



W.P(MD)No.20076 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20076 of 2022

and

W.M.P.(MD)Nos.14602, 14603 and 18258 of 2022

M/s. Ahilam Travels,
Rep. by its Proprietor,
R.Ahilan.

... Petitioner

Vs.

- 1.The Union of India,
Rep by its Director/Chief Executive Officer,
Ministry of Commerce and Industry Government,
E Market Place (Gem) (Section),
Vanjiya Bhawan, New Delhi.
- 2.The Site Director,
Nuclear Power Corporation of India Ltd,
(A Govt of India Enterprise),
Kudankulam Nuclear Power Project,
Kudankulam Post, Radhapuram Taluk,
Tirunelveli District – 627 106.
- 3.The Station Director,
Nuclear Power Corporation of India Ltd,
(A Govt of India Enterprise),
Kudankulam Nuclear Power Project,
Kudankulam Post, Radhapuram Taluk,
Tirunelveli District – 627 106.
4. The Head (CTC), (Tender Section),
Nuclear Power Corporation of India Ltd,



W.P(MD)No.20076 of 2022

(A Govt of India Enterprise),
Kudankulam Nuclear Power Project,
Kudankulam Post, Radhapuram Taluk,
Tirunelveli District – 627 106.

5 The Scientific Officer-E (CTC),
Nuclear Power Corporation of India Ltd,
(A Govt of India Enterprise),
Kudankulam Nuclear Power Project,
Kudankulam Post, Radhapuram Taluk,
Tirunelveli District – 627 106.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 5th respondent in his proceedings in No.NPCIL/KKNPP/CTC/2022/ S/2033 dated 10.08.2022 and consequential impugned order passed by the 5th respondent in his proceedings in No.NPCIL/KKNPP/CTC/2022/ S/2099 dated 19.08.2022 and quash the same as illegal and consequentially to direct the respondents to open with the petitioner's technical bid and proceed further with the tender process by accepting the petitioner's technical bid within a period stipulated by this Court.

For Petitioner : Mr.Ajmalkhan,
For M/s.Ajmal Associates.

For Respondents : Mr.V.B.Sundhareshwar,
Central Govt. Standing Counsel for R1.
Mr.Krishna Srinivasan,
For M/s.Ramasubramanian & Associates for R2 to R5.



W.P(MD)No.20076 of 2022

ORDER

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Heard the learned senior counsel for the writ petitioner, the learned Central Government Standing Counsel for the first respondent and the learned standing counsel for the respondents 2 to 5.

2.The respondent corporation issued notification dated 08.06.2022 calling for bids from eligible participants for the following service:-

Item Category	Custom Bid for Services – Item 1 Supply of brand new Non Ac Mahindra Bolero on working days for 9 hrs duty with 2000 kms on Monthly basis on hire with SCHEDULED QUANTITIES ARE 288 Vehicle Month, Custom Bid for Services – Item no 1 on holidays for 9 hrs duty with SCHEDULED QUANTITIES ARE 936 Vehicle day, Custom Bid for Services – Item 3 for Item no 1 rate per hr for the vehicle on duty beyond 9 hrs with SCHEDULED QUANTITIES ARE 12960 Hours, Custom Bid for Services – Item 4 Supply of brand new Non Ac Mahindra Bolero for 24 hrs duty with 5000 kms on Monthly basis on hire with SCHEDULED QUANTITIES ARE 288 Vehicle Month, Custom Bid for Services – Item 5 For item no 1 and 4 rate per kim beyond 2000 or 5000 kms running with SCHEDULED QUANTITIES ARE 108000 Kilometer, Custom Bid for Services – Item 6 Supply of brand new Ac Mahindra Bolero without driver and with 1500 kms per month on hire with SCHEDULED QUANTITIES ARE 36 Vehicle Month, Custom Bid for Services – Item 7 For item no 6 rate per km beyond 1500 kms running with SCHEDULED QUANTITIES ARE 18000 Kilometer.
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W.P(MD)No.20076 of 2022

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3.The writ petitioner applied in response thereto. The petitioner failed to opt under the MSE category. An MSE participant is exempted from paying EMD. The petitioner under erroneous impression that he had opted under the MSE category, failed to pay the EMD and thus, he was disqualified. Challenging his disqualification, the present writ petition has been filed.

4.When the matter was taken for hearing on 30.08.2022, the following interim order was passed:-

“Mr.V.B.Sundhareshwar, learned Central Government Standing Counsel takes notice for the first respondent.

2. Issue notice to the respondents 2 to 5 returnable by 09.09.2022. Private notice is also permitted.

3. Mr.Ajmal Khan, learned Senior Counsel appearing for the petitioner submitted that the petitioner applied in response to the tender notification issued by the second respondent. The petitioner applied under MSE Category and hence, is exempted from paying any EMD. However, on the ground that the petitioner has not applied for MSE purchase preference and that he had not paid the bid security amount, he had been disqualified.



W.P(MD)No.20076 of 2022

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4. *The learned Senior Counsel draws my attention to Page No.29 of the typed set of papers indicating that the petitioner had already been registered as MSE on the GeM Portal. He also draws my attention to the document uploaded in this regard. Prima facie, I am satisfied that the petitioner had been erroneously disqualified.*

5. *This Writ Petition was listed for admission yesterday, i.e., on 29.08.2022. The learned Central Government Standing Counsel took notice for the first respondent. I called upon the learned Central Government Standing Counsel to inform the NPCIL about the listing of the case today, i.e., on 30.08.2022. The learned Central Government Standing Counsel informs me that he sent an E-mail yesterday itself, i.e., on 29.08.2022 and they told over phone that they are appointing an independent counsel. The tender inviting authorities are aware that the Writ Petition is being listed for hearing today, i.e., on 30.08.2022. Unfortunately, there is no response. Since prima facie materials have been placed before me indicating that the disqualification of the petitioner is not sustainable, I restrain the respondents 2 to 5 from confirming the petition mentioned tender process.*

6. *Call the matter on 09.09.2022.”*

The respondents have filed a petition for vacating the interim order.



W.P(MD)No.20076 of 2022

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5. After hearing the learned counsel on either side, I am of the view that issue can be easily resolved. The fact remains that the petitioner is an MSE. It is not in dispute. In fact, the petitioner furnished udyam registration certificate also. His failure to opt under the MSE category appears to have been an inadvertent and condonable error. I, therefore, direct the respondents to condone the same. Once the petitioner's lapse is condoned, he is very much entitled to participate in the bid process. The petitioner's bid will be considered on merits and in accordance with law along with other participants.

6. The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

10.01.2023

NCS : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 12.01.2023.



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W.P(MD)No.20076 of 2022



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W.P(MD)No.20076 of 2022

G.R.SWAMINATHAN, J.

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W.P(MD)No.20076 of 2022

10.01.2023
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