

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.04.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.9046 of 2022
and W.M.P No.8845 of 2022

M/s XO Footwear Pvt.Ltd.
Rep by its Director
Mr Nalin Gupta
Regd. Off.: A-122, Mangolpuri
Industrial Area, Phase - II,
New Delhi - 110 034

...Petitioner

Vs.

The Managing Director and Tender Inviting Authority,
Tamil Nadu Text Book and Educational Services Corporation,
EVK SAMPATH MAALIGAI,D.P.I.Campus
68, College Road,
Chennai - 600 006.

...Respondent

Prayer:Writ Petition filed under Article 226 of the Constitution of India, to issue aWrit of Mandamus, directing the respondent to consider the petitioner as qualified in the technical bid and further direct them to open and consider the financial bid of the petitioner in the Tender REF.RC.NO.10454/PUR-1/2021.

For Petitioner : Mr.SatishParasaran
Senior Counsel
for Mr.Jitender Mehta D.

For Respondent : Mr.J.Ravindran
Additional Advocate General
assisted by
Mr.D.Ravichander
Special Government Pleader
and Mrs.S.Varsha

O R D E R

The petitioner is a company based in New Delhi that claims to be engaged in the manufacture and supply of shoes, socks and bags. It claims to have been awarded and successfully executed several contracts, both with the Government as well as with private entities.

2. The petitioner responded to Notification dated 20.12.2021 issued by the Tamil Nadu Text Book and Educational Services Corporation (respondent/Corporation) inviting applications for the supply of 71.30 lakhs pair of socks for school going children studying in Government and aided schools of Tamil Nadu on Annual Rate Contract basis for the academic year 2022-2023. The petitioner submitted its bid on 28.01.2022 believing itself to be in compliance of all required parameters.

3. The petitioner has received a communication dated 01.03.2022 from the respondent stating that from the available records of the Jharkhand High Court, it was noticed that the petitioner had been debarred/blacklisted by the Jharkhand Education Project Council and the debarment has been confirmed by the Hon'ble Court in L.P.A.No.186 of 2020 and S.L.P.(c) No.015791-/2020 before the Hon'ble Supreme Court of India.

4. The views of the petitioner in regard to the aforesaid observations along with its explanation enclosing relevant documents were directed to be provided within a period of four days from date of receipt of the letter, failing which, the authority stated that he would assume that the observations were true and would proceed accordingly.

5. On 03.03.2022, the petitioner responded to the communication pointing out that the contents of the letter were not correct. They conceded that there had, no doubt, been a debarment order passed by the Jharkhand Education Project Council on 18.09.2019. The term of debarment was one year and as such, the debarment had expired on 17.09.2020.

6. Notwithstanding such expiry, the debarment had itself been the subject matter of challenge before the Hon'ble Supreme Court, as rightly noted by the authority. However, the statement that the debarment had been confirmed was erroneous, as, on the contrary, a three Judge Bench of the Hon'ble Supreme Court had stayed the debarment, vide its order dated 29.01.2021. The SLP is pending till date. There was no response received after the petitioner filed its reply.

7. The petitioner thus proceeded on the assumption that the reply had been accepted. In such circumstances, it was surprised to find, when the short list of tenderers who had passed the technical evaluation was put up, that it had not made the cut. Bearing in mind the position that as on the date when the short list of tenderers was put up, the only information available with the petitioner that might be held against it was the factum of prior debarment, the present Writ Petition came to be filed challenging the non-selection of the petitioner for the second stage of tender.

8. When the matter came up for admission on 08.04.2022, after hearing the parties, the following order was passed:

Mr.D.Ravichander, learned Special Government Pleader, assisted by Ms.Varsha, accepts notice for the respondents and both learned counsel are in full possession of facts to enable consideration of interim protection as sought for by the petitioner.

2. The petitioner has submitted a bid in response to a tender for the supply and delivery of socks to school children in Tamil Nadu on actual rate basis for the year 2022-2023.

3. The trigger for the present Writ Petition is at the instance of the respondents who had issued show cause notice on 01.03.2022 calling for an explanation as to why the bid not be rejected, since the petitioner had been debarred/black listed by the Jharkhand Education Project Council.

4. The blacklisting was confirmed both by a learned single Judge as well as the Division Bench of the Jharkhand High Court and is pending before the Hon'ble Supreme Court in SLP Civil No.015791-/2020.

