



W.P.(MD).No.24570 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

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Sunshine International Agritech,
represented by its Managing Director,
Arun Kumar (Aged about 28 years old),
D.No.W2/151/1, Mariyaponnusami Mill Coumpound,
Annanji Vilakku,
Unjampatti,
Theni District 625 531.

... Petitioner

vs.

1.The Finance Secretary,
Finance Department Secretariat,
Fort St. George,
Chennai 600 009.

2.The Secretary,
School Education Department,
Rina Rd, Fort St. George,
Chennai 600 009.

3.The Managing Director,
Tender Inviting Authority,
Tamil Nadu, Text Book and
Educational Service Corporation,
Chennai 600 006.

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 3 to permit the petitioner to participate in the Tender dated 27.10.2022 for the supply and delivery of school bags to the School Children in Tamil Nadu for the year 2023 – 2024 (Tender Ref. RC.No.9350/PUR-II-2-2022) and to consider the petitioner's representation, dated 07.10.2022.

For Petitioner	: Mr.B.Sargunam
For R1 to R3	: Mr.J.Ravindran
	Assistant Advocate General
	assisted by
	Mr.OM.Prakash
	Government Advocate

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to permit the petitioner to participate in the Tender dated 27.10.2022 for the supply and delivery of school bags to the School Children in Tamil Nadu for the year 2023 – 2024 (Tender Ref. RC.No.9350/PUR-II-2-2022) and to consider the petitioner's representation, dated 07.10.2022.



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2. The case of the petitioner is that he is the certified vendor as per Procurement Policy, Department of Expenditure, Ministry of Finance, Government of India, vide issued Office Memorandum No.6/18/2019-PPD, dated 23.07.2020. On 08.02.2021, the Department of Expenditure, Ministry of Finance, Government of India published public procurement order vide order for vendors and bidders to participate in the procurement of goods and services etc. As per the Public Procurement vide order the petitioner duly registered with the competent authority, as per the requirement of Office Memorandum Notification No.6/18/2019-PPD, dated 23.07.2020. The Finance Ministry of the Indian Government circulated the above order to Secretariats of All Ministries/Departments of the Government of India and Chief Secretaries/Administrators of Union Territories /National Capital Territory of Delhi, as which is also applicable to Ministries/Departments of Tamil Nadu, as per Notification No.F.18/37/2020 PPD.

3. On 23.09.2022, the third respondent, in accordance with the above Central Government Order circulated Tender Notification Ref.RC.No.9350/PUR-II/2022 for supply and delivery of school bags to the school children in Tamil Nadu for the year 2023 to 2024. As per the



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Tamil Nadu Notification No.Ref.RC.No.9350/PUR-II/2022, the petitioner properly registered with the competent authority. On 07.10.2022, the petitioner has sent a representation to the respondents for supply and delivery of School Bag, Geometry Box, Crayons, Wooden color pencil, Footwear, Shoes, Socks, Ankle Books and Woolen Sweater and Raincoat to Tamil Nadu School Children also requested to permit the import of international brand to take part in the tender. The petitioner has paid Rs.1,000/- with 18% GST = Rs.1,180/- for the cost of the tender document. He has also paid Rs.10,000/- with 18% GST = Rs.11,800/- for the bid processing fee. Moreover, the petitioner has also followed all the undertaking towards the jurisdiction of legal proceedings as per Annexure XXIII of the Tamil Nadu Notification, dated 23.09.2022. On 25.10.2022, the third respondent sent a reply to him for his representation via Email dated 10.10.2022 and rejected his participation in the course of the last time rush for the year 2023 to 2024 tender which is supposed to be held on 27.10.2022. Hence, the petitioner has filed the present writ petition.

4. The third respondent has filed a counter stating that the writ petition is not maintainable as all eligible bidders are entitled to submit



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their bids in the Tender Ref.RC.No.9350/PUR-II/2022 and no special permission is required for the same. The tender for supply and delivery of schoolbags is called for every year by the Government and the entire tender process is conducted strictly in adherence to the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000. The petitioner Company made a representation to the third respondent Corporation stating that they were in importer of goods from a foreign company of people's republic of China and they should be permitted to participate in the tender. In response to the said representation, the third respondent has sent a reply on 25.10.2022, stating as follows:

“Further, it is hereby informed that as far as the tenders referred by you are concerned, it is mandatory that the manufacturing unit in agreement with the supplied needs to be within the purview of the Factories Act, 1948, Bureau of Industrial Standards, Local Pollution laws and ought to have obtained necessary consents from State Pollution Control Board, must possess Provident Fund registration, Employees State Insurance registration, National Accreditation Board for testing and Calibration Laboratories' accreditation and hence, you as an importer of a foreign entity would not be eligible to participate. Hence, your request could not be



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acceded to.”

