



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
16.11.2021	19.11.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.24153 OF 2021

AND

W.M.P. NOS. 25475, 25478 & 25479 OF 2021

M/s.Om Ganesha Metal Drums
rep. By its Managing Partner
A.Jitender Kumar
Plot No.E-28, Add. Patalganga MIDC
Taluka Panvel Dist., Raigadh
Maharashtra 410 220.

... Petitioner

- Vs -

1. The General Manager
Marketing Division
Indian Oil Corporation Ltd.
139, Nungambakkam High Road
Chennai 600 034.

2. The Deputy General Manager
Tender Inviting Authority
Indian Oil Corporation Ltd.
139, Nungambakkam High Road
Chennai 600 034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records of the 2nd respondent in e-mail communication dated 28.10.2021 in rejecting the bid application of the petitioner and quash the same and consequently direct the respondents 1 and 2 to include and permit the petitioner to participate in Tender No. SRCC /PT /090 /TNSO /2021-22 bearing Tender ID No. 2021_SROTN_139613_1 as per law.

For Petitioner : Mr. AR.L.Sundaresan,
SC, for
Mr. S.Kamalesh Kannan

For Respondents: Mr. Mohammed Fayaz Ali



ORDER

The present petition has been filed challenging the rejection of the petitioner's bid application by the 2nd respondent.

2. The petitioner is a partnership firm, viz., a Micro, Small and Medium Enterprises (MSME) Unit, involved in the manufacture of metal drums and the unit was established in the year 2020, which is a "Startup Unit", as certified by the Department of Promotion of Industry and Internal Trade and the unit is involved in the supply of metal drums.

3. It is the case of the petitioner that pursuant to the invitation of tender by the 2nd respondent for the supply of 160 Litres MS (24G-0.63 MM) empty bitumen drums to bitumen drum filling/packing plant at Chennai, the petitioner submitted its bid application through electronic mode within the time prescribed by the 2nd respondent.

4. However, to the shock and surprise of the petitioner, vide e-mail dated 28.10.21, the 2nd respondent rejected the bid of the petitioner on the ground that the registered partnership deed was not submitted. It is averred by the petitioner that a letter was addressed to the 2nd respondent by e-mail on 28.10.21 explaining that the firm registration would take a minimum of one year as per the Indian Partnership (Maharashtra Amendment) Act, 1984, as the petitioner had applied for the same only on 18.11.2020 and would be getting the registration certificate on 19.11.2021.

5. In spite of the same, without properly considering the reply, the 2nd respondent, vide e-mail dated 29.10.21, rejected the bid application on the ground that the registered partnership deed, as is mandated under clause 8 (e)(d) of the tender notification has not been submitted. Though the petitioner, through his communication, brought to the notice of the 2nd respondent that its unit is a startup unit and as per the certificate of the Department of Industrial Policy and Promotion, registration deed is not mandatory, however, the 2nd respondent, without considering the said reply, vide communication dated 1.11.21 rejected the said reply of the petitioner. Aggrieved by the said impugned order of rejection passed by the 2nd respondent, the present petition has been filed by the petitioner.



6. Learned senior counsel appearing for the petitioner submitted that the whole crux of the issue squarely falls under clause 8 (e)(d) of the tender notification, which prescribes certain documents to be annexed along with the bid application. It is the submission of the learned senior counsel that though the said condition has been laid down in the tender, however, the said condition has to be read in relation to the policy circular No.1(2)(1)/2016-MA dated 10th March, 2016 of the Ministry of Micro, Small & Medium Enterprises of the Government of India, where relaxation has been granted in the norms for Startups and Micro & Small Enterprises in public procurement. However, the 2nd respondent has not properly appreciated the said policy circular, but has merely gone by the tender conditions, which is grossly erroneous.

7. It is the further submission of the learned senior counsel for the petitioner that the petitioner was the successful bidder relating to a similar tender floated by the Mathura Unit of the Indian Oil Corporation and the conditions prescribed in the tender therein were identical and the petitioner had submitted only the documents as were submitted before the 2nd respondent and the said documents were taken note of and the petitioner was declared as the successful bidder, though the petitioner had not taken up the said work for certain other reasons. The Mathura unit of Indian Oil Corporation having taken a stand on the same set of tender conditions, it is not open to the 2nd respondent, an arm of the Indian Oil Corporation, to take a different stand from the one already taken by its other unit.