5. The period of blacklisting was itself only for a period of one year, from 17.09.2019 to 17.09.2020, and thus has expired as on date. In any event, and as the petitioner had pursued its challenge as against the blacklisting, the Hon'ble Supreme Court has stayed the order.

6. The petitioner, on 03.03.2022, has responded to the show cause notice but the respondent, has not been deliberated upon the reply, which, in the opinion of the Court, ought to have been done.

7. At this juncture, reference may be made to Section 10 of the Tamil Nadu Transparency in Tenders Act, 1998 ('Act') that sets out the process of evaluation and acceptance of tender. This provision does not require the tender accepting authority to call for clarifications from the tenderer.

8. It is Rule 27 of the Rules, dealing with the process of tender evaluation, that empowers the authority to seek bona fide clarifications from tenderers relating to the bids submitted by them. Thus, letter dated 01.03.2022 has been issued, invoking Rule 27(4) and, having sought a bona fide clarification from the petitioner, it was incumbent upon the authority to have determined the issue before proceeding further.

9.This aspect of the matters is over and above the prima facie case made out by the petitioner for expiry of the blacklisting itself. The respondent

did not shortlist the petitioner for the second stage of tender evaluation, which indicates that the respondents were unconvinced with the reply submitted on 03.03.2022.

10. In such an event, it was incumbent upon the authority to hear the tenderer and pass a speaking order which has also not been done, and this, in my considered view, amounts to violation of the principles of natural justice.

11. For the aforesaid reasons, the bid of the petitioner shall be proceeded with, subject to the result of this Writ Petition.

12. List on 13.04.2022. Counter by then with an advance copy served upon the petitioner.

9. Pleadings have been completed thereafter and in the counter filed, the respondent categorically states that it is not just the debarment that has stood in the way of the petitioner being shortlisted and there are other reasons as well. This aspect of the matter is dealt with at paragraphs 53 and 54 of this order.

10. The preliminary defence of the respondent is one of challenge to maintainability. The prayer of the petitioner is for a direction to the respondents to consider it as qualified in the technical bid and further direct them to open and consider the financial bid of the petitioner in the tender.

11. Learned Additional Advocate General Mr. J. Ravindran would point out that it does not lie for the Court to consider award of a contract to an entity or to examine its eligibility for the purpose of such award and such a prayer is thus impermissible. The award of a tender or selection of a candidate falls within the exclusive domain of the contractor, in this case, the respondent Corporation and acceding to the request of the petitioner in this case would open the Pandora's box as it would set a precedent for all disgruntled tenderers to approach this Court complaining that their credentials were more worthy of consideration.

12. Such a practice, he says, must be deprecated and the scope of judicial review strictly kept in mind. He reminds the Court of the dictum of the judgments of the Hon'ble Supreme Court in National High Speed Rail Corporation Limited Vs Montecarlo Limited [2022 LiveLaw SC 108] and M/s. N.G. Projects Limited Vs M/s. Vinod Kumar Jain & Ors. [2022 LiveLaw SC 302], wherein the limited scope of judicial review in tender matters has been reiterated by the Hon'ble Apex Court.

13. Two seminal issues have been raised in this Writ Petition, that are crystallised below:

- i) In the case of debarment, whether the entity once debarred/black listed is to be punished for eternity by the State of Tamil Nadu; and
- ii) Whether the procedure under the Tamil Nadu Transparency in Tenders Act, 1998 ('Act') and the Tamil Nadu Transparency in Tenders Rules, 2000 ('Rules') are, as the titles suggest, transparent or whether the practice and procedure presently followed is opaque warranting change.

14. Coming to the first issue, the relevant dates in this connection are as follows:

i) The petitioner was debarred by the Jharkhand Education Project Council on 18.09.2019.

ii) The reason for debarment was that the sample of the product supplied by the petitioner along with its bid was found unsuitable.

iii) The period of debarment has expired on 18.09.2020.

iv) The Division Bench of the Jharkhand High Court had upheld the debarment, as against which, Special Leave Petition was filed by the petitioner in SLP (c) No.015791-/2020, notwithstanding that the period of debarment had itself expired. The judgment of Division Bench confirming the debarment has been stayed by a Bench comprising three Judges Bench of the Hon'ble Supreme Court, by order dated 29.01.2021.

v) The bid document includes a declaration at Annexure -VI to the effect that the tenderer declares that 'it or its partners/shareholders have not been blacklisted by Central/any State Government and its Public Sector Undertakings/Corporations.'

vi) The petitioner has proceeded on the basis that the appropriate, logical and proper interpretation of the declaration would be in the context of current/live debarment/blacklisting and not an event in the past that has expired.

