



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.12242 of 2020

and

WEB COPY W.M.P. (MD)Nos.14075, 10501, 10503 & 10509 of 2020

M/s.Priyam Industries
and Engineering Pvt.Ltd.,
Reg.Off.No.625, Surya Complex,
II Floor, Anna Salai,
Chennai-600006.

... Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
District Rural Development Agency,
Represented by Collector / Project Director,
DRDA,
Tirunelveli District.

2.M/s.Asian Power Lines
Rep. by its Proprietor,
Mr.E.Ramesh
No.3/85-D, Thirunagar,
Thelichathanallur, Paramakudi,
Ramanathapuram District.

... Respondents

R2 impleaded vide court order dated 27.01.2021 in WMP(MD).
No.14072/2020 in WP(MD).No.12242 of 2020

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the Tender Summary Report issued by the respondent herein made in Tender Ref.No.A5/1013/2019, 2nd call e-cart dated 17.09.2020 and quash the same insofar as the petitioner herein is concerned whose technical bid was rejected and consequently, direct the respondent to consider the case of the petitioner as technically qualified and participate in the financial bid on 18.09.2020 or any other dated as may be fixed by this Court .

For Petitioner	: Mr.Silambanan Senior Counsel for Mr.S.Karthik
For R1	: Mr.S.Angappan Government Advocate
For R2	: Mr.S.Srinivasa Raghavan



ORDER

Heard the learned Senior Counsel appearing for the petitioner, learned Government Advocate appearing for the official respondent and the learned counsel appearing for the impleaded respondent/R2.

2. The first respondent issued tender notification dated 15.08.2020 inviting e-bids for supply of battery operated e-cart for solid waste management activities for the village panchayats in Tirunelveli District. Like any other tender process, the tender process in the case on hand also involved two stages namely technical bid stage and the price bid stage. The technical Bids were originally opened on 27.08.2020. But then, due to administrative reasons, it was postponed to 17.09.2020. On the said date, the technical bids were opened and the petitioner was disqualified at that stage. The price bid appears to be opened on 18.09.2020. In the meanwhile, the petitioner rushed to this Court and this Court had granted an interim order.

3. At the very outset, this Court must note that the attempt of the first respondent to open the price bid on the very next day after opening of the technical bid is a clear breach of Clause 20.6 of the Tender Notification. Clause 20.6 reads as follows:-

"20.6 The result of evaluation of Part I of the Bids shall be made public on e-procurement following which there will be a period of 5 working days during which any bidder may submit complaint which shall be considered for resolution before opening of Part II of the bid. Any complaint shall be dealt with in accordance with complaint handling protocol as available on the e-procurement portal."

4. The learned Senior Counsel for the petitioner draws my attention to the order dated 03.08.2020 passed by the Principal Seat in W.P.No.31945 of 2019 etc. The learned Judge, who allowed the said writ petition, was also dealing with identically awarded tender clauses.

5. The learned Judge took the view that a bidder disqualified at the technical stage must be given an opportunity to utilise the remedy available under Clause 20.6 for resolution of their grievance. The failure on the part of the authority to adhere to the regulation resulted in vitiation of the proceedings. Of course, in the said case, the order was remitted to the file of the authority for fresh consideration. In the case on hand, I was initially inclined to remit the matter, so that, the authorities can proceed from the stage from where the defect crept in. But then, the learned Senior Counsel took me through the evaluation sheet enclosed in the typed set of papers filed by the Government Advocate.

6. While setting out the overall width of the samples of the four papers, the following details were noted.



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SI. No.	Specification mentioned in Tender Condition	Priyam Industries and Engineering PVT LTD Thirupur	Eshwar Motors Paramakudi	Arun Indian Motors Salem	Asian Power Lines Paramakudi
5.	Overall Width 1120 mm +5% Tolerance (1.064)	1.02	1.08	1.01	1.01

7.The petitioner was disqualified on the footing that the overall width was only 1.02 cm. The overall width of Asian Power Lines, Paramakudi, whose sample was only 1.01 cm, was however declared as having been qualified. This obviously cannot be correct. Arun Indian Motors, Salem, was also disqualified. That leaves the field only with the Eshwar Motors, Paramakudi. The very purpose of conducting the tender process is to invite and encourage competition. Since the field is left with only one player namely Eshwar Motor, Paramakudi, I am of the view that the first respondent has to necessarily conduct a fresh tender process. In this view of the matter, the proceedings impugned in the writ petition are quashed. The first respondent is directed to conduct a fresh tender process.

8.This Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
District Rural Development Agency,
Represented by Collector / Project Director,
DRDA,
Tirunelveli District.



W.P.(MD)No.12242 of 2020

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-2250[F] dated
27/01/2021)

W.P. (MD) No.12242 of 2020
27.01.2021

NSM(CO)

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