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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 17.09.2021

PRONOUNCING ORDERS ON : 21.09.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.NO.17455 OF 2020

AND

WMP NOS.21639 TO 21641 OF 2020

M/s.Vinzas Solutions India Pvt Ltd.,
Rep by its Authorised Signatory
Mr.K.Elamvazhuthi
O.No. W-97 N.NO. W-23
3rd Main Road, Anna Nagar
Chennai-600 040.

...Petitioner

.Vs.

1. The Chief Executive Officer
Tamil Nadu e-Governance Agency (TNeGa)
No.807 P.T. Lee Chengalvarayan Naiker Maligai
Anna Salai
Chennai 600 002.
2. The Tender Scrutiny Committee,
Tamil Nadu e-Governance Agency (TNeGa)
No.807 P.T. Lee Chengalvarayan Naiker Maligai
Anna Salai
Chennai 600 002.
3. M/s.Interlace India Pvt.Ltd.,
No.9/D 12, Sipcot IT Park,
Siruseri,
Chennai 603 103.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the 1st respondent in the impugned order dated 11.10.2020 bearing No.Lr.No.H-50/1/2019 -e Gov - Ceg/TNeGA and quash the Work Order allotted to the 3rd Respondent as L1 as arbitrary, illegal, ultra vires.



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[Prayer amended as per the order dated 07.09.2021 in WMP No.13345/2021 in WP.No.17455 of 2020 by NAVJ]

For Petitioner : Mr.Nithyaesh Natraj
for M/s.Nithyaesh & Vaibhav

For Respondents : Mr.R.Neelakandan
Additional Advocate General
Asst.by:
Mr.A.Selvendran
Government Advocate
for R 1 & R 2

Mr.R.Shivakumar
for M/s.K.M.Vijayan Associates
for R 3

ORDER

The subject matter of challenge in the present Writ Petition pertains to declaring the 3rd Respondent as the successful bidder in the E-tender notification dated 15.01.2020, through the proceedings of the 1st Respondent dated 11.10.2020.

2.The Petitioner is the consortium partner of M/s. ABM Knowledgeware Ltd., under a consortium agreement dated 20.03.2020 and this consortium agreement itself was entered into for the purpose of participating in the E-Tender floated by the 1st Respondent. The TNeGA is developing a state wide single window system which will be web enabled and citizen oriented in order to facilitate transparency in working, comfortable filing from the end user's side and also to keep digitised records for the futuristic use by the authorities. In this portal, a citizen can apply for the planning permission, building permission and plan approval, layout approval, completion certificate etc. In addition, the architect, licensed surveyors, engineers can also register their profile in their respective eligible departments. It was done to ensure that in certain approvals, more than one department may be involved and, in those scenarios, the interface between the workflow of two or more departments must be hassle free without change in the records.

3. Keeping the above in mind, the 1st Respondent issued an E-tender notification dated 15.01.2020, inviting tender for the work of Development & Maintenance of State Wide Single Window Web Portal for On-line Submission, Processing and



Disposal of Planning Permission Applications, Building Permission Applications, Completion Certificate, Reclassification and Layout approval for DTCP, DTP, GCC and CMA (DDGC).

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4. After the issuance of the notification, several technical queries were raised by several bidders. Hence, pre-bid meeting was conducted and even corrigendum was issued and the date of submission of the tender was also postponed. The Petitioner company, in fact, had filed Writ Petition Nos. 3679 of 2020 and 5482 of 2020, questioning certain statements made against the company's software and certain conditions imposed in the notification. Thereafter, taking into consideration the various queries raised, certain clauses in the notification were also amended and ultimately it enabled the Petitioner and other bidders to participate in the auction.

5. There were totally four bidders who had submitted the bid and the bids were opened by the scrutiny committee on 05.06.2020. The tender scrutiny committee evaluated the technical bids as per the eligibility criteria and evaluation criteria as prescribed in the notification and ultimately through technical presentation, for all the four bidders. Two of the bidders scored below 70 marks and hence they were found ineligible to participate for the financial bid opening. The Petitioner and the 3rd Respondent scored sufficient marks and they were found to be qualified for opening of the financial bid. The scrutiny committee opened the financial bids of the Petitioner and the 3rd Respondent and based on the rate quoted by them, the 3rd Respondent was identified as the L1 bidder and the bid was given in favour of the 3rd Respondent on 30.07.2020. The work order was issued on 01.10.2020 and it is stated that the 3rd Respondent thereafter commenced the work.