vii) The bid contains a provision for tenderers to seek clarification and a query was raised by another bidder to following effect:

3. Does this mean that if a Bidder has ever been blacklisted by any state or central government department then he is not allowed to participate in this tender?

viii) To this, the remark of the contractor is 'Bid condition confirmed'.

ix) This remark, in my view, provides no clarity, as the language in the declaration is capable of more than one interpretation.

x) Relevantly, for all 20 queries that have been raised by prospective bidders, the remark of the Tender Inviting Authority (TIA) in all 20 cases, is 'Bid condition confirmed'.

xi) To my mind, the in-built mechanism for clarifying the tender conditions is an utter failure, if this were to be the manner in which the TIA proposes to address the clarifications. No doubt, some of the clarifications make suggestions for changes in the tender conditions and these have to be considered solely at the discretion of the tenderers/contractors, however, there are other clarifications that have been sought, such as query 3, extracted above, and a few others that merely seek explanation or clarity to be provided which could well have been done.

15. To my mind, the consequence of blacklisting cannot be for all times. Normally, an order of blacklisting is by itself, circumscribed by a tenure proportionate to the irregularity/deviation for which the punishment is imposed. In such an event, once the period of blacklisting is over, it must be construed to be business as usual.

16. Assuming a situation where the offence committed or the irregularity in question is so egregious so as to warrant a life time blacklisting/debarment, then so be it, but such instances would be the exception and not the norm and in most of the cases of blacklisting, orders are seen to span a year or few years at the most.

17. The Hon'ble Supreme Court in the case of Kulja Industries Limited Vs Chief Gen. Manager W.T.Proj. BSNL and Ors. (AIR 2014 SC 9) had had occasion to consider the effect and consequences of blacklisting, particularly in the context of allocation of government contracts. The question that fell for determination was whether the respondent, i.e., the Bharat Sanchar Nigam Limited (BSNL) was right in blacklisting the appellant for allotment of contracts, for all time.

18. The Division Bench of the Bombay High Court had answered the question in the affirmative, as against which an appeal was filed before the Hon'ble Supreme Court. The Bench examined the position in the context of domestic as well as international law. The submissions of the appellant were that a permanent debarment was wholly arbitrary as an order of blacklisting, by itself, imposed very serious civil consequences for the entity punished.

19. It was thus necessary that such a punitive step be tempered with reasonableness and fairness. Blacklisting must be proportionate to the offence for which the entity is punished and while the period might vary, it could not be for all time.

The Hon'ble Supreme Court considered the provisions in the bid documents, in terms of which the contractor had reserved its right to disqualify the supplier for a particular period and for particular deficiencies/failures.

20. There is no doubt in regard to the position that in the contractor vests such power. The Court also held that dehors the specific language used in a bid document relating to disqualification for certain enumerated offences, the scope of such power, as set out in the document, could not be taken to be exhaustive, as the power to blacklist available to be exercised by the contractor in any number of situations that might present themselves in a commercial contract, was inherent in the party allotting the contract.

21. This is for the reason that a debarment, by its very nature, is a commercial or a business decision, by which the party affected by a particular failure/deficiency, punishes the offender by its decision not to enter into a contractual relationship with that party for a particular period of time.

22. The Court compared the identical scenarios in the context of the law in USA, UK, England, Wales and Northern Ireland, where there are statutory provisions to make operators ineligible on various grounds including fraud, fraudulent trading, conspiracy to defraud, bribery or other offences.

23. The test they say would be one of proportionality and this test must be applied bearing in mind the offence that is alleged to have been committed by the party that committed the breach. Paragraph 24 is relevant insofar as, while they say that debarment is an effective deterrent for the continued perpetration of offence, such a measure can never be a permanent measure. Paragraph 24 is extracted herein below:

24. Suffice it to say that 'debarment' is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the 'debarment' is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

This decision has been followed subsequently by the Hon'ble Supreme Court in B.C.Biyani Projects Pvt. Ltd. Vs State of M.P. and Ors. (2017(3) AWC 2840 SC).

24. The first question is thus answered holding that the tender documents of the State must provide clarity in regard to the specifics of blacklisting/debarment suffered by the applicant. This condition is imposed only by way of the declaration to be filed by the bidder and not by way of a specific condition itself.

