



WEB COPY



W.P.No.3576 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.3576 of 2020
and
WMP.Nos.4197 & 4200 of 2020

M/s.Klenzaid's Contamination Control Pvt. Ltd.,
A Company registered under the Companies Act, 1956
and having its Registered office at
A-21, MIDC, Andheri (E), Mumbai-400 093.

...Petitioner

Vs.

The Executive Engineer, CID
Central Public Works Department,
Chennai-1 Division,
Haddows Road, Shastri Bhavan,
Nungambakkam, Chennai-600 006.

...Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the Respondent in Letter No. 67(1)/CID/2019-20 dated 10.02.2020 and quash the same as illegal, unconstitutional, bad in law and without authority and direct the Respondents to evaluate and allow the petitioner to participate in the Technical Bids.

For Petitioner : Mr.Kumarpal R Chopra

For Respondent : Mr.A.R.L.Sundaresan, ASG
Assisted by Mr.Venkatasamy Babu, SPC



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ORDER

This Writ petition has been filed seeking quashment of the order of the respondent in Letter No.67(1)/CID/2019-20 dated 10.02.2020 and for a consequential direction to the respondent to evaluate and allow the petitioner to participate in the Technical Bids.

2. The case of the petitioner is that the petitioner company is registered under the Companies Act, 1956 and is an ISO 9001 certified company, engaged in manufacturing and supplying equipment for use in the Pharma/Biopharma/Biotechnology Sectors. On 19.11.2019, the respondent invited Tender for construction and establishment of integrated BSL-3 Laboratory and Repository Facility for ICMR-National Institute for Research on Tuberculosis (in short 'NIRT') at EPID unit in Thiruvallur and the estimate cost of the Notice Invite Tender is Rs.23,26,05,448/- and the earnest money of the Notice Invite Tender (in short 'NIT') is Rs.33,26,054/-. The petitioner company had furnished the eligibility documents as stipulated in NIT for intending non-CPQD enlisted bidder to participate in the technical bids along with the detailed description of the previous works



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done by the petitioner, vide letter dated 17.12.2019, despite which, the respondent, vide several letters insisted the petitioner company to furnish the particulars and description of the previous works and to submit a letter of work experience/performance report and copy of letter from HSCC for granting of extension of time with/without levy of compensation, though the petitioner company furnished all the informations and details pertaining to the previous works to the respondent through various letters. While so, though the petitioner company complied with all the terms and conditions as stipulated in the NIT, the respondent, vide impugned letter dated 10.02.2020 bearing Letter No.67(1)/CID/2019-20, disqualified the petitioner from the technical bid on the ground that, the petitioner failed to submit the documentary evidence for the decision of levy of compensation for the delay and extension of time, without considering the performance report submitted ICMR-National Institute of Virology, who is the actual employer and continuously insisted report from one M/s.Hospital Services Consultancy Corporation (India) Ltd., which is not sustainable. Hence, challenging the above said letter dated 10.02.2020 issued by the respondent, the petitioner has come up with this Writ petition.



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3. Learned counsel for the petitioner submitted that, though, this Court, while entertaining the Writ petition granted interim stay, vide order dated 12.02.2020, wherein the learned Additional Advocate General submitted that final bid has been opened but no decision has been taken and the respondent will await further orders of this Court, however, contrary to the statement made by the Additional Advocate General in the above said order, the respondent awarded the contract in favour of the third parties, which is a clear violation of the undertaking given before this Court and the concerned third party has completed the worked. Even then, the petitioner is entitled for return of the EMD amount paid by the petitioner.

4. Per contra, the learned Additional Solicitor General appearing for the respondent submitted that, during the pendency of this Writ petition, the technical bid was opened and tender was awarded in favour of the third party on 22.02.2020 and most of the work was completed and thereby, nothing survives for further adjudication. He further submitted that, the respondent is not aware of the above said order of this Court and the undertaking given by the Additional Advocate General. Hence, he prayed for dismissal of this Writ petition.



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5. In response, the learned counsel for the petitioner submitted that, though the tender was awarded in favour of the third party, the petitioner is entitled for return of the EMD amount which was deposited at the relevant point of time. Hence, he submitted that, it would suffice, if this Court issues direction to the respondent to return the EMD amount to the petitioner.

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

7. In view of the above submissions, since the tender/work was already awarded in favour of the third party during the pendency of this Writ petition, inspite of the order of stay granted by this Court, however, no purpose would be served in proceeding with the matter any further and no further adjudication is necessary in this Writ petition as the prayer sought for by the petitioner has become infructuous. In such circumstances, this Court without interfering with the order impugned in this Writ petition, directs the respondent to return the EMD amount, if any, paid by the petitioner in respect of the present tender back to the petitioner, within a period of two weeks from the date of receipt of a copy of this order.



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8. With the above observations and directions, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous petitions are closed.

07.06.2023
(1/2)

skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

The Executive Engineer, CID
Central Public Works Department,
Chennai-1 Division,
Haddows Road, Shastri Bhavan,
Nungambakkam, Chennai-600 006.



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WMP.No.4195 of 2020
in
W.P.No.3576 of 2020

M.DHANDAPANI., J.

Dispense with ordered for the
present.

07.06.2023
(2/2)

skt