6. The Petitioner, aggrieved by the decision taken in favour of the 3rd Respondent and allotting the work in his favour, has filed the present Writ Petition before this court.

7. When the Writ Petition was admitted on 10.12.2020, this court passed an interim order to the effect that if the work order has not already been allotted to the 3rd Respondent, the same should be kept in abeyance until further orders. However, by the time the interim order was passed, the work order had already been issued in favour of the 3rd Respondent on 01.10.2020 and hence the 3rd Respondent had proceeded with the work. Thereafter, the pleadings were completed and the Writ Petition itself was taken up for final hearing.



8. Heard Mr. Nithyaesh Natraj, learned counsel for the petitioner, R. Neelakandan, learned Additional Advocate General, for respondents 1 and 2 and Mr. R. Shivakumar, learned counsel appearing on behalf of the 3rd respondent.

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9. The learned Counsel for the Petitioner primarily raised three grounds questioning the decision of the 1st Respondent selecting the 3rd Respondent as the successful bidder and they are ;

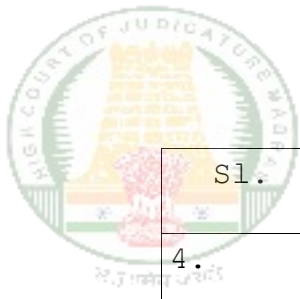
a. the 3rd Respondent did not satisfy Clause 4.1.4 of the eligibility condition.

b. the 3rd Respondent did not satisfy the evaluation criteria provided under 4.2 B (4.2.3 and 4.2.4) and

c. the letter of authorisation was given by the company in favour of one V. Padmavathy through a board resolution and authorised her to participate and to sign all the documents in connection with the tender and whereas she has sub-delegated the authorisation in favour of one V. Kannan and he only signed all the documents pertaining to the tender and the same is in violation of Clause 5.3 of the tender notification.

10. The learned Counsel for the Petitioner submitted that the ineligibility of the 3rd Respondent was pointed out to the 1st and 2nd Respondents through a representation as early as on 26.06.2020, and even thereafter on 30.07.2020, 10.08.2020 and 21.08.2020 and the same was not considered by the Respondents and they proceeded to allot the tender in favour of the 3rd Respondent. The learned Counsel for the Petitioner also brought to the notice of this court, the following judgments in order to substantiate his submissions:

Sl.	Particulars
1.	W.B State Electricity Board Vs Patel Engineering Co Ltd and others reported in 2001 (2) 451.
2.	Richa Industries Ltd Vs Delhi Metro Rail Corporation and anr. reported in 2017 SCC online Del 7168.
3.	Ghaziabad Mechfab Pvt Ltd .Vs Richa Industries Ltd and anr. in SLP.No.7210/2017.



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Sl.	Particulars
4.	Dr.ShanthiRengarajan Vs Oriental Insurance Company Ltd and anr. reported in 2018 SCC online Mad 13513.
5.	Vidarbha Irrigation Development Corporation Vs Anoj Kumar Garwala reported in 2019 SCC Online SC 89.
6.	In the matter of Maharashtra Chess Association Vs Union of India and others reported in 2019 SCC Online SC 932.
7.	Balakrishna Ram Vs Union of India and anr. in Civil Appeal No.131/2020.
8.	State Bank of Travancore v. Kingston Computers India Private limited reported in (2011) 11 SCC 524.