25. In line with the judgment of the Hon'ble Supreme Court in Kulja Industries Limited (supra), the declaration must henceforth contain options for eliciting whether (i) there has ever been an order of blacklisting/debarment suffered by the tenderer, (ii) what the dates/tenure of blacklisting/debarment were, (iii) the purpose of the blacklisting (iv) whether there was any challenge to the same either before the tendering authority or the Courts, (v) the status of the litigation, if any, and (vi) whether blacklisting/debarment imposed upon the bidder is current/live.

26. In cases where the blacklisting has long passed, there is, in the considered view of the Court, very little merit in the State rejecting the applications of the tenderers solely on that basis. What must be taken into account is the purpose for the blacklisting in the first place and whether it is current. A misdeed committed in the past cannot continue to haunt an entity forever and this would go against all canons of fairness and reasonableness.

27. The absurdity in the situation is clear from the fact that the Jharkhand Education Project Council, that had debarred the petitioner originally, has itself awarded tenders subsequently to the petitioner after the expiry of debarment. The State cannot assume a holier than thou attitude in such cases.

28. Learned Additional Advocate General all but confirms that the declaration under Annexure VI, as in the present contract, is more or less standard across the board and a condition imposed in all Government contracts. However, and to quote him, he 'sails with the thinking of the Court', as set out in the above paragraphs and as expressed in the open Court. Suitable amendments will be made to the tender documents issued by the State, going forward.

29. Issue No.1 is answered in favour of the petitioner and as a consequence, blacklisting dated 17.09.2019 is not relevant any further in the case of the petitioner, subject to the judgement of Hon'ble Supreme Court in the pending civil appeal.

30. This takes me to the second legal issue to be answered, which is what is the level of transparency that is required to

be maintained by the respondent and the authorities in grant of tender and how this must be balanced with the aspect of confidentiality that is so integral to tender matters.

31. The scheme of the Act and Rules is required to be examined. The Rules define, under Rule 2(e) and 2(h) a 'two-cover system' and 'multi stage tender', that constitute methodologies adopted by agencies in the State of Tamil Nadu for conduct of tender. These processes are defined as follows:

2(e) 'Two-cover System' means a procedure under which the tenderers are required to simultaneously submit two separate sealed covers, one containing the Earnest Money Deposit and the details of their capability to undertake the tender which will be opened first and the second cover containing the 2 [financial] quotation which will be opened only if the tenderer is found qualified to execute the tender;

2(h) 'Multi-Stage Tender' means a tender in which there are atleast two stages including an initial stage of short-listing based on the fulfillment of eligibility criteria based on experience and financial or technical parameters or both and a final stage in which only the qualified, short-listed tenderers are invited to submit their financial bids;

32. The difference between 1 and 2 is that, in a two envelope process, the bidder is expected to submit both technical (1st stage) and financial (2nd stage) bid simultaneously, though the bids are opened in a staggered fashion. The technical bids are first opened, the eligibility of the bidders is determined and those that make the cut are short-listed to the second stage, when their financial bids are alone opened.

33. In the second method, the submission of bids is itself staggered, the bidders being required to submit technical bids first, the authorities forming a short list based on their bids and the short listed bidders thereafter submitting financial bids for due consideration of the authority. In the present case, the methodology followed is the former.

34. There are two authorities who are instrumental in initiating and executing the award of tender. The first is the TIA, which assumes full responsibility for the process involved at the initial stages, i.e., the invitation to bid, the receipt of the bids and all processes incidental, allied and connected thereto. There is a requirement that full confidentiality be maintained in regard to these processes and this is echoed in Rule 27 of the Rules that reads as follows:

27. Process of tender evaluation to be confidential until the award of the contract is notified.- (1) Subject to the provision of 44[sections 13 and 14 of the Act], the Tender Inviting Authority shall ensure the confidentiality of the process of tender evaluation until orders on the tenders are passed.

(2) The Tender Accepting Authority shall cause the information on orders passed on the tenders published in the Tender Bulletin.

(3) Tenderers shall not make attempts to establish unsolicited and unauthorised contact with the Tender Accepting Authority, Tender Inviting Authority or Tender Scrutiny Committee after the opening of the Tender and prior to the notification of the Award and any attempt by any tenderer to bring to bear extraneous pressures on the Tender Accepting Authority shall be sufficient reason to disqualify the tenderer. (4) Notwithstanding anything contained in sub-rule (3), the Tender Inviting Authority or the Tender Accepting Authority may seek bonafide clarifications from tenderers relating to the tenders submitted by them during the evaluation of tenders.

