



W.P.No.33411 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2022

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.33411 of 2013

M/s Gautam Polymers
rep. By its Regional Sales Incharge
– Authorised signatory
Mr.S.Vignesh Kumar
Plot No.114, Sector – 6A,
SIDCUL Haridwar – 249 403
Uttarakhand

... Petitioner

Vs.

Tamilnadu Energy Development Agency,
V Floor, EVK Sampath Maaligai,
68, College Road,
Chennai – 600 006

... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records in LR No.TEDA/3218A/SHILS-CFL/SE/2012-13 dated 19.09.2013 on the file of the respondent and quash the same.

For Petitioner

: Mr.M.P.Senthilkumar for
Mr.N.Muthukumar

For Respondent

: Mr.L.S.M.Hasan Fizal
Additional Government Pleader



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ORDER

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The present Writ Petition has been filed challenging the order of the respondent in LR No.TEDA/3218A/SHILS-CFL/SE/2012-13 dated 19.09.2013 and quash the same. The respondent published a tender calling for an International Competitive Bidding for supply, installation, commissioning and five year comprehensive maintenance of CFL based solar home lighting systems in 49,650 houses out of 60,000 solar power houses under Chief Minister's Solar Powered Green House Scheme on 20.20.2012.

2. Further, the petitioner submitted a tender on 04.12.2012 for four regions for 28,596 fully constructed green homes spread across 15 Districts of State of Tamilnadu and the validity was for 180 days. The tender was opened on 04.12.2012, as per the schedule date of the opening provided in the advertisement of tender. Detailed and thorough technical evaluation of the petitioner-bidder and its suppliers were carried out by the respondent in December 2012 to technically evaluate the petitioner. Further, vide letter dated 01.02.2013, the respondent informed the petitioner that the price bid will be opened on 04.02.2013 at 11.00 a.m and requested its representatives to be present.



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3. That apart, the respondent entered into negotiations with the petitioner on 04.02.2013 on the issue of price. However, the petitioner has categorically informed the respondent in writing that there is no scope of any negotiation for price bid, therefore, the entire process of evaluation was completed on 04.02.2013. When the matter stood thus, the respondent issued a letter requesting for validity of extension of validity of bid, which was to expire on 01.06.2013, i.e., 180 days from the date of tender opening, i.e., 04.12.2012 without assigning any reasons. The petitioner's bid expired on 01.06.2013. In spite of the expiry of the petitioner's bid, to the utter shock and surprise of the petitioner, the respondent informed the petitioner vide email on 21.06.2013 to collect its Letter of Acceptance.

4. The respondent issued the Letter of Acceptance for supply, installation, commissioning and 5 year comprehensive maintenance of 208596 nos, CFL based solar home lights, as identified locations in the 15 districts of Tamilnadu at an all-inclusive total cost not exceeding Rs.56,79,16,560/- [Rupees Fifty Six Crores Seventy Nine Lakhs Sixteen Thousand Five Hundred and Sixty only) The petitioner issued a letter dated 22.06.2013 expressing inability to extend the validity of the bid period and



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requested the respondent to close the file. The petitioner also issued another letter dated 26.06.2013 in response to the respondent's letter of acceptance dated 21.06.2013 categorically stating that it is not accepting the same, since the bid had expired on 01.06.2013 and the same has not been extended by the petitioner. Thereafter, a show cause notice was issued by the respondent on 13.08.2013 for blacklisting the petitioner, since it had failed to extend the bid validity. The petitioner sent a reply dated 28.08.2013 to the show cause notice strongly refuting the respondent's proposal to blacklist the petitioner. Thereafter, the impugned order has been passed blacklisting the petitioner, which has been sought to be quashed.

5. Per contra, the stand is taken by the respondent to the effect that the activities of the respondent including tender invitation for the schemes envisaged by the State Government and implementation activities after finalising the tenders. Considering the significance of the schemes that are undertaken by the respondent, lot of efforts are put in for each and every tender process, which are directly meant for downtrodden people in the society especially in rural areas. The tender conditions are prepared in an exhaustive manner and published by giving wide publicity, not leaving any



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room for any hidden instructions or conditions. All the conditions are clear without any ambiguity and all the tenderers know well about the processes involved in tender invitation stage to final stage of implementation.

6. The tenderer knowing well about all the conditions, objectives, requirements, process, procedures involved and also knowing all the risk factors, time duration, time extension requirements etc., and having accepted all the conditions, arranged inspections for qualifying to open the price bid, well aware of the stage of the tender and recommendations of their name being made to the Government, well informed about the time factor involved in Government taking a decision on such a crucial and important tender involving huge amount of public money, involving so many number of agencies and so many households etc., acted in a malicious way after knowing the prices quoted by the other bidders. The petitioner failed to respond to the office letter dated 15.05.2013, which is a routine and accepted method in the tender process. The petitioner, who has been chosen as L1 bidder for the four regions of 15 districts in Tamilnadu, which is literally more than half of the total quantity of the tender, that is 58,596 houses out of 49,650 houses at the cost of Rs.56,7916,650 for the supply, installation, commissioning which includes 5 years comprehensive

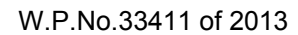


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maintenance of CFL based SPV home lighting systems in houses of Tamilnadu under the Chief Minister's solar powered green house scheme.

The failure to respond to the letter dated 05.05.2013 to extend the bid validity is in violation of tender clause. Further, it is the case of the respondent that because of refusal to accept the letter of acceptance, Department had to redo the entire tender process, which resulted in financial loss, therefore, submitted that the impugned order is valid in law.

