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W.P.No.35371 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.35371 of 2019 and W.M.P. Nos.
36189, 36191 and 36193 of 2019

Brij Polymers Pvt. Ltd.,
rep. by its Authorised Signatory
Narendran

... Petitioner

-Vs-

- 1.Tamil Nadu Text Book and Educational
Services Corporation,
rep. by its Managing Director,
68, E.V.K.Sampath Maaligai,
D.P.I.Campus, College Road,
Chennai, Tamil Nadu 600 006.
- 2.M/s.M B Rubber Private Limited,
rep. by its Managing Director,
195, Gagan Vihar, Delhi 110 051.
- 3.M/s. Liberty Shoes,
rep. by its Managing Director.
- 4.M/s.Powertech Electro infra Pvt. Ltd.
Rep. by its Managing Director.
- 5.M/s.Charanpaaduka Industries Private Limited,
rep. by its Managing Director.



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6.M/s.XO Footwear Private Limited,
rep. by its Managing Director.

7.M/s.Infinity Footwear Private Limited,
rep. by its Managing Director.

8.M/s.Bata India
Kolkatta 700 013.

9.M/s.H B Rubber Private Limited,
rep. by its Managing Director.

10.M/s.B.N.G.Fashion Gear Private Limited,
319-320, Sector 17,
Footwear Park, HSIIDC,
Bahadurgarh, Haryana – 124 507.

11.M/s.Lawreshwar Polymers,
rep. by its Managing Director.

12.M/s.Shamsons Polymers Pvt. Ltd.,
E-250, Third Floor,
Greater Kailash,
New Delhi – 600 048.

13.M/s.Shamsons Industries,
R-9/5, Raj Nagar,
Ghaziabad – 201 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, for issuance of Writs of Certiorarified Mandamus calling for the records of the 1st in relation to RC. No.288/PUR-1/2019, namely the Supply and Delivery of Footwear (Velcro Sandal) in Tamil Nadu on Annual Rate Contract Basis for the year 2019-20 issuing purchase orders in favour of respondents No.2 to 4 and all records consequent thereto and quash the same as being arbitrary and illegal in as much



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as the respondents No.2 to 4 have engaged in fraudulent behaviour under Clause 5.13.1 of the Tender Conditions and consequently direct the first respondent to terminate its purchase orders with respondents No.2 to 4 and re-evaluate the bids strictly in the manner provided for under the Tender Conditions.

For Petitioner : Mr.Sathish Parasaran,
Senior Counsel for
Mr.Rahul Balaji

For Respondent : Ms. S.Varsha for R1
Mr.S.Thiruvengadam for R2

ORDER

The present writ petition is being filed challenging the arbitrary and illegal action of the 1st Respondent in erroneously issuing purchase orders to the Respondents 2 to 4, vide Purchase Orders dated 07.11.2019 and 08.11.2019, under Tender bearing Ref. No. RC.No.288/PUR-1/2019, namely the Supply And Delivery Of Footwear (Velcro Sandal) In Tamil Nadu, On Annual Rate Contract Basis For The Year 2019-2020, dated 28.05.2019. The 1st Respondent has failed to follow the terms and conditions of the Tender document and has entered into purchase orders with entities who do not qualify under the technical conditions of the tender document and have engaged in blatant acts of collusion.



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2. It is the further case of the petitioner that the evaluation of technical bids has not been done in accordance with the requirements specified in the tender documents, in so far as the sample testing has been conducted by different testing agencies, which is in blatant violation of the terms of the Tender Conditions, which requires that testing will be done by 1 accredited laboratory alone. Further, the Petitioner has reasonably learnt that the testing agency chosen by the 1st Respondent was FDDI Chennai, which is a testing agency that has already been held guilty of malpractice to pass the Respondents No. 2 and 3, before the Chattisgarh High Court. It is pertinent to note that Respondent Nos. 2 and 3 have been awarded the present tender after testing by an agency that has already been found guilty of favoritism towards the same bidders in another tender in Chattisgarh. Similarly, while the 4th Respondent was not cleared by the testing agency in the year 2016, before the Hon'ble High Court of Chattisgarh, the 4th Respondent's close business associate, one M/s. Charanpadhuka (the 5th Respondent in the present petition) was passed. Further, as enumerated later it is pertinent to note that the 4th Respondent is not a footwear manufacturer and it is in fact the 5th Respondent who has submitted the samples on behalf of the 4th Respondent. The same is evident from the fact that the design of the samples



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provided by the 4th and 5th Respondent are alike. The Respondent states that the enter tender is vitiated by collusion between the successful bidders and the 1st Respondent. Further, the decision of the 1st Respondent to award the contract to the Respondents No. 2 to 4 is Wholly arbitrary, illegal and lacks transparency and hence, the entire process is vitiated. Hence, the present writ petition.

3. The learned counsel for the first respondent submitted that the petitioner has filed the present writ petition challenging the decision passed by the first respondent to decide the annual rate contract basis for the year 2019-2020 issuing purchase orders in favour of the respondents. The very same issue has already came up for consideration before this Court in W.P.No.23795 of 2017 and this Court vide its order dated 01.06.2019, dismissed the same. Therefore, the learned counsel prays that this Court may dismiss the present writ petition also.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5. As rightly submitted by the learned counsel for the first respondent, the very same issue came before this Court and the same was dismissed by this



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Court in W.P.No.23785 of 2019, dated 01.06.2019. The relevant paragraph is

extracted hereunder:

*14. There is also substantial force in contention of the Respondents that the Writ Petition ought not be entertained at a pre-mature stage under the pretext of the Petitioner seeking consideration of his representations made even before the technical bids of the tenderers had been finalized. Suffice here to notice that the Hon'ble Supreme Court of India in **Tamil Nadu Generation and Distribution Corporation Ltd., -vs- CSEPDIL – Trishe Consortium [(2017) 4 SCC 318]** has cautioned against the interference of Courts in on-going tender process in the following words:-*

“37. Before parting with the case we are constrained to add something. We do so with immense pain. The respondent, before finalization of the financial bid submitted series of representations and seeing the silence of the owner it knocked at the doors of the writ court which directed for consideration of the representations. We are disposed to think that the High Court at that stage should have exercised caution. If the courts would exercise power of judicial review in such a manner it is most likely to cause confusion and also bring jeopardy in public interest. An aggrieved party can



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approach the Court at the appropriate stage, not when the bids are being considered. We do not intend to specify. It is appreciable the owner in certain kind of tenders call the bidders for negotiations to show fairness transparently. But the present case is not a one of such nature. Once the price bid was opened, a bidder could not have submitted representations on his own and seek a mandamus from the Court to take certain aspects into consideration. We have stressed this aspect only to highlight the role of the Court keeping in mind the established principle of restraint.”

6. In view of the above, no further order is necessary in this case and the same is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

23.06.2023

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M.DHANDAPANI, J.

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To

Tamil Nadu Text Book and Educational
Services Corporation,
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Chennai, Tamil Nadu 600 006.

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