35. The role of the Tender Accepting Authority (TAA) is different and involves engagement with the entirety of the procedures relating to processing of the tender culminating in award of the same. Rule 27 providing for confidentiality does not cover the TAA. This does not mean that TAA is not required to maintain confidentiality, but only means that the rigour of confidentiality imposed under the Act is more specific to the TIA. This understanding will also help in interpreting the processes and procedures under the Act and the roles assigned to the TIA and TAA respectively.

36. Section 10 sets out the methodology for acceptance of tenders and reads thus:

10. Evaluation and Acceptance of Tender.-

(1) The Tender Accepting Authority shall cause an 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 criteria specified in the tender document.

(2) After evaluation and comparison of tenders as specified in sub-section (1), the Tender Accepting Authority shall accept the lowest tender ascertained on the basis of objective and quantifiable factors specified in the tender document and giving relative weights among them:

Provided that the Tender Accepting Authority shall accept the tender of domestic enterprises, not being the lowest tender, upon satisfaction of such conditions as may be prescribed, in respect only of goods manufactured or produced and services provided or rendered by them, and only to the extent of not exceeding twenty five per cent of the total requirement in that procurement, if such domestic enterprise is willing to match the price of the lowest tender:

Provided further that the Tender Accepting Authority shall accept the tender of a department of Government, Public Sector Undertaking, Statutory Board and other similar institutions as may be notified, not being the lowest tender, upon satisfaction of such conditions as may be prescribed, in respect only of goods manufactured or produced and services provided or rendered by them, and only to the extent of not exceeding forty per cent of the total requirement in that procurement, if such tenderer is willing to match the price of the lowest tender:

Provided also that in case of a single procurement, the total procurement under the above two provisos shall not exceed forty percent of the total requirement in that procurement.]

(3) Notwithstanding anything contained in subsection (2), if the Tender Accepting Authority decides that the price of the lowest tender is higher with reference to the prevailing market rate or the schedule of rates, 17[the said authority] may negotiate for a reduction of price with that tenderer.

(4) If at any time before the acceptance of tender, the Tender Accepting Authority receives information that a tenderer who has submitted tender has been banned by any Procuring Entity, 17[the said authority] shall not accept the tender of that tenderer even if it may be the lowest tender.

(5) In case where two or more tenderers quoted the same price, the Tender Accepting Authority shall split the procurement among such tenderers taking into consideration the experience and credentials of such tenderers. Where such splitting is not possible or could not be done equally, 17[the said authority] shall record reasons for the same.

(6) If the Tender Accepting Authority proposes to accept the tender as per the provisions of this section, 17[the said authority] shall pass orders accepting the tender together with reasons for such acceptance: 18 [Provided that if the tenderer is unable to supply the entire quantity required, the Tender Accepting Authority

may follow the fixed rate contract procedure as may be prescribed.]

(7) The Tender Accepting Authority shall intimate the information regarding the name and address of the tenderer whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate Tender Bulletin Officers.

37. Section 10(1) refers to the manner in which financial bids would be opened and conspicuous by its absence is the procedure to be followed in opening technical bids, that is, the first stage in two-bid and multi-stage contracts. The practice followed as of now is that, the technical bids are opened by the TAA, various parameters that have been earmarked are duly examined, the tenderers and the bids assessed for technical competence, and a decision taken to either short list them or reject the bids at that stage for want of technical qualification.

38. No communication is made with the tenderer at that stage and they are not informed of the reasons for rejection if they have not made the short list. The question that arises is as to whether they are entitled to such reasons as it would enable the rejected tenderers, including the petitioner in the present case, to understand where their bids have fallen short and take remedial measures.

39. On the other hand, it is the stand of the respondent and this is an unnecessary request and one that cannot be expected to be acceded to, as confidentiality in regard to this aspect of the matter must be maintained to ensure integrity of the tender process.

40. Reliance is placed by the petitioner upon a judgment of the Constitutional Bench of the Hon'ble Supreme Court in State of Punjab and Others Vs Jagdev Singh Talwandi [(1984) 1 SCC 596]. This matter related to a challenge to preventive detention and one of the questions that the Court considered was the importance of reasoning in orders passed by the High Court.

41. The analogy sought to be drawn relates to the defence put forth by the respondents, to state that reasons are the soul of any process, including the tender process, and thus, the respondents must be compelled to furnish the reasons for rejection promptly as civil rights of parties are at stake.

