



W.P(MD)No.3118 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3118 of 2023

and

W.M.P.(MD)Nos.2900 & 2901 of 2023

M/s.Star Seven Eleven,
Represented by its Proprietor,
P.Nagarathinam,
G, 26/1, STAR 7,11,
Ramiyah Street,
Jaihinpuram, Madurai.

... Petitioner

Vs.

1.The Development Commissioner,
MSME,
Nirman Bhavan, A-Wing,
7th Floor, Maulana Azad Road,
New Delhi-110 108.

2.The State rep. By
Secretary to Government,
Micro, Small and Medium Enterprises (D2) Department,
Secretariat,
Chennai.

3.National Small Industries Corporation Ltd.,
No.74, ADR Towers 1st Floor,
Kalavasal,
Theni Main Road,
Madurai-625 016.



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4.The Commissioner,
Madurai Corporation,
Aringar Anna Maligai,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to alter the tender conditions with respect to “Clause 5 of Annexure 1.1 and Clause 5 and 10 of Instructions to the bidders” in all “Tender notifications of the 4th respondent” in compliance with the Tamil Nadu Transparency in Tenders Act and Rules and G.O.199, dated 27.06.2022 and consequentially, direct the fourth respondent to permit the petitioner to participate in the tender process as an MSME organization and give them benefits as per the Act and G.O., mentioned above and consider the tender application of the petitioner, if they are otherwise eligible.

For Petitioner : Mr.Porkodi Karnan
for M/s.Polax Legal Solutions

For Respondents : Mr.K.R.Laxman
Senior Panel Counsel for R1 & R3
: Mr.M.Lingadurai
Special Government Pleader for R2
: Mr.S.Vinayak
Standing Counsel for R4

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned standing counsel appearing for the fourth respondent.



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2. The petitioner is a micro enterprise. The petitioner has produced the copy of Udyam Registration Certificate. The petitioner wants to participate in the tender process floated by the Madurai Corporation. The petitioner seeks exemption from the payment of EMD. The petitioner also states that the condition of prior experience should not be insisted upon in the case of MSME, if the tender value below rupees twenty lakhs. Since the petitioner is not being conferred with the aforesaid benefits, the present writ petition came to be filed.

2. When the matter was taken up for hearing, the learned standing counsel appearing for the fourth respondent Corporation submitted that they are an independent statutory entity and whether to confer any benefit on the petitioner or not should be left the policy decision of the local body. My attention is drawn to G.O.Ms.No.40, Micro, Small and Medium Enterprises (A) Department, dated 22.07.2021. Clause Nos.5 & 6 of the said G.O reads as follows:-

5. The Government after careful examination has decided to provide the following concessions to the registered startups for public procurements by a Procuring Entity (as defined in Transparency in Tenders Act, 1998) for procurements that are below Rs.20 Lakh in value to improve the startup ecosystem in the State:

(i) Exemption from payment of Earnest Money Deposit.



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- (ii) Exemption from the condition of prior turnover.
- (iii) Exemption from the condition of prior experience
- (iv) Waiver of tender cost.

Procurement Entity shall mean the following:

- (i) Government Departments.
- (ii) Public Sector Undertakings of the Government.
- (iii) Statutory Board formed by the Government.
- (iv) Local Bodies in the State.
- (v) Co-operative Institutions in the State.
- (vi) Universities.
- (vii) Societies formed by the Government.

6. The above concessions are given subject to the following conditions:-

- (i) The startup should be registered on the portal of Department for promotion of Industry and Internal Trade (DPIIT) or Tamil Nadu Startup and Innovation Mission (TANSIM).
- (ii) The Startup should have registered office in Tamil Nadu.
- (iii) Eligibility shall be restricted to startups as defined in the Tamil Nadu Startup and Innovation Policy.

3. The learned standing counsel states that concessions and benefits provided in Clause No.5 are subject to what has been set out in Clause No.6 of Clause No.6 of G.O.Ms.No.199, Finance (Salaries) Department, dated 27.06.2022 is as follows:-

“6. With regard to the matter pertaining to the exemption of Earnest Money Deposit / Security Deposit to the Small Scale Industrial Units and Public Sector Undertaking the Government have reviewed the orders issued in the Government Orders read above in line with the provisions under Rule 14(1) of Tamil Nadu Transparency in Tender Rules, 2000 and considered that there is a need for issue of a single consolidated and comprehensive order. Accordingly, the Government in supersession of the orders issued in the Government Order



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first and second read above, pass the following order:-

(i) “Micro and Small Enterprises located within the State of Tamil Nadu are exempted from payment of Earnest money Deposit against the production of a copy of Udyam Registration Certificate or any other valid registration certificate/proof as notified by the Government of India in respect of the items manufactured by them for participation in the tenders floated by the Government Departments, State Public Sector Undertakings, Statutory Boards, Local Bodies, Co-operatives, Universities and Societies formed by the Government and whenever it is deemed necessary, the procuring entity may inspect the unit and satisfy themselves with regard to verifying the credentials of the applicants on the line of activity pursued by such manufacturers, quality and production capacity and other relevant factors.

(ii) Procuring entities shall obtain an undertaking from the successful bidders that they would pay penalty an amount equivalent to Earnest Money Deposit / Security Deposit or an amount equal to the actual loss incurred by the procuring entities whichever is less in the event of non-fulfilment or non-observance of any of the conditions stipulated in the contract.”

3. It is relevant to note here that G.O was issued by MSME department of the Government of Tamil Nadu. G.O clearly states that it would apply to the local bodies in the State also. The Madurai Corporation being a local body in the State of Tamil Nadu is obviously governed by the terms of the said G.O. If the Government of Tamil Nadu has issued any other G.O for conferring any benefit to MSMEs, the Madurai Corporation is obliged to grant the same.



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4. The Writ Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes/ No

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NOTE:Issue Order Copy on 07.03.2023

To

The Secretary to Government,
Micro, Small and Medium Enterprises (D2) Department,
Secretariat,
Chennai.

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