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5. The petitioner's representation has already been considered and the decision of the third respondent has been communicated to the petitioner by way of e-mail, dated 25.10.2022. Hence, if the petitioner is aggrieved by the same, the petitioner ought to necessarily file an appeal under Section 11 of the Tamil Nadu Transparency in Tenders act, 1998. However, without exhausting the statutory remedy available to the petitioner, the petitioner has rushed to this Court in a premature attempt to interfere with the tender process. The last date for submission of bids has got over on 27.10.2022 at 2.00 p.m. and the bids have been opened in the presence of the bidders for technical evaluation on 27.10.2022 at 2.30 p.m., and hence, no more bids can be permitted to be submitted by any other person. Hence, the relief sought for by the petitioner cannot be granted.

6. Heard the learned counsel for the petitioner and the learned Assistant Advocate General appearing for the respondents.



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7. Considering the above said facts, the first limb of the prayer to permit the petitioner to participate in the Tender dated 27.10.2022 for the supply and delivery of schoolbags to the School children is simply rejected on the ground that already the said tender has been conducted on 27.10.2022. The second limb of the prayer to consider his representation dated 07.10.2022, also become infructuous, on the ground that on 25.10.2022, the third respondent has rejected his claim stating as follows:

“Further, it is hereby informed that as far as the tenders referred by you are concerned, it is mandatory that the manufacturing unit in agreement with the supplied needs to be within the purview of the Factories Act, 1948, Bureau of Industrial Standards, Local Pollution laws and ought to have obtained necessary consents from State Pollution Control Board, must possess Provident Fund registration, Employees State Insurance registration, National Accreditation Board for testing and Calibration Laboratories' accreditation and hence, you as an importer of a foreign entity would not be eligible to participate. Hence, your request could not be acceded to. ”

8. According to the respondents, in the said tender condition, it has been clearly stated that,

This tender procedure is governed by the Tamil Nadu



Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000, as amended from time to time. In case of any conflict between the terms and conditions in the tender document and the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000, the Act and Rules shall prevail.

9. The procedures to be followed only as per the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules, 2000 and there cannot be any Central Act to be followed by the authorities to consider the bids.

10. The learned counsel for the petitioner relies upon the Memorandum of Government of India, Ministry of Finance, Department of Expenditure, Procurement Policy Division, dated 08.02.2021. According to the same, A bidder is permitted to procure raw material, components, sub assemblies etc., from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the competent authority, as it is not regarded as 'sub-contracting'. However, in case a bidder has proposed to supply finished



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goods procured directly/indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the competent authority.

11. According to the petitioner, he is a registered contractor and he is eligible to procure goods and services etc., from the countries sharing land border with India. But, here is the case, the Tamil Nadu Government has floated the tender for the Tamil Nadu Text Book and Educational Services Corporation, which is the procuring agency of free educational kits to the students studying in Government and Government aided Schools in the State of Tamil Nadu. According to respondents, they invited tenders to be opened on 27.10.2022 for supply and delivery of school bags to the school children in Tamil Nadu for the year 2023 to 2024. As per the tender in Ref.RC.No.9350/PUR-II/2022, the eligible bidders who are entitled to participate to submit their bids. The total period of supply is 120 days from the date of issuance of purchase order. The present tender process follows two cover system wherein both the technical bid and the price bid are submitted at the same time in two sealed covers as Part A cover and Part B cover respectively. Upon qualifying in the Technical evaluation, the price bid cover would be



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opened for evaluation. The tender for supply and delivery of school bags is called for every year by the Government and the entire tender process is conducted strictly in adherence to the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders Rules 2000. According to the respondents, the tender notification issued on 23.09.2022. The tender condition No.4 lists the qualification criteria for the bidders such as eligibility requirements, turnover, production capacity, past experience and cash credit facility etc. The petitioner Company made a representation to the third respondent Corporation stating that they were an importer of goods from a foreign Company of people's republic of China and they should be permitted to participate in the tender. In response to the tender, the third respondent has sent a reply on 25.10.2022.

12. According to the petitioner, he is having a Unit in Theni, but whether the same has all these facilities were not proved before this Court and the petitioner's main case itself that he is an importer, who has got the materials from a foreign Company and the factory should be within the purview that has been prescribed by the Corporation in the tender notification. The manufacturer and supplier, who does not possess



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the requirements of the State Government would not be eligible to participate in the tender process. The petitioner, who is only an importer and the Government decision is only for the benefit of our Indian citizens, such policy has been taken that the person, who is participating in the tender should have factories and other manufacturing units in India. The respondents have clearly stated that they have no other intention other than that while formulating such conditions and each and every year, the tender is called for procurement and if the petitioner is eligible, he can participate in the future tender. The learned counsel for the petitioner prayed that the amount of Rs.30,00,000/-, which has been paid by way of Demand Draft, to be returned to him, as his application itself is not considered. As the petitioner was not at all allowed to participate in the tender, the respondents will consider his request for return of the said amount, in the manner known to law.

13. In the result, this Writ Petition is dismissed. No costs.

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To

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V.BHAVANI SUBBAROYAN,J.

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