



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.6011 of 2022

and

W.M.P.Nos.6103 and 6104 of 2022

M/s. Tarpaulins India Tarp (P) Ltd.,
Represented by its Director,
264, Azad Markets,
Delhi - 110006.

... Petitioner

Vs

Tamil Nadu Civil Supplies Corporation,
Represented by its Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office No.12, Thambusamy Road,
Kilpauk, Chennai - 600010.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned Tender No. NIT No. QC2/062134/2021 issued by the respondent dated 04.03.2022 and quash the same as illegal and direct the respondent to conduct a fresh tender process by permitting bidders strictly as per the Tender conditions and in accordance with the Tamil Nadu Transparency in Tenders Act 1998 and the Tamil Nadu Transparency in Tender Rules 2000.

For Petitioner : Mr.Naveen Kumar Murthi

For Respondent : Mr.R.Shanmugasundaram
Advocate General Assisted by
Mr.D.Ravichander
Special Government Pleader and
Ms.A.G.Shakeenaa

O R D E R

The petitioner is clearly engaging in a fishing and roving enquiry while challenging the tender process for Tender in No.NIT No.QC2/062134/2021 dated 04.03.2022.



2. The grievances that have been expressed in regard to the selection of bidders as L-1 to L-5, the petitioner being L-5, are set out in the paragraphs to follow including the responses of the respondents to such grievances. The first allegation is that L-1 has suppressed the fact that he was blacklisted earlier. In response, Mr.R.Shanmugasundaram, learned Advocate General appearing for Mr.D.Ravichander, learned Special Government Pleader for the respondent, circulates a copy of an order dated 25.09.2019 issued by the respondent/Managing Director, Tamil Nadu Civil Supplies Corporation, as per which the black listing of L-1 stood lifted.

3. This aspect of the matter also finds mention in an interim Arbitral award in proceedings of the Arbitrator in CC.No.15/Q.C/2020 dated 20.01.2022, wherein, L-1 and the Tamil Nadu Civil Supplies Corporation / respondent in the writ petition were parties. In the concluding paragraph, there is reference to the blacklisting of L-1 for a period of one year and the lifting of the black listing by the aforesaid order.

4. The paragraph as supra is extracted below:

"As regards the claim petition in respect of "black listing" the claimant for a period of one year from 25-09-2020 to 24-09-2021 was over and his request may be considered that the claimant may be allowed to participate in the present and future tenders issued by the respondents M/s TNCSC Ltd. Ch -10. Because the period of black listing had already been over and the claimant is entitled and eligible to participate in the future tenders. Except on this claim of black listing the rest of the other claims of the claimant petition deserves no consideration and rejected.

Hence the cost of the proceedings and expenses incurred by the each party shall be in their own account and their respective parties should bear the cost equally 50%-50%.

Dictated to typist verified and corrected and signed by me this day 2nd Nov.2021."

In my view, this grievance stands effectively answered.

5. The second grievance expressed in the Court relates to the fact that, according to the petitioner, all tenderers were required to possess Certification of compliance with the specifications of Bureau of Indian Standards (BIS).

6. Mr.R.Shanmugasundaram, learned Advocate General appearing for Mr.D.Ravichander, learned Special Government Pleader for the respondent, points out that there is no such pre-condition.



Petitioner has been afforded full opportunity to point out such condition in the tender document but is unable to locate the same condition. Clearly, there is no merit in this allegation as well.

WEB COPY

7. My attention is next drawn to the pre-qualification criteria, whereunder clause 3(c) provides for a bidder to furnish a valid copy of manufacturing license to establish his credentials as a recognized manufacturer of LDBP (Low Density BlackPolymer) covers.

8. Again, Learned Advocate General, on instructions, would confirm that both L-1 and L-2 have complied with the aforesaid requirement. The allegation of the petitioner to the effect that L-1 and L-2 have been permitted to breach these conditions is thus found to be incorrect, factually.

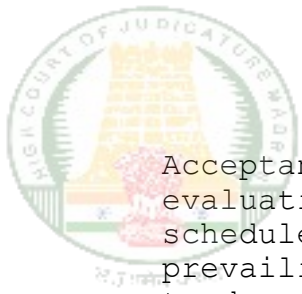
9. The last grievance relates to the supply of not less than 3000 numbers of LDBP covers or similar items to have been executed in any one of the last five financial years i.e., 2016-2017, 2017-2018, 2018-2019, 2019-2020 and 2020-2021, to a Government/Quasi Government/Government Institution/Private Institution. A compliance report is to be obtained from the competent authority in this regard. Learned Advocate General circulates a copy of the certificate issued by the State of Haryana to establish compliance of L-1 with this condition.

10. With this, all allegations/grievances of the petitioner stand addressed. Incidentally, the affidavit filed in support of the writ petition does not contain pleadings along the specific lines as argued by learned counsel.

11. Prior to signing off, this Court expresses its displeasure at the conduct of the petitioner in engaging evidently, in a roving enquiry, without being in full possession of the requisite facts. The Tamil Nadu Transparency in Tenders Act, 1998 provides for an in-built grievance mechanism and Section 11 provides for an appeal that may be filed by a tenderer aggrieved by an order passed by the tender accepting authority awarding the tender under Section 10 of the said Act.

12. In the present case, though the tenders were ripe for finalisation even few days ago, since mention was made for listing of the matters projecting that the selection process was entirely in breach of tender conditions and the participating entities were incompetent in several respects, the respondents were requested to withhold finalization and awarding of the tenders to await listing of the present matters.

13. In fact Section 10, providing for Evaluation and



Acceptance of Tenders, provides for the process of objective evaluation of the tenders, taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market rate for procurement and comparison of the tenders in accordance with the procedure and the criteria specified in the tender document. Clause (3) of Section 10 also provides for negotiation and reduction of price, if the tender accepting authorities, upon review, find that the price of L-1 is higher with reference to prevailing market rates.

14. Thus, a process of negotiation is in-built in the process and, in fact, all tenderers have been called for such negotiations on 14.03.2022, in which the petitioner did not choose to participate. While the writ petition is thus dismissed as being devoid of any merit whatsoever, I deplore the action of the petitioner in approaching the Court making wild allegations and impose costs of an amount of Rs.1,00,000/- (Rupees One Lakh only) payable to the Cancer Institute, Adyar, Chennai 600 020 and Blue Cross of India, No.1, Eldams Road, Chennai -600 018 in equal measure, that is, a sum of Rs.50,000/-, each.

15. Learned Advocate General does not object to the request of the petitioner to file their grievances before in terms of Section 11 of the Act, should the petitioner be so aggrieved upon award of tender and the petition is so permitted.

16. With this, the Writ Petition stands dismissed with costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Jeni/Kak

To

The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Tamil Nadu Civil Supplies Corporation,
Head Office No.12, Thambusamy Road,
Kilpauk, Chennai - 600010.

W.P.No.6011 of 2022

SR-II(CO)
CT 27/04/2022