8. It is the further submission of the learned senior counsel for the petitioner that the registration of the partnership firm could not be produced for the reason that as per the Indian Partnership (Maharashtra Amendment) Act, 1984, the registration certificate is given only on the completion of one year of registration and the petitioner having registered the partnership firm on 18.11.20, the registration certificate would only be made available on 19.11.21 and, therefore, insisting on the said certificate as one of the condition for accepting the tender is wholly unsustainable.

9. In fine, it is the submission of the learned senior counsel for the petitioner that the petitioner having been exempted from submission of the documents finding place in clause 8 (e)(d) of the tender in view of the policy circular of the Government of India relating to MSME and the petitioner



having been the successful bidder in a similar tender floated by the Mathura unit of the respondent/Indian Oil Corporation, insisting upon the partnership deed, which has been exempted by giving a different interpretation to the circular is wholly unsustainable and, accordingly prays for allowing the writ petition.

10. Per contra, learned standing counsel appearing for the respondents submitted that Mathura Unit of Indian Oil Corporation is an independent unit and any interpretation given by it for a particular tender condition is not binding on the respondents and the petitioner cannot gain any leverage from the said fact, as the condition stipulated in the tender is a mandatory one, according to the respondents and the same cannot be taken aid of by the petitioner to have his tender admitted, when the mandatory condition is not fulfilled.

11. It is the further submission of the learned standing counsel for the respondent that no exemption has been granted for Startups and MSME by the Government of India insofar as submission of registered partnership deed is concerned. It is the further submission of the learned standing counsel that the petitioner having submitted GST registration, which is a condition stipulated in clause (e)(c), the petitioner cannot go back and claim that clause 8 is exempted in view of the policy circular of the Government of India. The petitioner cannot on the one hand submit a certificate, which he has with him, and on the other hand claim that for the other certificate he is enforcing the exemption, alleged to be granted by the Government of India. It is, therefore, the submission of the learned standing counsel for the respondent that the petition filed is wholly misconceived and the same is liable to be dismissed.

12. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record, more especially the conditions stipulated in the tender and the policy circular on which much reliance has been placed by the petitioner.

13. The issue in the present case falls within a very narrow campus. While the petitioner claims that the conditions prescribed in sub-clause (d) of clause 8 (e) is exempted in view of the policy circular, it is controverted by the respondent and it is submitted that the condition prescribed is mandatory. To appreciate the above contention, it is but necessary to have a



is the copy of the registered partnership deed, as reflected in sub-clause (d) of clause 8 (e).

18. Could it be said, on a perusal of the relaxation given by way of the policy circular issued by the Government of India, that the submission of the registered partnership, as found in sub-clause (d) of clause 8 (e) has been granted exemption.

19. The learned senior counsel appearing for the petitioner, in his inimitable style, had contended that the relaxation given with regard to the other documents, which finds place in clause 8 (e), equally, for which exemption has been granted by the 2nd respondent, the said exemption would also be available to the registered partnership deed as the said document should be seen in conjunction and not in isolation to the policy circular. Though the said contention, at first blush, looks attractive, but a deeper analysis of the policy circular coupled with the tender conditions paints a different picture.

20. The intention of the issuance of the policy circular is manifestly evident from point (3) of the policy circular, which, at the cost of repetition, is quoted hereunder :-

"(3) The Startups are normally Micro and Small Enterprises which may not have a track record. These will have technical capability to deliver the goods and services as per prescribed technical & quality specifications, and may not be able to meet the qualification criterion relating to prior experience-prior turnover."

21. The intent is crystal clear from the aforesaid view expressed in the policy circular. The Government of India, taking into consideration the capability of the startups to deliver goods and services as per technical and quality specifications, but may not be able to meet the qualification criterion relating to prior experience and prior turn over, has granted relaxation from the said two criterion, viz., prior experience and prior turn over. Over and above, there is no other exclusion given by the Government of India in the aforesaid circular.