7. The learned counsel for the respondent would submit that as per tender clause 8(ii), whenever the extension is sought by the respondent, the petitioner should extend the validity period, the tenderer having known all the processes in taking a decision by the Government, ought to have extended the validity period, whereas, it remained silent, thereafter, when the letter of acceptance was issued on 22.06.2013, he suddenly declined to accept the work by letter dated 23.06.2013, therefore, when the tender conditions are clear, that extension is norm, which has been violated, the petitioner has been rightly blacklisted by the authority and the impugned order has been passed after giving proper opportunity to the petitioner, hence sought to dismiss the present Writ Petition.



8. Heard the learned counsel on either side and perused the

9. The petitioner has been black listed mainly on the ground that

10. It is relevant to extract the tender conditions Clause 8.2, which

“a) Bids submitted shall remain valid for a period of 180 days from the date of tender opening. If the bid validity is lesser than 180 days, the bid will be rejected as non-responsive.



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b) In exceptional circumstances, TEDA may solicit the bidders to extend the validity. The Bidder should extend price validity and Bid security validity”

On a careful perusal of the above clause makes it clear that though original validity period is 180 days from the date of tender opening, in exceptional circumstances, the respondent may solicit the bidders to extend validity on such circumstances, only on such exceptional circumstances if the extension is sought, the bidder has no other alternative except to extend the price validity and bid security validity, as per terms and conditions. Admittedly, the tender was opened on 04.12.2012, the validity period was till 01.06.2013, in the meanwhile, on 15.05.2013, the letter was issued by the respondent indicating that “tender was opened on 04.12.2012 and the validity of the bid submission expires on 01.06.2013, that is 180 days from the date of tender opening and requested the validity period of 3 months from the date of expiry”, which has not been replied by the petitioner.

11. It is relevant to that while seeking an extension for a further period of three months from 15.05.2013, there was no reason whatsoever assigned by the respondent. A letter, simply seeking extension for another period of three months without even referring the circumstances, under which such period is required for further extension. Further, Clause 8.2 of



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the tender condition, makes it very clear that only in exceptional circumstances, such extension could be sought. If extension was sought on any of the exceptional circumstances, then, it is the obligation on the part of the tenderer to extend the price validity and bid security period. However, letter dated 15.05.2013, not even referred to any extraordinary situation or circumstances for extension of time. Therefore, it cannot be said that as a matter of right, whenever extension is sought, the same has to be honoured by the tenderer. Therefore, the contention of the respondent that there is no response to the letter dated 15.05.2013 and they issued the letter of acceptance on 22.06.2013, cannot be countenanced.

12. It is also relevant to note that the approval itself by the Government was granted on 18.03.2013, the same could be seen by the letter dated 17.06.2013, filed in the typed set of papers by the respondent. Even after such approval, letter of acceptance was issued with a delay of 80 days. Even for forwarding the letters, on the government side, there was some delay, merely because the Government is sitting over file for various other reasons, the liability cannot be clothed on the part of the petitioner for such delay. If at all any delay had occurred in the process of tender, only the respondent has to be blamed themselves and not the



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petitioner. Therefore, when the tender has been invited for implementing certain scheme, the respondent ought to have acted diligently within a period, as stipulated in the tender and they cannot sit over the files and force the tenderer to accept the conditions beyond the terms of the contract. The letter of acceptance for implementation of the scheme to execute the contract depending upon various factors, which is always subject to price variations, escalations etc., Only considering all these aspects, the conditions are stipulated in the tender for both sides to follow scrupulously. All the conditions in the tender are not followed and extraordinary circumstances under which the extension is sought is also not informed to the petitioner, merely on the sake of request for extension, it cannot be said that the tenderer should accept the extension, as required by the respondent, as a matter of right.

13. In such view of the matter, this Court is of the view that the delay on the part of the Government cannot be pitted against the tenderer to accept the Letter of Acceptance. Show cause notice was also issued only on these lines and order came to be passed mainly on the ground that since the scheme is the brain child of the Chief Minister, the same could not be executed and it is carried over to the next year, therefore, the



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petitioner has been blacklisted. If the respondent was so vigilant and was so sincere to implement the scheme with its speed and spirit, ought to have taken steps to award the letter of acceptance within a period, as specified in the tender, but sitting over the files and caused the delay on their part, merely because the scheme is introduced by the chief minister, could not be continued and the same cannot be a ground to blacklist the petitioner. In fact, the petitioner has not violated any tender conditions. Hence the impugned order cannot be sustained in law.

14. It is further noted that the impugned order also passed blacklisting the petitioner forever, such order also cannot be sustained in the eye of law. The **Hon'ble Apex Court** in the case reported in **2022 Livelaw (SC) 694 [M/s Chauhan Builders Raibareli Vs. The State of Uttarpradesh & Others]** held that 'One cannot be blacklisted for life. The order of blacklisting to the extent that it has not specified the period cannot be sustained'.

15. In view of the above and further fact that the petitioner has been blacklisted merely on the ground that the scheme of the government could not be implemented, cannot be sustained in law, when the government was sitting over the files and delayed the entire process.



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In the result, the Writ Petition is allowed and impugned order dated 19.09.2013 passed by the respondent is set aside. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

Tamilnadu Energy Development Agency,
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68, College Road,
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N.SATHISH KUMAR, J.,

ssd

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