11. The 1st and 2nd Respondents have filed a counter affidavit. In so far as the first two grounds raised by the learned counsel for the Petitioner, the same has been answered in the counter affidavit and is extracted hereunder:

"11. With regard to the averments contained in Para 7, 8 & 10 it is submitted that the requirement of this tender is not a unique software, and software firm with adequate experience and expertise can develop the building, planning permission & scrutiny engine, hence the tender clauses mentioned in 4.1- Eligibility Criteria is related to the generic term i.e., software development but not restricted to scrutiny engine in order to invite more number of competitive bids. Further, it submitted that if the Eligibility criteria was restricted only to building, planning permission & scrutiny engine, then the same would restrict the participation drastically. Therein, Cl. 4.2- Evaluation Criteria and Cl. 4.3 Technical Presentation marks are allotted for software development and also added marks were given for the similar project experience i.e., Building & planning permission, scrutiny engine, etc., I therefore, state prior relevant experience related to Building & planning permission, scrutiny engine, etc., is not necessary and software firm with adequate experience and expertise can also develop this application within



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authorized Mr.V.Kannan Senior Bid Manager, to sign for this tender on behalf of the company and she has also attested the signature of Mr.V.Kannan. Mr.V.Kannan has signed the letter of undertaking and all tender documents."

13. The learned Additional Advocate General appearing on behalf of the 1st and 2nd Respondents submitted that the 3rd Respondent had satisfied the eligibility criteria and evaluation criteria and he was found to be technically qualified by the tender scrutiny committee and thereafter on the opening of the financial bid, it was found that the 3rd Respondent had quoted a lower rate and hence was identified as L1 bidder and the letter of acceptance was awarded to the 3rd Respondent on 21.09.2020. The learned Additional Advocate General further submitted that the 3rd Respondent has completed the development of core modules on 17.03.2021, scrutiny engine on 16.07.2021, commencement of construction, building plan approval along with scrutiny engine on 31.07.2021, Plinth, Last storey & completion certificate modules on 13.09.2021 and the entire work will be completed in the last week of November 2021. The learned Additional Advocate General therefore submitted that the work awarded in favour of the 3rd Respondent should not be interfered at this stage.

14. The learned Additional Advocate General further submitted that the Petitioner was aware about the technical bid going in favour of the 3rd Respondent even during July 2020 and the Petitioner failed to immediately approach this court and there is a long delay in filing the present Writ Petition only during November 2020 and this delay is fatal to the case of the Petitioner since by then the work order was issued and the 3rd Respondent had already commenced the work. The learned Additional Advocate General therefore sought for the dismissal of the Writ Petition.

15. The learned Counsel appearing on behalf of the 3rd Respondent relied upon the counter affidavit filed by the 3rd Respondent and adopted the submissions made by the learned Additional Advocate General.

16. This court has carefully considered the submissions made on either side and the materials available on record.

17. This court must bear in mind the caution given by the Hon'ble Supreme Court when it comes to dealing with cases



involving tender. This court does not want to burden this order by citing and extracting from various judgments since the law is well settled with regard to the scope of interference by a court exercising Writ jurisdiction. The same will be kept in mind by this court and this court will straight away get into the issues raised on either side.

18. The learned Additional Advocate General pointed out that there was a delay on the part of the Petitioner in approaching this court. In the considered view of this court, the Petitioner cannot be non-suited on the ground of delay since they have raised objections during the relevant point of time against the 3rd Respondent with regard to the eligibility criteria and evaluation criteria. The Petitioner had no occasion to knock the doors of this court at that point of time since the Petitioner was also found to have technically qualified. Therefore, if the Petitioner had approached this court at that time, the Writ Petition may not have been entertained since it would have been construed premature.

19. The other ground raised by the learned Additional Advocate General to the effect that the 3rd Respondent had sufficiently progressed in the work and therefore it should not be interfered at this point of time also does not hold any water since the delay in taking up the Writ Petition for final hearing cannot be put against the Petitioner. That apart, if this court finds that the 3rd Respondent has not fulfilled the eligibility criteria and the evaluation criteria, it has to be necessarily interfered with and this court cannot lay off its hand just because the 3rd Respondent had progressed with the work. It is now well settled that when it comes to fulfilling the basic criteria, it has to be complied with strictly and no latitude will be allowed.

20. In view of the above, this court wants to deal with the grounds raised by the Petitioner on merits and analyse as to whether the same is sustainable and consequently, the tender issued in favour of the 3rd Respondent requires interference.

