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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.05.2022

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MRS.JUSTICE S. ANANTHI

W.A. Nos.1290 & 1301 of 2022
and
C.M.P. Nos.8157 and 8229 of 2022

M/s.BAG POLY International Pvt. Ltd.,
No.95, KM Stone,
Village Alipur Khalsa Road,
Post Box. No.30, Gharaunda,
Karnal District, Haryana - 132 114.

...Appellant in W.A.No.1290/2022

M/s.Tarpaulins India Tarp (P), Ltd.,
Represented by its Director,
264, Azad Market,
Delhi - 110 006.

...Appellant in W.A.No.1301/2022

Versus

1. The Tamil Nadu Civil Supplies Corporation,
Represented by its Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

...Sole Respondent in WA.1301/22
& 1st Respondent in
WA.1290/22

2. Atul Industrial Corporation,
Plot Number 965, Dakshin Marg,
Industrial Area Phase II,
Chandigarh - 160 009.

3. Tandhan Polyplast Private Limited,
JL-15, Kashyabpur, Uluberia - Amta Rd,
Kulgachia, Howrah,
West Bengal - 711 303.

...2nd and 3rd Respondents in
W.A.No.1290/ 2022



Common Prayer: Writ Appeals in W.A.Nos.1290 and 1301 of 2022 filed under Clause 15 of Letters Patent against the orders passed by this Court in W.P. Nos.6012 & 6011 of 2022 dated 15.03.2022.

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Prayer in W.P.No.6012 of 2022: 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 1st Respondent dated 04.03.2022 and quash the same as illegal and direct the 1st 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 Tenders Rules 2000

Prayer in W.P.No.6011 of 2022: 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 4.03.2022 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 Appellant in
W.A.No.1290/2022 : Mr.S.T.S.Murthy
Senior Counsel
for Mr.V.P.K.Gowtham

For Appellant in
W.A.No.1301/2022 : Mr.Naveen Kumar Murthi

For Respondents in
both W.As. : Mr.R.Shanmugasundaram
Advocate General
Assisted by Mr. C. Selvaraj, AGP
and Ms. A.G.Shakeena
for R1/TNCSC

COMMON JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN,J.]

These Writ Appeals were directed against the orders dated 15.03.2022 passed by the learned Judge in W.P. Nos. 6012 & 6011 of 2022 dismissing the writ petitions filed by the appellants herein with costs of Rs.1,00,000/- each.

2.The facts leading to the filing of these writ appeals are as follows:

2.1. The appellant in WA.No.1290 of 2022 is engaged in the



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manufacture of various plastic items including LDBP (Low Density Black Polyethylene) covers, being used by end users for the protection of food grains in the open and warehouses, whereas the appellant in WA.No.1301 of 2022 is involved in the manufacture of tarpaulins and polythene covers. While so, the Respondent Corporation called for Short E-Tender for supply of 15000 Numbers of LDBP covers having the size of 9.8x6.4x5.2 meters with 250 Micron Thickness vide Tender Document No.NIT No.QC2/062134/2021, dated 12.01.2022. The appellants participated in the tender by making a payment of Rs.22,50,000/- as Earnest Money Deposit and submitted their detailed bids. However, the Respondent Corporation abruptly cancelled the said tender by citing administrative reasons. Thereafter, the Respondent corporation, for the second time, floated a short Re-Tender for the same specification vide Tender Document No.NIT No.QC2/062134/2021, dated 21.02.2022. In response to the same, the appellants submitted their bids by making another payment of Rs.22,50,000/- towards EMD. This re-tender was also abruptly cancelled by the Respondent Corporation.

2.2. Such being the case, the Respondent Corporation, for the third time, floated a Short Re-Tender for supply of 15000 Numbers of LDBP (Low Density Black Polyethylene) covers having the size of 9.8x6.4x5.2 meters with 250 Micron Thickness vide Tender Document No.NIT No.QC2/062134/2021 dated 04.03.2022 to be supplied by way of two covers i.e., (i) Techno-Commercial Bid and (ii) Price Bid.

2.3. Thereafter, as a part of the price bid evaluation, the appellants received letter Rc.No.QC2/062134/2021 dated 12.03.2022 from the Respondent Corporation stating that the L1 bidder has offered Rs.11,880/- as their rate and hence, the representatives of appellants were called to the office of the Corporation on 14.03.2022 for submitting their final rate in writing. In the meanwhile, the Respondent Corporation published the Price Comparative Statement in their website, wherein, it was found that the qualified bidders list contained a blacklisted bidder and some other bidder, who did not possess prior experience of supplying LDBP covers and similar products.

2.4. According to the appellants, the Respondent Corporation has selected M/s. Atul Industrial Corporation as the successive L1 bidder, who was blacklisted by the Respondent Corporation and the said fact was not disclosed by the said bidder in their Bid document. Further, they did not possess a valid BIS License of IS 2508:2016 as stipulated in the Tender condition. As far as Tandhan Polyplast Private Limited, the other bidder, is concerned, it has acquired the license only within the last 12 months and hence, the said company also does not satisfy the experience criteria mentioned in the Tender



Documents.

2.5. The appellants further averred that the Respondent Corporation without considering the above aspects, declared the said bidders as qualified in both technical and price bid evaluation in utter disregard to their bids. In this regard, the appellants have made representations dated 13.03.2022 to the Respondent Corporation, but the same were not considered.

