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W.P.No.10334 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10334 of 2023

and

W.M.P.Nos.10304 & 10305 of 2023

M/s.A.S.K.Earth Movers
rep. by its Proprietor Mr.A.Sasi Kumar
No.78/17. Jeganathan Street
Agaram
Chennai 600 082.

... Petitioner

Vs.

1.The Commissioner
Greater Chennai Corporation
Chennai – 600 003.

2.The Superintending Engineer (SWD & Mechanical)
Mechanical Engineering Department
Greater Chennai Corporation
Rippon Building
Chennai 600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the Tender Notice bearing No. M.E.D.C.C.D. No. C1/015/2023 dated Nil issued by the 1st respondent bearing the conditions mentioned in 2.3 - Eligibility Criteria Work, in 2nd and 3rd item namely: “2. The bidder should have carried out the



work satisfactorily in transporting garbage/sand/stone quarry/construction materials/ coals for the total value of not less than Rs.1.77 Crore from January 2020 to December 2022 for any Govt./ Quasi Govt. / Local Bodies/ Private company in single or multiple orders. Necessary work orders with respective work completion and performance certificate has to be furnished to the bid”. “3. Bidders should have sound financial background. The Bidders should have minimum Annual average turnover of Rs.1.06 Crore, in three financial years between April-2019 to March 2022. Necessary audit Balance Sheets, proving above requirements are to be furnished with the bid. The tenderer must submit the copy of certificate showing turnover certified by chartered accountant along with the UDIN” and quash the same as illegal.

For Petitioner : Mr.S.Udhayakumar

For Respondents : Mrs.P.T.Rama Devi
Standing Counsel
[For Greater Chennai Corporation]

ORDER

The tender document issued by the Greater Chennai Corporation for transporting garbage from Zone VI Transfer Station at Pulianthope to Kodungaiyur Dumping Ground for 1,16,800 MTs or 365 days is under challenge in the present writ petition.



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2. The petitioner M/s.A.S.K.Earth Movers has been engaged in the work of collecting garbage for Greater Chennai Corporation from TPF (storage of garbage) and transporting the same to the Kondungaiyur Dumping Ground. The petitioner is having professional experience of 15 years and presently doing collection and transporting work in Zone 6 and 8. The tender document has been published and the value of the job is Rs.3,52,82,944/- and the petitioner is unable to submit his application on account of the fact that the respondents have fixed the eligibility criteria, which is unreasonable with an intention to prevent many such similarly placed companies from participating in the tender process.

3. The learned counsel for the petitioner states that the conditions 2 and 3 incorporated in 2.3 - Eligibility Criteria Work, in second and third item reads as under:

“2. The bidder should have carried out the work satisfactorily in transporting garbage/sand/stone quarry/construction materials/ coals for the total value of not less than Rs.1.77 Crore from January 2020 to December 2022 for any Govt./ Quasi Govt. / Local Bodies/ Private company in single or multiple orders. Necessary



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work orders with respective work completion and performance certificate has to be furnished to the bid.

3. Bidders should have sound financial background. The Bidders should have minimum Annual average turnover of Rs.1.06 Crore, in three financial years between April-2019 to March 2022. Necessary audit Balance Sheets, proving above requirements are to be furnished with the bid. The tenderer must submit the copy of certificate showing turnover certified by chartered accountant along with the UDIN.”

4. The learned counsel for the petitioner reiterates that the above conditions would have no purpose sought to be achieved, since the petitioner is more experienced in the field of collection of garbage and possessing adequate man power and other infrastructure facilities. While so, such conditions are imposed with an intention to debar few eligible candidates, who all are performing the job in many other areas. Thus, the tender document is to be quashed to the extent of deleting such eligibility conditions stipulated.



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5. The learned Standing Counsel appearing on behalf of the respondents / Corporation brought to the notice of this Court that the Eligibility criteria was relaxed by issuing a corrigendum and as per the amendment carried out 2.3 Eligibility Criteria for work 1.3.1 Eligibility Conditions Sl.No.1 Pg.No.5 to be read as Rs.1.77 Crores from January 2020 to December 2022. Therefore, 15% of the total cost is fixed as the eligibility criteria and the persons, who have completed the work to the extent of Rs.1.77 Crores from January 2020 to December 2022 are eligible to submit their application to participate in the tender process.

6. The scope of judicial review in such matter is limited. The power of judicial review under Article 226 of the Constitution of India is to ensure the process through which the decision is taken by the competent authorities in consonance with the Statutes and Rules, but not the decision itself. The reasonableness of the decision can be tested by the Courts. In the present case, the total cost of the work is Rs.3,52,82,944/-. The persons, who possess the experience in the field and completed the work to the tune of Rs.1.77 Crores is made eligible for the purpose of participating in the tender process.



In other words 15 % of the total cost has been fixed as an eligibility criteria to participate in the tender process and such eligibility must be within a period of 3 years from 2020. The authorities in accordance with the conditions prescribed, shall ensure that the persons, who all are having experience in the field and possessing sufficient man power and infrastructure facilities can alone participate in the tender so as to ensure that the work has been done expertise. Such an objective cannot be said to be unreasonable.

7. The learned counsel for the petitioner states that regarding certain pending bills, if certificates are issued to that effect, the petitioner will be eligible. However, it is for the petitioner to approach the competent authorities for clearing of the pending bills, anyway it is unconnected with the tender document, which is under challenge in the present writ petition and in respect of the grounds raised in the present writ petition for quashing the tender document, this Court do not find any acceptable grounds.



8. Accordingly, this Writ Petition stands dismissed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

03.04.2023

(2/2)

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

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Greater Chennai Corporation

Chennai – 600 003.

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Mechanical Engineering Department

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S.M.SUBRAMANIAM, J.

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