21. The 1st ground that has been raised by the Petitioner is with regard to non-fulfilment of Clause 4.1.4 of the eligibility criteria. For proper appreciation, the relevant Clause is extracted hereunder:



"4.1. Eligibility Criteria

Clause	Eligibility Conditions	Documentary Proof
4.1.4	The bidder should have successfully completed, at least 2 End-to-End IT system integration Projects (software development and operation & maintenance) during last 5 years as on date of submission of bids for any Central/State Government Departments / Organizations / PSU / Private sectors in India/abroad where the value of the each project should be at least Rs. 5 crores and the projects should have gone-live (in usage) .	Work Order Project Contract Document / Agreement along with Completion/ Satisfactory Completion Certificate by the client with details of project value.

The bidders who have submitted required Documents for 4.1 Eligibility Criteria and meeting above all the Eligibility Criteria as determined by the Committee consisting of members from CMDA, DTCP, DTP, GCC, CMA (DDGC) and TNEGA only will be eligible for further Evaluation as per evaluation criteria 4.2 and 4.3. The Bidder shall submit the Documentary proof for all the items listed in 4.2 & 4.3 Evaluation Criteria."

22. According to the Petitioner, the above Clause was not fulfilled by the 3rd Respondent. The reason assigned by the Petitioner is that the 3rd Respondent does not possess "the past experience in the relevant field" for which the tender was called for.

23. This requirement as contended by the Petitioner is not found on a bare reading of the above Clause. The Petitioner however wants to give such a meaning to the above Clause by keeping in mind the purpose for which the tender was invited by the 1st Respondent.



24. The answer given by the 1st and the 2nd Respondents in so far as this ground raised by the Petitioner is that Clause 4.1 which provides for the eligibility criteria must be construed generically and it was not intended to restrict only to those who fulfil the purpose for which the tender was issued. According to the Respondents, if such a restricted meaning is given to the above Clause, the number of participants will come down drastically. That apart, for any applicant who has the adequate experience and the expertise in developing software and operation and maintenance in IT system integration project, can also develop the building planning permission scrutiny engine. Therefore, according to the 1st and the 2nd Respondent, since the 3rd Respondent fulfilled this criteria as contemplated in the above Clause, he cannot be disqualified based on the ground raised by the Petitioner.

25. In the considered view of this court, this court does not find any illegality or infirmity in the interpretation given by the 1st and 2nd Respondents with regard to the above Clause. The requirement of the above Clause has been fulfilled by the 3rd Respondent. The expectation of the 1st and the 2nd Respondents that adequate experience and expertise in IT system integration project will enable the participant to develop software application for building plan processing, scrutiny etc. is proved to be correct going by the progress shown by the 3rd Respondent in developing the software and this was explained by the Additional Advocate General and also the fact that they are going to complete the work by November 2021. Therefore, this court rejects the first ground raised by the Petitioner in so far as the non-fulfilment of Clause 4.1.4 is concerned.

26. This court will now go into the 2nd ground raised on the side of the Petitioner. For proper appreciation, Clause 4.2 B of the evaluation criteria is extracted hereunder:

S.No	Criteria/Sub Criteria	Marking System	Max. Marks
B	Relevant Past Experience		28



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4.2.3	The bidder should have successfully completed, End-to-End IT system integration Projects (software development and operation & maintenance) during last 5 years as on date of submission of bids for any Central/State Government Departments / Organizations/PSU /private sector in India/abroad where the value of each of the project should be at least Rs. 5 crores and the projects should have gone-live (in usage). Work order / Agreement with Completion / Satisfactory completion Certificate from Client has to be enclosed	2 (Two) End-to-End Projects=20 marks 3 or more - End-to-End Projects=25 Marks	25
4.2.4	The bidder should have successfully completed software application for building Plan Processing/Scrutiny/Approval with 2D/3D CAD drawing scrutiny software during last 5 years as on date of submission of bids for any Central/State Government Departments / Organisations/PSU/Private sectors in India/abroad.	1 Project = 3 Marks	3

27. This ground raised by the Petitioner is also connected with the earlier ground that was raised while dealing with Clause 4.1.4 of the eligibility criteria. In fact, the Petitioner attempted the assign a meaning to Clause 4.1.4 of the eligibility criteria only by taking cue from Clause 4.2.4 of the evaluation criteria. Admittedly, Clause 4.2.4 has not been fulfilled by the 3rd Respondent. Therefore, the Petitioner wants the 3rd Respondent to be technically disqualified on this ground.

