

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition No.16617 of 2021

Solar Designs Pvt. Ltd.,
through its Director S.James Arockia Mary,
having its Registered Office at
No.1, A Wing, 3rd Floor,
602, Parsn Manere, Anna Salai,
Chennai 600 006.

... Petitioner

vs.

1. UTI Infrastructure Technology and Services Ltd.,
UTI Tower, Gn Block, B.K.C.,
Bandra (East), Mumbai 400 051,
rep. by its Managing Director.
2. UTI Infrastructure Technology and Services Ltd.,
D-1, First Floor,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai 600 032,
rep. by its Project Manager.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Declaration, declaring that, the eligibility criteria/condition in the Tender Notice dated 09.07.2021 bearing No.1699 issued by the 1st Respondent, whereby the Respondents have debarred the bidders from participating in the tender, if they are 'embroiled in any kind of litigation, either instituted by or against the bidder, with any government department/agency, Reserve Bank of India, Nationalized Bank, or any Public Sector Unit or Company or Body, in relation to the contract of furnishing, civil and electrical work", as illegal, arbitrary, bad in law, unlawful, unjustified and therefore, null and void ab initio.

For Petitioner :Mr.Niranjan Rajagopalan
for Mr.Sugam Kumar Jha

For Respondents :Mr.S.Vasudevan

O R D E R

Petitioner has come up with the above Writ Petition seeking to declare that, the eligibility criteria/condition in the Tender Notice dated 09.07.2021 bearing No.1699 issued by the 1st Respondent, whereby the Respondents have debarred the bidders from participating in the tender, if they are "embroiled in any kind of litigation, either instituted by or against the bidder, with any government department/agency, Reserve Bank of India, Nationalized Bank, or any Public Sector Unit or Company or Body, in relation to the contract of furnishing, civil and electrical work", as illegal, arbitrary, bad in law, unlawful, unjustified and therefore, null and void ab initio.

2. It is stated by the Petitioner that, it is a Private Limited Company incorporated on 02.08.1999 under the Companies Act, 1956 and it is engaged in the business of contracts of turnkey projects related to interior designing works. In the past, the Petitioner has successfully executed various high stake Work Orders for various Government Organizations, Undertakings and Public Sector Units along with various reputed private entities. It is further stated by the Petitioner that, the 1st Respondent invited e-tender on 09.07.2021 by issuing a Technical Bid bearing No.1699 in two bid system and the last date for submission of e-technical bid is 30.07.2020. The 1st Respondent also fixed the eligibility criteria for pre-qualification under the Technical Bid.

3. According to the Petitioner, they did not submit the bid in lieu of the order dated 25.06.2021 passed by this Court in W.P.No.15056 of 2020, whereby, Respondents were directed to consider the representation if any, made by the Petitioner, before floating any further tender process and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to the Petitioner. In compliance of the said order of this Court, the Petitioner made a representation dated 16.07.2021 to the Respondents. However, they have not received any reply from the Respondents. Thus, it is the case of the Petitioner that, the tender floated by the Respondents after the order dated 25.06.2021 passed by this Court in W.P.No.15056 of 2020, is bad in law.

4. Learned counsel for the Petitioner contended that, the Petitioner was not allowed to participate in the tender process and the Petitioner is aggrieved by the malafide, illegal and arbitrary exercise of power by the Respondents in introducing such eligibility criteria, without any basis or justification.

5. Learned counsel appearing for the Respondents submitted that, during the pendency of the Writ Petition in W.P.No.15056 of 2020, Respondents have convened a meeting and decided to delete the clause "embroiled in any kind of litigation, either instituted by or against the bidder, with any government department/agency, Reserve Bank of India, Nationalized Bank, or any Public Sector Unit or Company or Body, in relation to the contract of furnishing, civil and electrical work" in the present tender as well as in the future tender process. Learned counsel further submitted that, the Petitioner may participate in the future tender process and that, their tender will be considered without applying the clause challenged in the present Writ Petition.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. In the Affidavit dated 20.01.2022, the Petitioner Company has taken a stand that, with regard to the deletion of the clauses challenged, in the future tender process, the Petitioner Company has no grievance, but, it is concerned only with regard to the present tender, which is under challenge. It is also stated by the Petitioner that, the decision to delete such clauses in the future, does not, in any way remove the illegality of the present tender.

8. However, in view of the submissions of the learned counsel appearing for the Respondents that, the impugned clause has been removed from the tender conditions, this Court directs the Respondents to allow the Petitioner to participate in the present tender process, if he has not participated in the same. In case, the Petitioner had already participated in the present tender process, Respondents shall consider the same and pass appropriate orders on the tender.

The Writ Petition is ordered accordingly. No costs. Consequently, connected W.M.P.Nos.17608 and 17609 of 2021 are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

(aeb)

To

1. The Managing Director,
UTI Infrastructure Technology and Services Ltd.,
UTI Tower, Gn Block, B.K.C.,
Bandra (East), Mumbai 400 051.

2. The Project Manager,
UTI Infrastructure Technology and Services Ltd.,
D-1, First Floor,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai 600 032.

+1cc to Mr.Sugam Kumar Jha, Advocate Sr.3631
+1cc to Mr.S.Vasudevan, Advocate Sr.3435

W.P.No.16617 of 2021

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srg 31/01/2022