



W.A.No.3365 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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Chennai Metroplitan Water Supply &
Sewerage Board

Rep. by its Managing Director

No.1, Pumping Station Road

Chintadripet, Chennai 600 002.

.. Appellant

Vs.

1. Tecton Engineering & Construction LLC

P.O.Box No.6039, Ajman

United Arab Emirates.

2. Zuberi Engineering Construction Private Limited

H-4/58 Azad Marg

C Scheme, Near Janta Girls School

Jaipur 302 001.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the
order dated 17.10.2023 passed in W.P.No.23275 of 2023.



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For the Appellant : Mr.S.Silambannan
Additional Advocate-General
Assisted by
Mr.Krishna Ravindran

For the Respondents : Mr.T.V.Ramanujun
Senior Counsel
Assisted by
Mr.A.Prasanna Venkat
For M/s. APR Associates
for Respondent-1

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.S.Silambannan, learned Additional Advocate General, assisted by Mr.Krishna Ravindran, learned counsel for the appellant and Mr.T.V.Ramanujun, learned Senior Counsel, assisted by Mr.A.Prasanna Venkat for the first respondent.

2. The present respondents had filed the writ petition before the learned Single Judge seeking directions against the present appellant to open Part A of the technical bid submitted by them. The learned Single Judge allowed the writ petition. Aggrieved thereby,



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the present appeal.

3. Learned Additional Advocate-General for the appellant submits that the learned Single Judge ought not to have entertained the writ petition. In tender matters, the Court has to be loath in exercising its writ jurisdiction.

4. According to learned Additional Advocate-General, the original writ petitioners had not filled the application properly with the required bank guarantee. The bank guarantee required was of Rs.9,75,00,000/-, whereas the writ petitioners had mentioned that they have submitted bank guarantee only for a sum of Rs.7,88,00,000/-. The writ petitioners had also mentioned the wrong tender number in the application. They cannot be allowed to correct the mistakes subsequently. The tender itself cannot be opened on the website because of these anomalies.

5. Learned Additional Advocate-General submits that the



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appellant has not committed any error in not opening the technical bid of the respondents. He relies upon the judgment of the Apex Court in the case of ***W.B. State Electricity Board v. Patel Engineering Co. Ltd. [(2001) 2 SCC 451]***. He also relies upon the judgment of the Apex Court in the case of ***Agmatel India Private Limited v. Resoursys Telecom [(2022) 5 SCC 362]*** and another judgment of the Apex Court in the case of ***Tata Motors Limited v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) [2023 SCC Online SC 671]***.

6. We have also heard learned Senior Counsel for the respondents/original writ petitioners.

7. There cannot be any dispute with the proposition that this Court, while exercising the writ jurisdiction under Article 226 of the Constitution of India, would be loath in interfering with the decisions taken by the employer/principal.



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8. It is also trite that clerical errors can be allowed to be corrected. Substantive deficiencies cannot be allowed to be corrected by the bidder. In the case of **Tata Motors Limited**, supra, relied by learned Additional Advocate-General, the Apex Court has observed that the clauses in the tender, such as, "no addition/correction, submission of documents would be allowed after opening of technical bid", is only limited to the documents necessary to be included in the technical bid and would not be applicable to any such document which does not form part of the technical bid.

9. The learned Single Judge, while appreciating the matter and the contentions of the rival parties, perused the screen shot of the present appellant partly available at page no.1702 of their paper book, observed that the portal makes it clear that the window opened in the online portal of the appellant does not indicate which is Part-A of the technical bid and which is Part-B of the technical bid. In such circumstances, there is every room for a confusion in the mind of the bidder who is submitting his bid through online portal.



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The ambiguity or lack of clarity in the window opened in online portal of the present appellant for uploading bid documents vitiates fair opportunity. The learned Single Judge further observed that if the writ petitioners are able to prove correct bank guarantee certificate for the value of Rs.9,75,00,000/- is uploaded in the second entry of the uploaded documents, the writ petitioners are entitled to the direction as prayed for.

10. The contention of the writ petitioners is also recorded by the learned Single Judge that the correct bank guarantee certificate for Rs.9,75,00,000/- is available in the second part of the screen shot at page No.1702. Referring to the second entry in the uploaded documents, described as scanned copy of the bid security and contractors bid, it is observed in the impugned judgment that the correct copy of the certificate is uploaded in the second part of the window.

11. The technical bid is in two parts, Part A and Part B. Part A



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of the technical bid is called as Initial Filter Criteria, the second stage is opening of the technical bid and the third stage is the price bid.

12. It is only if the appellant finds that the original writ petitioners have uploaded the correct bank guarantee certificate of Rs.9,75,00,000/-, then only their bid price deserves to be considered. Otherwise, the technical bid would be rejected. However that could be verified only upon opening the technical bid, i.e. Part A and Part B.

13. It is also a settled proposition of law that the Appellate Court would be loath in interfering with the discretion exercised by the learned Single Judge in such matters.

14. In the light of the above, we are not inclined to interfere with the decision taken by the learned Single Judge.



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WEB COPY 15. The appellant may take the assistance of NIC for opening of the technical bid.

The writ appeal, as such, stands dismissed. There will be no order as to costs. Consequently, C.M.P.No.27501 of 2023 is also dismissed.

(S.V.G., CJ.) (D.B.C., J.)
19.12.2023

Index : Yes/No
Neutral Citation : Yes/No

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