28. The reasoning given by this court while dealing with the 1st ground raised by the Petitioner, will equally apply for



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this ground also. A careful reading of 4.2.B shows that 28 marks is earmarked for the relevant past experience. Clause 4.2.3 which is nothing but the extract of Clause 4.1.4 of the eligibility criteria has been allocated 25 marks. Any applicant who also has a past experience as provided under Clause 4.2.4 of the evaluation criteria will be given additionally 3 marks. That does not mean that an applicant who does not fulfil Clause 4.2.4 will automatically become technically disqualified. The only consequence of not fulfilling Clause 4.2.4 is that the applicant will not be given the marks assigned for this Clause. It is clear from the counter affidavit that the 3rd Respondent was not given any marks under Clause 4.2.4 of the evaluation criteria. The scrutiny committee has assigned marks to the 3rd Respondent wherever he has fulfilled the criteria and thereby the 3rd Respondent had scored 80 out of 100 marks and thus qualified for the next stage i.e. opening of the financial bid. In view of this discussion, the 2nd ground raised by the Petitioner is also rejected.

29. The last ground raised by the Petitioner pertains to non-fulfilment of Clause 5.3 of the tender notification. For proper appreciation, the relevant Clause is extracted hereunder:

"5.3 Letter of Authorization:

A letter of authorization from the Board of Directors / appropriate authority authorizing the Tender submitting authority or a Power of Attorney should be submitted in the tender; otherwise the Bids will be summarily rejected."

30. The contention raised by the learned Counsel for the Petitioner is that the board resolution of the 3rd Respondent company authorised one V. Padmavathy to participate and sign the documents in connection with the tender and whereas she sub-delegated the authority in favour of Mr.V. Kannan and therefore, it is in violation of Clause 5.3 of the notification.

31. In the considered view of this court, the ground raised by the Petitioner is too technical and in fact the said V.Padmavathy has attested the signature of Mr.V.Kannan, while sending the letter to the 1st Respondent on 07.05.2020. Therefore, this Court does not find any serious violation of Clause 5.3 of the notification.

32.The Hon'ble Supreme Court in Poddar Steel Corporation v. Ganesh Engineering Works & Ors reported in (1991) 3 SCC 273 and this court in Pace Digitek Infra Pvt.



Ltd., v. Tamil Nadu Fibernet Corporation Ltd reported in 2021 SCC OnLine Mad 900, had categorically held that a tender can be classified to contain the essential and ancillary conditions. If it is an essential condition, it must be enforced with rigidity without any scope for deviation. If it is an ancillary condition, there is a scope for deviation/relaxation since it will not cause prejudice or injustice to the other bidders. In the present case, even if the argument made by the Petitioner is taken to be correct, the authorisation letter dated 07.05.2020, acted upon by the 1st Respondent does not cause any prejudice to the Petitioner. This is apart from the fact that there is no violation of Clause 5.3 of the tender notification by the 3rd Respondent. Accordingly, the third ground that was raised on the side of the Petitioner is also hereby rejected.

33. In view of the above discussion, this court does not find any ground to interfere with the tender issued in favour of the 3rd Respondent and in the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (CS)

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Sub Assistant Registrar

KP

To

1. The Chief Executive Officer
Tamil Nadu e-Governance Agency (TNeGa)
No.807 P.T. Lee Chengalvarayan Naiker Maligai
Anna Salai Chennai 600 002.
2. The Tender Scrutiny Committee,
Tamil Nadu e-Governance Agency (TNeGa)
No.807 P.T. Lee Chengalvarayan Naiker Maligai
Anna Salai Chennai 600 002.

+1cc to the Government Pleader, High Court, Madras, S.R.No.48536

W.P.No17455 of 2020

BR(CO)

RLP(08/12/2021)