22. In the case on hand, the rejection is on the basis of the non-furnishing of the deed of partnership, which is said to be a mandatory document, which is to be furnished with the tender application. It is to be pointed out that the partnership deed is a document, which is executed between two or



more individuals, prescribing the conditions of partnership. The said document has nothing to do with the prior experience and prior turnover and the same cannot also be said to be a document, which has been given relaxation by the aforesaid circular. Irrespective of the fact whether a concern is a Startup/MSME or a concern, which has been in the business for a period of time, a deed of partnership is entered into at the time of starting of the concern between the partners and would not in any way be said to be a document, which could not be produced by the Startup/MSME due to its coming into existence fairly recently. Further, point (4) of the policy circular only speaks about the relaxation granted for prior turnover and prior experience for Startup/MSME in relation to public procurement relating to quality and technical specifications. A deed of partnership could not be said to fall either in the realm of quality or in the realm of technical specification, as it is a totally a separate document, which pertains to the formation of the partnership firm. Therefore, trying to import the circular into play in the present context is wholly misconceived and any view by this Court, in the line as projected by the petitioner, would be nothing but reading something into the policy circular, which is not intended by the Government. Further, it has been the consistent ratio laid down in a catena of decisions by this Court and the Hon'ble Supreme Court that nothing should be read between the lines so long as the same is clear and in the case on hand, the policy circular being clear and unambiguous and gives relaxation only insofar as prior turnover and prior experience are concerned, nothing can be imported or read between the said lines and, therefore, the contention of the petitioner that the documents mandated in the tender conditions should be read in conjunction with the policy circular and not in isolation is too far fetched to be accepted.

23. Further, the petitioner cannot blow hot and cold as the petitioner has submitted GST registration certificate as mandated in sub-clause (c) of clause 8(e). The petitioner having submitted the GST registration certificate, cannot now come and claim that the petitioner is exempted from submission of the document mandated under sub-clause (d) of clause 8 (e). Therefore, this Court holds that the document mandated under sub-clause (d) of clause 8 (e) is not a document exempted by the policy circular of the Government of India dated 10th March, 2016.

24. Insofar as the contention relating to the Mathura division of Indian Oil Corporation accepting the tender of the petitioner on an earlier occasion without submission of



registered partnership deed and, therefore, the 2nd respondent cannot give a different interpretation to the said clause, the said submission also cannot be accepted for the simple reason that the two divisions are separate entities, which are not bound by the orders of one or the other. Further, the petitioner having accepted the tender conditions and participated in the tender process by submitting application and having not submitted the mandated documents, without questioning the tender conditions, the petitioner cannot now come before this Court and claim that the interpretation which he proposes to give to clause 8 (e) on the basis of an order passed by a different authority should be the interpretation given by the 2nd respondent as well. Therefore, the contention of the petitioner that the 2nd respondent has to follow the interpretation given by his counterpart unit in Mathura is wholly unreasonable, unacceptable and does not merit acceptance.

25. For the reasons aforesaid, this Court is of the considered view that the action of the 2nd respondent in rejecting the tender application of the petitioner for non-submission of the requisite documents as mandated under clause 8 (e) is wholly in order and does not suffer from the vice of any illegality or arbitrariness or unreasonableness and the same deserves to be sustained. Accordingly, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

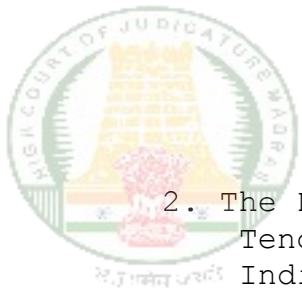
// TRUE COPY //

SUB ASSISTANT REGISTRAR

GLN

To

1. The General Manager,
Marketing Division,
Indian Oil Corporation Ltd.
139, Nungambakkam High Road,
Chennai 600 034.



2. The Deputy General Manager,
Tender Inviting Authority,
Indian Oil Corporation Ltd.
139, Nungambakkam High Road,
Chennai 600 034.

WEB COPY

W.P. NO. 24153 OF 2021

kg[co]
srg 30/11/2021