



WEB COPY



W.P.No.35236 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.35236 of 2023

in

W.M.P.No. 35212 of 2023

Pt. Bara Daya Energi,
Represented by its Authorised Signatory,
Having Branch Office at
No. 102, 1st Floor, Capital Towers,
D.No. 180, Kodambakkam High Road,
Chennai – 600 034.

... Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited.,
Represented by its Chairman and Managing Director,
NPKRR Maaligai, 144, Anna Salai,
Chennai – 600 002.

2. Chief Engineer/Mech/Coal,
Tamil Nadu Generation and Distribution Corporation Limited.,
II Floor, NPKRR Maaligai, 144 Anna Salai,
Chennai – 600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from rejecting the Petitioner's bid in response to the Tender Specification No. COAL 144 dated 21.11.2023 and to consider the same in accordance with law if otherwise qualified as per tender specification.



WEB COPY



W.P.No.35236 of 2

For Petitioner : Mr.Abdul Saleem
Senior Counsel
For Respondents : Mr.P.S.Raman, Senior Counsel
for Mr.D.R.Arunkumar
Standing Counsel

ORDER

This Writ Petition has been filed to forbear the respondents from rejecting the petitioner's bid in response to the Tender Specification No.COAL 144 dated 21.11.2023.

2. The case of the petitioner is that the petitioner has participated in the tender process initiated by the Gujarat State Electricity Corporation Limited (in short 'GSECL'). In the process of execution, the petitioner was not able to supply the coal due to the worldwide COVID situation. Therefore, GSECL has terminated the petitioner's contract *vide* proceedings dated 08.10.2021. Aggrieved against the same, the petitioner has invoked the Arbitration Clause and the said Arbitration Proceedings is pending before the Hon'ble Gujarat High Court.

2.1 Further, he would submit that the termination of contract would not amount to either ban or blacklisting. Further, it is submitted that when the petitioner has participated in the tender process before the Karnataka



W.P.No.35236 of 2021

Power Corporation Limited (KPCL) the respondents have rejected the bid, citing the termination order passed by the GSECL dated 08.10.2021.

WEB COPY

2.2 Aggrieved by the same, the petitioner has filed an application under the Right to Information Act (RTI Act) dated 04.12.2023, pursuant to which, the petitioner received a reply dated 08.12.2023, wherein, the following informations have been furnished:-

“Accordingly, the TIA had contacted Chief Engineer (Fuels), GSECL and enquired whether GSECL has blacklisted or terminated the agency PT Bara Daya Energi, Indonesia in their imported coal contract. In response, it was informed that GSECL has terminated the imported coal contract with PT Bara Daya Energi, Indonesia, but not blacklisted it.

The TIA communicated to the TSC members that CE(Fuels), GSECL has informed the GSECL has terminated the contract. The TSC advised that since the PQR credentials furnished by the bidder is of PT Bara Daya Energi, Indonesia who has been terminated by GSECL would have to be rejected now in KPCL's tender as the ITT CI.No.1.2 and Section-XIX of the tender document.”



W.P.No.35236 of 2022

WEB COPY

3. Mr.P.S.Raman, learned Senior Counsel for the respondents would submit that though it is the contention of the petitioner that as far as the termination order passed by GSECL is concerned, it is only termination of contract and no doubt the termination will not amount to either ban or blacklisting the person from participating in the tender process, however, the learned Senior Counsel drawn the attention of this Court to the counter affidavit filed by the 2nd respondent, wherein, it is stated as follows:

“3.....the TANGEDCO insists the bidders to furnish various declarations as per the annexures enclosed in the said tender specification in order to ensure the reliability of coal supply and to maintain sustained power supply to common public. One such declaration is that the bidder has to furnish Schedule L stating that they have not been Banned/Blacklisted as on date of submission of bid by Ministry of Power or Govt.of India or Govt.of Tamil Nadu or other State Governments/PSU/TANGEDCO.the petitioner's bid will be considered if it is otherwise eligible unless it is blacklisted or banned by any of the tender inviting authority.”



WEB COPY



W.P.No.35236 of 2021

3.1 Hence, by referring to the above paragraph, it is further submitted that the bidders are supposed to file fresh Schedule L, wherein, they have to state whether they are banned or blacklisted as on the date of submission of bid. Therefore, the same would be considered as per the terms and conditions of the bid.

4. I have given due consideration to the submission made by the learned counsel for the petitioner as well as the respondents.

5. The issue to be decided is whether the termination of the contract would amount to banning or blacklisting the persons from participating in the bid?

6. Initially, the petitioner has participated in the bid before the GSECL and the said GSECL terminated the contract *vide* proceedings dated 08.10.2021. When the petitioner has participated in the tender process before the KPCL, the said tender was rejected though they have clarified that the termination would not amount to blacklisting or banning the petitioner from getting participated in the tender. The petitioner has challenged the



W.P.No.35236 of 21

same before the Hon'ble Karnataka High Court and the Karnataka High Court has passed the following order:

“.....

The grievance is that, this would be projected in future tenders. Therefore, as and when the tenders are notified this cannot be projected to be the reason, but however, since no tender is now notified, the petitioner is at liberty to move the Court in the event, any tender notification is issued.

.....”

6.1 Thus, a reading of the interim order passed by the Hon'ble Karnataka High Court, (as quoted above), termination letter dated 08.10.2021 and Schedule L, it is clear that the termination letter dated 08.10.2021 is only an order terminating the petitioner's contract and not an order either banning or blacklisting the petitioner from getting participated in the bid.

6.2 Further, merely terminating the petitioner's contract by the GSECL will not amount to either banning or blacklisting the petitioner from participating in the future tenders of the same, since the word "termination"



W.P.No.35236 of 2023

cannot be equated with the words "ban or blacklist". This is what the Hon'ble Karnataka High Court in the interim order has stated so. This Court is also of the same view that the termination of contract by the Authority will not amount to banning the petitioner from participating in the future tender process. Therefore, this Court does not find any impediment for the TANGEDCO to permit the petitioner to participate in the future tender process and scrutinize the same in accordance with terms and conditions of the tender.

7. With the above observation, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2023

1/2

Note: Issue Order copy today i.e., on 05.01.2024.

veda

Internet: Yes

Index : Yes / No

Speaking order/Non-Speaking order

Neutral Citation : Yes / No



W.P.No.35236 of 2022

WEB COPY

- To
1. Tamil Nadu Generation and Distribution Corporation Limited.,
Represented by its Chairman and Managing Director,
NPKRR Maaligai, 144, Anna Salai,
Chennai – 600 002.
 2. Chief Engineer/Mech/Coal,
Tamil Nadu Generation and Distribution Corporation Limited.,
II Floor, NPKRR Maaligai, 144 Anna Salai,
Chennai – 600 002.



WEB COPY



W.P.No.35236 of 2

KRISHNAN RAMASAMY, J.

veda

W.P.No.35236 of 2023

21.12.2023
1/2