2.6. In the above circumstances, challenging the third Short Re-Tender vide Tender Document No.NIT No.QC2/062134/2021 dated 04.03.2022 and declaring the ineligible tenderers as successful bidders for both technical bid and price bid, the appellants filed W.P.Nos.6012 & 6011 of 2022. The learned Judge, upon considering the grievances espoused by the appellants, found that the allegations levelled against the respondent Corporation are not well-founded. While arriving at such a conclusion, the learned Judge held that as per Section 11 of the Tamil Nadu Tender Transparency Act, an aggrieved tenderer can file an appeal before the Appellate Authority and accordingly, dismissed the said writ petitions by the impugned orders dated 15.03.2022 and also imposed a cost of Rs.1,00,000/- each on the appellants, for approaching the Court by making wild allegations, which are largely unsubstantiated. Aggrieved by the said orders passed by the learned Judge imposing costs, the appellants are before this court with the present Writ Appeals.

3. Heard Mr.S.T.S.Murthy, learned Senior Counsel and Mr.Naveen Kumar Murthi, learned counsel appearing for the respective appellants. It is their specific contention that the second respondent in WA.No.1290 of 2022 was a blacklisted bidder, who suffered the punishment of blacklisting and no order was passed by the competent authorities by setting aside the same. According to the learned senior counsel, the issue of blacklisting is neither an arbitrable dispute nor is the Arbitrator having the jurisdiction to decide the same in a claim regarding penalty imposed. However, the Arbitrator has decided the issue of blacklisting as well, which is impermissible in law and deserves to be ignored. It is also to be noted that even in the award of the Arbitrator, the issue of blacklisting was not held in favour of the claimant, but only to the extent that since the period of blacklisting was over, they may be permitted to participate in the future tenders. Thus, it is evident that the said blacklisting has not been stayed or set aside by any competent authorities. While so, the respondent Corporation ought not to have permitted the said blacklisted bidder to participate in the tender, especially, when the tender conditions prohibit the same. Regarding the third respondent in WA.No.1290 of 2022, it is submitted by the learned senior counsel that they did not possess sufficient prior experience of



having supplied LDBP covers and they had only prior experience in supplying Tarpaulins which are a totally different product made using different raw materials. However, the respondent corporation has permitted them to participate in the tender and selected them as qualified bidder. When those points were raised in the writ petitions by the appellants, the learned Judge did not consider the same and erroneously, dismissed the writ petitions, that too, with exemplary costs by observing that the appellants were engaged in a roving enquiry and making wild allegations, which are totally unwarranted. Therefore, the learned counsel sought to allow these writ appeals by setting aside the orders impugned herein. However, the learned senior counsel fairly submitted that the appellants are inclined to approach the Appellate Authority by filing necessary appeal under section 11 of the Act, so as to ventilate their grievances.

4. Referring to the submissions as were placed before the learned Judge, Mr. R. Shanmugasundaram, learned Advocate General appearing for the Respondent Corporation submitted that the learned Judge has rightly dismissed the writ petitions as unsustainable in law especially when the appellants have the alternative remedy of filing statutory appeal as per Section 11 of the Act of 1998. Thus, according to the learned counsel, the orders impugned herein do not call for any interference by this court, as the Respondent Corporation has strictly followed the conditions as stipulated in the tender notification and in accordance with the provisions of the Tamil Nadu Transparency in Tenders Act.

5. This court has considered the rival submissions and also perused the materials available on record.

6. The orders of the learned Judge dated 15.03.2022 are assailed in these writ appeals by the appellants, wherein, while dismissing the writ petitions, a sum of Rs.1,00,000/- each was imposed on them, after having observed inter alia that the appellants were engaged in a roving enquiry without being in full possession of the requisite facts; and the action of the appellants in approaching the court making wild allegations, is deplorable.

7. Admittedly, the tender applications submitted by the appellants were rejected by the respondent Corporation. According to the appellants, they are fully eligible for award of the tender, however, the respondent corporation has shown favouritism towards ineligible bidders, which caused serious prejudice to them. If that is so, the appellants ought to have filed appeal under Section 11 of the Act, as the same is an efficacious alternative remedy available to them and therefore,



the invocation of discretionary remedy as conferred under Article 226 of the Constitution of India, is not proper.

8. The Hon'ble Supreme Court has repeatedly held that in fiscal statutes, this rule of restraint has to be applied with utmost rigour. In this context, in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others* [(1985) 1 SCC 260], it was observed by the Supreme Court as follows:

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

9. Reiterating the principle laid down in the decision in *United Bank of India v. Satyawati Tondon and others* [(2010) 8 SCC 110], the supreme court in *Authorized Officer, State Bank of Travancore and another v. Mathew K.C.* [(2018) 3 SCC 85] held as follows:

"10. In *Satyawati Tondon* the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved



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person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

"55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

10.Such being the position of law, this court is of the opinion that the learned Judge has rightly dismissed the writ petitions, pointing out that the appellants ought to have filed statutory appeal, instead of filing the writ petitions and hence, the same does not call for any interference.

11.However, as regards the imposition of costs of Rs.1,00,000/- each on the appellants as well as disparaging remarks, it is settled law that the same are not to be made against the persons and authorities whose conduct comes into consideration before the courts of law, unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. In the light of the said legal proposition and also having regard to the facts and circumstances of the case coupled with the submissions of the learned senior counsel for the appellants, touching the



jurisdiction of the Arbitrator as well as the eligibility of the parties in the tender process, this court sets aside the orders of the learned Judge, relating to imposition of costs and grants liberty to the appellants to agitate the rest of the issues before the Appellate Authority by filing statutory appeal under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998.

12. Subject to the above modification, these Writ Appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar/
Vacation Officer

//True Copy//

Sub Assistant Registrar

sra/rsh

To

The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

+1cc to Mr.V.P.K.Gowtham, Advocate, S.R.No.31135

+1cc to Mr.Naveenkumar Murthi, Advocate, S.R.No.31136

WA Nos.1290 & 1301/2022

PA(CO)
RGA(26/05/2022)