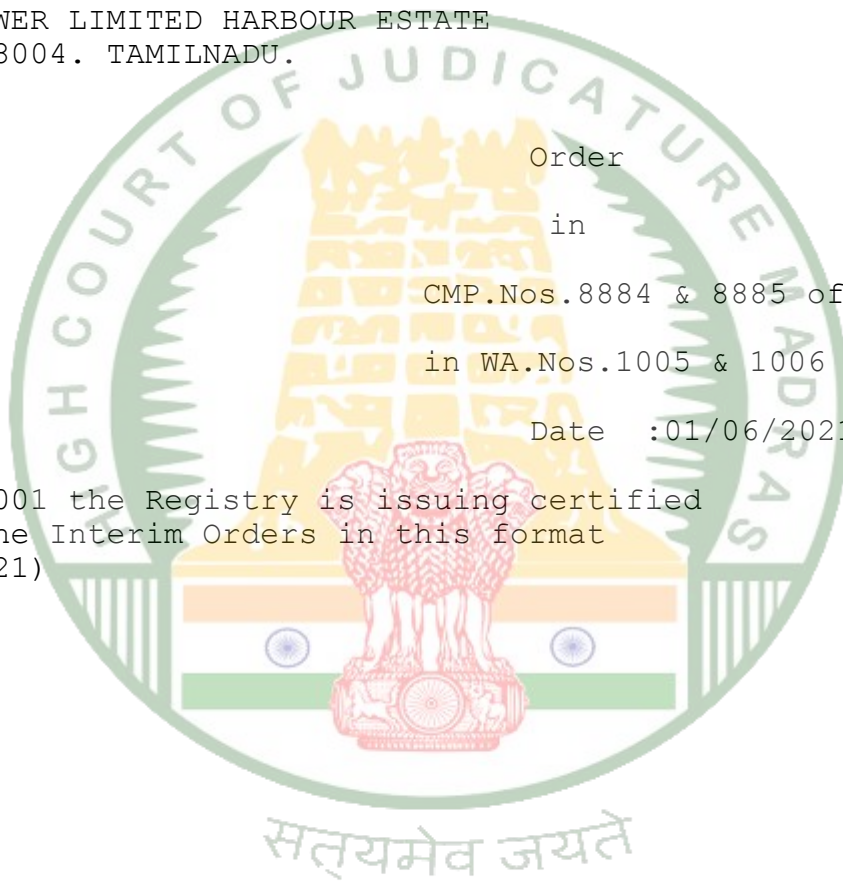
in

CMP.Nos.8884 & 8885 of 2021

in WA.Nos.1005 & 1006 of 2021

Date :01/06/2021

From 26.2.2001 the Registry is issuing certified
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KP(04/06/2021)



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