42. On a consideration of the provisions of the Act and Rules, I agree with the respondent that there is no methodology available for disclosure/communication of reasons for rejection at the 1st stage itself. This is more for a practical reason and

also to ensure, as respondents urge, some method and procedure in the process evolved. Incidentally and looking at the tenor of disposal of clarifications raised by the tenderers, this Court urges that there be a more concerted and bonafide effort to address the clarifications in a purposive and practical manner so as to assist the tender process rather than frustrate it.

43. The provisions of Sections 10 and 11 should be read together. Section 11 provides for a remedy to those tenderers whose bids have been rejected either at 1st stage or 2nd stage to file an appeal before the TIA questioning their non-selection/rejection. This appears to be the proper method to be followed, as, if the contentions of the petitioner were to be accepted, there is every possibility that the tender process including award would get unduly delayed, even in the interim stage, i.e., between 1st and 2nd stage.

44. This is not in the interests of either the tender process or the concerned project and thus I find the design of the method adopted under the Act and Rules in this regard to be appropriate and not perverse, requiring intervention by the Court. However, one apprehension expressed by the petitioner is legitimate. Under Rule 5, the tender authority publishes a weekly bulletin which is to reveal details of all tenders floated and awarded. This bulletin is stated to be regular in its publication.

45. However, more often than not, once the award of tender is published, there remains very little time or opportunity for the rejected bidders to take remedial measures, either by way of justifying their bids or by way of pointing out lacunae in the successful tenderers' bids, as the work orders have been issued and work commenced by then.

46. Whether remedy is sought before the Courts or by way of appeal, there is reluctance to interfere with an on going project and this is an admitted position. However, the remedy for this is not to interfere with the process itself but to render more efficient, the existing protocol and processes.

47. Section 11, which provides for appeal remedy, reads as follows:

11. Appeal.- (1) Any tenderer aggrieved by the order passed by the Tender Accepting Authority under section 10 may appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.

(2) In disposing of an appeal under sub-section (1), the Government may, after giving the party an

opportunity of making his representations, pass such order thereon as they may deem fit.

(3) The order of the Government on such appeal shall be final.

(4) The Government may, pending the exercise of their powers under this section pass such interlocutory orders as they may deem fit.

48. Section 11 as seen above, is a self-contained provision, which also, inter alia provides for and vests power of interim protection under sub-section (4) thereof, upon the appellate authority and rightly so. Thus, all that remains is for the rejected bidder to take steps promptly and in a timely fashion to address the lacunae in the tender process and such application for interim protection, if any, to be taken up and considered promptly.

49. The former requirement falls within the domain of a bidder and as far as the latter is concerned, this Court believes it reasonable to direct that, in general, stay petitions/petitions for interim protection that are filed by unsuccessful tenderers must be taken up and disposed expeditiously and in any event, within 48 hours of such filing. The result of the application for interim protection is, without doubt, the discretion of the Appellate Authority, unless shown to be perverse.

50. The second question is answered accordingly and this Court believes that the process already in place, with the added direction now issued, would result in a robust mechanism that would streamline the existing procedures/protocols in the tender process.

51. The plea of maintainability is rejected as the prayer sought has to be seen and understood in the context and stage of proceedings of the matter at the time when the writ petition was filed. At that juncture the only information available with the petitioner was communication of the respondents dated 01.03.2022, relating to blacklisting.

52. In light of the facts and circumstances surrounding the issue of blacklisting and the conclusion of this Court in this order relating thereto, I find nothing untoward in the prayer sought. Later events must however be referred to and the counter filed states that there were other reasons for which the petitioner's bid was found wanting in the technical evaluation.

53. The files were sought and produced before me and upon perusal, I find the presence of other factors in the assessment that have led to the decision of rejection of its bid. I say no

more in this regard as it is unnecessary and in the event that the petitioner chooses to challenge the tender, once awarded, before the authority.

54. The tender process shall continue in accordance with law and tender conditions, as proposed and scheduled. This Writ Petition is disposed in terms of the aforesaid discussion and observations. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sl

To

The Managing Director and Tender Inviting Authority,
Tamil Nadu Text Book and Educational Services Corporation,
EVK SAMPATH MAALIGAI, D.P.I. Campus
68, College Road, Chennai - 600 006.

+lcc to Mr.S.Siva Kumar, Advocate, S.R.No.28229 (07/06/2022)
+lcc to the Government Pleader, S.R.No.27955 (07/06/2022)

W.P. No.9046 of 2022
and
W.M.P No.8845 of 2022

MG(CO)
SB(26/04/2022)