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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No.14752 of 2021

and

W.M.P. Nos. 15649 & 15650 of 2021

M/s.Climax Synthetics Pvt. Ltd.,
Rep. by its GM - Marketing
Mr.Ajay A Menon
Having Office at:
A/1-835 & 836, GIDC, Makarpura, Vadodara,
Gujarat - 390 010

..Petitioner

Versus

1. The Principal Secretary/Chairman
Tamil Nadu Civil Supplies Corporation
12, Thambusamy Road
Kilpauk, Chennai - 600 010.
2. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road
Kilpauk, Chennai - 600 010.
3. M/s.Tarpaulins India Tarps (P) Ld.,
264, Azad Market Road, MithaiPul, Teliwara,
Sadar Bazaar
New Delhi, Delhi - 110 006

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondent authorities 1 & 2 from violating the tender condition Clause 3(k) and grant/award the contract or any part thereof pertaining to the tender notification NIT No.QC2/020437/2021 dated 24.06.2021 in favour of the third respondent or any other tenderer who has been blacklisted by the Government departments and prohibited under Clause 3(k) of the tender notification and consequently, direct the respondent authorities 1 & 2 to call upon the writ petitioner for



negotiation on par with other tenderers prior to awarding the tender pertaining to the tender notification NIT No.QC2/020437/2021 dated 24.06.2021.

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For Petitioner : Mr. Thangasivam
for Mr.M.Sudhan

For Respondents - 1 & 2 : Mr. R. Shanmugasundaram,
Advocate General
assisted by Mr. C. Munusamy
Standing counsel for RR1 and 2

ORDER

The present writ petition has been filed by the petitioner for issuing a Writ of Mandamus forbearing the respondents 1 & 2 from violating the tender condition - Clause 3(k) and from awarding the contract or any part thereof pertaining to the tender notification NIT No.QC2/020437/2021 dated 24.06.2021 in favour of the third respondent or any other tenderer who has been blacklisted by the Government departments and prohibited under Clause 3(k) of the tender notification and consequently, direct the respondents 1 & 2 to call upon the petitioner for negotiation on par with other tenderers prior to awarding the tender pertaining to the tender notification NIT No.QC2/020437/2021 dated 24.06.2021.

2. The petitioner company is engaged in manufacturer of LDPE Films (Low Density Polyethylene), P covers/cover tops & HDPE (High Density Polyethylene) Pipes for the past seven years. It is also stated that the petitioner had obtained permanent registration with NSIC vide Certificate No.NSIC/ GP/ AHM/2015/001505423/130 which is valid upto 29.06.2021. The petitioner also claims to be in possession of BIS license (IS 2508:2016) No.CM/L-1946974 for manufacturing LDPE films and it is valid upto 15.03.2022. According to the petitioner, during the course of their business, they have come across the E-Tender Notification dated 24.06.2021 issued by the respondents 1 and 2 for supply of 10,000 nos. of Low Density Black Polyethylene Covers having the size of 9.8 x 6.4 x 5.2 meters with 250 micron thickness. The petitioner company submitted an online application and participated in the Technical Bid that took place on 03.07.2021, in which, the petitioner company as well as other 3 participants including the third respondent company were selected to participate in the Price Bid which was scheduled to be held on 06.07.2021 at 2.00 p.m. Accordingly, the Price Bid took place and all the 4 qualified companies including the petitioner company and the third respondent company were called



upon for negotiation, by the second respondent. In the said negotiation, the petitioner company was not allowed to interact with the second respondent panel. Further, in the absence of the petitioner company, the second respondent has passed an award in favour of the other three bidders including the third respondent.

3. The grievance of the petitioner is that the first respondent vide proceedings dated 12.06.2012 had already blacklisted the third respondent company for a period of five years and disqualified them from participating in any of the future tenders floated by Tamil Nadu Civil Supplies Corporation (hereinafter referred to as 'TNCSC'). While so, contrary to the order of blacklisting dated 12.06.2012, the third respondent was called for negotiation of the tender bid. Further, the petitioner also came to know that the third respondent was also blacklisted by the Government of Haryana for a period of 10 years with effect from 05.10.2010. In spite of the same, the second respondent has passed the award in favour of the third respondent company. Hence, the petitioner company submitted a representation dated 07.07.2021, before the second respondent vide e-mail and also submitted their objections, for granting of award to the third respondent company which has been blacklisted/banned from participating in any future tenders being floated by the TNCSC. Since the second respondent did not consider the representation dated 07.07.2021 of the petitioner, the present writ petition has been filed for the relief stated supra.

4. The learned Advocate General appearing for the respondents 1 & 2 would submit it is true that the first respondent vide proceedings dated 12.06.2012 had blacklisted the third respondent company and barred them from participating in the future tender floated by TNCSC. But subsequently, the said proceedings was set aside and therefore, the third respondent was permitted to participate in the Technical Bid as well as the Price Bid by the second respondent. He would further submit that the petitioner company is not a successful bidder and as an unsuccessful bidder, he is not entitled to maintain this writ petition. The petitioner, having participated in the tender, is estopped from maintaining this writ petition as against the award in favour of the third respondent.

5. At this stage, the learned counsel for the petitioner would submit that the petitioner company was selected to participate in the Price Bid, however, the second respondent awarded the tender in favour of the other 3 bidders and therefore, liberty may be granted to the petitioner company to approach the competent authority to work out their remedy.



6. Heard the learned counsel on both sides and perused the materials placed before this Court.

7. The petitioner has filed this writ petition by alleging that the third respondent was blacklisted from participating in the tenders flouted by the respondents 1 and 2, while so, he is not entitled to participate in the tender at all. On the other hand, the learned Advocate General appearing for the respondents 1 and 2 would submit that the order, blacklisting the petitioner, has been set aside subsequently and therefore, there is no bar for the third respondent from participating in the bid. In view of the above submission of the learned Advocate General appearing for the respondents 1 and 2, this Court is of the view that the foundation, on which the petitioner has laid this writ petition, itself is not sustainable.

8. It is well settled that in contractual matters relating to award of tender, the Constitutional Courts are expected to be slow and to adopt a restrained attitude from exercising a judicial review. In this case, the petitioner participated in the tender and having been unsuccessful in getting an award, he has come forward with this writ petition. Even as admitted by the petitioner, the second respondent awarded the contract in favour of the third respondent. Therefore also, the writ petition, at the instance of the petitioner is not maintainable. Consequently, the relief sought for by the petitioner for issuing a Mandamus to the respondents 1 and 2 cannot be entertained. It is open to the petitioner to approach the competent authority under Law to work out his remedy if he is still aggrieved by the award of the contract in favour of the third respondent.

9. Subject to the above observation, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

mrr/rsh



To

1. The Principal Secretary/Chairman,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road,
Kilpauk, Chennai - 600 010.
2. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

+2ccs to Mr.M.Sudhan, Advocate, S.R.No.33693

WP No. 14752 of 2021

PMK(CO)
SU(07/09/2021)