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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.40547 of 2016

M/s.Amoog Chemicals,
Rep.by its Managing Partner,
Mr.M.Muthusubbarayan,
New No.4/2, Sivasakthi Nagar,
Thaneer Pandal, Peelamedu,
Coimbatore - 641 004.

...Petitioner

Vs

1.The Tamil Nadu Newsprint and Papers Ltd.,
Rep.by its Deputy Managing Director,
Kagithapuram, Karur District,
Pin Code - 639 136.

2.The General Manager (Purchase & Offsites)
The Tamil Nadu Newsprint and Papers Ltd.,
Kagithapuram, Karur District,
Pin Code - 639 136.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 2nd respondent dated 06.10.2016 and quash the same and consequently direct the respondents to refund the security deposit of Rs.50,000/-, which is forfeited and also to continue to allow the petitioner to supply the materials finalised under Tender No.151613004417 dated 21.12.2015.

For Petitioner : Mr.Gokul Raj
For Mr.A.Mohamed Ismail

For Respondents : M/s.Samyuktha
For M/s.Shivakumar and Suresh
[For R1 & R2]

O R D E R

The Cancellation of purchase order based on the quality variation in Polyelectrolyte in proceedings dated 06.10.2016 issued by the 2nd respondent is under challenge in the present writ petition.



2. The petitioner firm is into the business of trade in industrial chemicals and dealing with water treatment chemicals. The respondent is a Government of Tamil Nadu Enterprise primarily manufacturing paper. For the purpose of treatment of effluent sludge from the factory of the respondent, they have to use a chemical called "Polyelectrolyte". As an enterprise of the Government, all procurement has to be done by calling for tenders. The petitioner firm has participated in several tenders and was successful and was declared to be L1 bidder. Accordingly, the petitioner firm got into a contract for supply of the said chemical arising out of tender notifications. Subsequently, the respondent found certain variations in the quality and accordingly, issued the impugned order in proceedings dated 06.10.2016, cancelling the purchase order.

3. In the impugned order, the 2nd respondent has stated that as per the purchase order, under "Clause-1 (a) Quality Test", material received with lumps during receipt or from lumps during storage, handling and subsequent usage shall be rejected. During supply of regular consignment material quality should be at par with material supplied during plant trial. If any deviation in quality / performance is found between material supplied during plant trial and subsequent consignment supply, balance quantity for the respective order shall be cancelled. TNPL decision is final and binding on the party.

4. Invoking the said clause, the 2nd respondent passed the impugned order. The allegation against the petitioner was that the respondent requested the petitioner to replace the remaining unused quantity of 1.225 MT of polyelectrolyte to meet out the requirement of the respondent. In spite of the repeated reminders, the petitioner had not replaced the same and thus, the impugned order is passed.

5. This Court cannot conduct an adjudication in respect of such disputed facts. The impugned order is issued, based on certain contractual obligations and as per the terms and conditions of the contract. Thus, an elaborate adjudication of disputed issues are required with reference to the original documents and evidences. Such an exercise cannot be done in a writ proceedings under Article 226 of the Constitution of India. Under these circumstances, this Court cannot form an opinion, whether the petitioner has supplied the chemicals as per the terms and conditions of the contract or not and further, the quality of materials supplied is as per the norms prescribed by the respondents or not. All these requires an adjudication of facts and circumstances.

6. This being the factum, the petitioner has to approach the competent forum for the purpose of resolving the disputes. In cases, where an Arbitration clause in the contract is available,



they have to resolve through Arbitration. If not, they have to approach the competent Court of law for adjudication of issues by way of trial. However, the relief as such sought for cannot be granted.

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7. The learned counsel for the petitioner states that no show cause notice was issued and further, the petitioner was prevented from participating in the subsequent tenders.

8. However, in this writ petition, while passing orders in W.M.P.Nos.34557 of 2016 and W.M.P.Nos.16273 of 2017 on 06.10.2017, this Court has recorded that the learned counsel appearing on either side fairly submitted that the period of Black listing comes to an end today (06.10.2017) and therefore, there is no bar for considering the name of the writ petitioner to participate in subsequent tenders. In view of the fact that the order impugned was passed, based on the terms and conditions of the contract, all those issues are also to be adjudicated between the parties before the appropriate forum. Thus, the petitioner is at liberty to approach the competent forum.

9. With this liberty, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Managing Director,
Tamil Nadu Newsprint and Papers Ltd.,
Kagithapuram, Karur District,
Pin Code - 639 136.

2.The General Manager (Purchase & Offsites)
The Tamil Nadu Newsprint and Papers Ltd.,
Kagithapuram, Karur District,
Pin Code - 639 136.

W.P.No.40547 of 2016

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A.SK(27.10.2021)