

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 2.3.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.NO.19426 OF 2020

AND

W.M.P.NO.24016 OF 2020

M/s.Best and Fast Metal Fab,
rep. by its Managing Director
Mr.N.Sudhakar,
No.624, Mahalakshmi Nagar,
Pollachi Main Road, Eachanari,
Coimbatore 641 021.

... Petitioner

vs.

1. Government of Tamil Nadu,
rep. by Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.
3. The Commissioner and Managing Director,
Tiruchirapalli City Corporation,
8, Bharathidasan Salai,
Opp. Campion School,
Cantonment, Tiruchirappalli 620 001.
4. The Tender Scrutiny Committee,
Office of the Commissioner and Managing Director,
Tiruchirapalli City Corporation,
8, Bharathidasan Salai,
Opp. Campion School,
Cantonment, Tiruchirappalli 620 001.
5. M/s.Arun Indian Motors,
rep. by its Authorized Person
No.5, Gandhi Road, Salem 636 007.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records from the fourth respondent in E5/643/2019(Main) dated 27.10.2020 in respect of the tender

notice No.118/2020-2021 Sl.No.01 dated 20.10.2020 to quash the same insofar as the petitioner (S.No.3) and fifth respondent (S.No.5) is concerned and consequently direct the third respondent to strictly follow the condition of tender notice No.118/2020-2021 S.No.01 dated 20.10.2020 in accordance with law.

For Petitioner : Mr.A.M.Esakkiappan
For R1 : Mr.D.Venkatesan, Govt.Advocate
For RR2 to 4 : Mr.V.Jayaprakash Narayanan,
Government Pleader

ORDER

The case of the petitioner is that he is also a Member of Micro Small and Medium Enterprises (MSME) and has got certificate to that effect and produced the same in the typed set of papers. As per the tender notification, any bidder participating in the tender must pay a sum of Rs.4,40,000/- as per clause 6 of the Tender Notification which reads as follows:-

"6. The bidder should remit an Earnest Money Deposit (EMD 2% of the Total value of work) of Rs.4,40,000/- into the Corporation Treasury through the Indian Bank Account No.6609843073 with Trichy Cantonment Branch, IFSC Code IDIB000T027 and the receipt obtained should be attached alongwith the bids. Cheque will not be accepted, but, Demand Draft in favour of "The Managing Director, Tiruchirappalli Smart City Limited", payable at Tiruchirappalli will be accepted. Other form of EMD will not be accepted. Bids received without EMD will be rejected."

2. As per the Tender Notification, this petitioner has also taken out a Demand Draft for Rs.4,40,000/- and also participated in the Tender. However, this petitioner's Tender has been rejected without any valid reason, on the other hand, a third party who has not even participated in the tender process has been awarded with the tender without any EMD amount.

3. The learned Government Advocate representing the State would submit that as per G.O.Ms.No.126 dated 11.4.2007 some exemption has been provided to the Members of MSME and based on that, a person was granted exemption however, the same has been disputed by the learned counsel for the petitioner and that this Government Order was issued in the year 2007 only for one year and that has not been extended subsequently and the exemption granted by the respondent relying upon the Government Order is not proper.

4. The learned Government Advocate has produced a copy of the Office Memorandum dated 25th July 2017 issued by the Department of Expenditure Procurement Policy Division and submitted that the said Department has taken a decision to exempt the Startups from submitting Earnest Money Department as a policy decision and the relevant provision viz., Rule 170(1) of General Financial Rules (GFR), 2017 has been amended as follows:

" Revised Rule 170(i): To safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry or Department or Startups as recognised by Department of Industrial Policy & Promotion (DIPP). The bidders should be asked to furnish bid security along with their bids. Amount of bid security should ordinarily range between two percent to five percent of the estimated value of the goods to be procured. The amount of bid security should be determined accordingly by the Ministry of Department and indicated in the bidding documents. The bid security may be accepted in the form of Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of forty-five days beyond the final bid validity period."

5. The learned Government Advocate also submitted that as per sub Rule (1) of Rule 14 of the Tamil Nadu Transparency in Tenders Rules, 2000, any category of tenderers can be specifically exempted by the Government from the payment of Earnest Money Deposit and on the analogy under sub rule (1) of Rule 14 of the said Rules, the Government specifically exempt the Self Help Groups, who have passed the first as well as second grading conducted by the Project Officer (Mahalir Thittam), District Rural Development Agency from payment of Earnest Money Deposit (EMD) in tenders called for by the State Government and the exemptions which were provided for a period

of one year was also renewed at the end of the year and subsequent exemptions were also provided.

6. In view of the above submissions made by the learned Government Advocate, this court is of the view that the petitioner is not entitled to succeed. Accordingly, the writ petition is dismissed. No costs. The connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.
3. The Commissioner and Managing Director,
Tiruchirapalli City Corporation,
8, Bharathidasan Salai, Opp. Campion School,
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4. The Tender Scrutiny Committee,
Office of the Commissioner and Managing Director,
Tiruchirapalli City Corporation,
8, Bharathidasan Salai, Opp. Campion School,
Cantonment, Tiruchirappalli 620 001.

+1cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.13257

+1cc to Mr.A.M.Esakkiappan, Advocate, S.R.No.13066

+1cc to the Government Pleader, S.R.No.13184

W.P.No.19426 of 2020

PMK(CO)
CS/24/03/2021