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W.P.No.7290 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.7290 of 2022
and
W.M.P.No.7324 of 2022

M/s.Genus Electrotech Ltd.,
Survey No.43, Meghpar Borichi, Galpadar Road,
Anjar Taluk, Gandhidham,
Kutch District, Gujarat-370110

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Special Programme and Implementation Department,
Secretariat, Fort St.George, Chennai-600 009.

2.The Principal Secretary to Government,
Co-operation, Food and Consumers Protection Department,
Secretariat, Fort St.George,
Chennai-600 009.

3.The General Manager,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 26.04.2021 of the 3rd respondent and quash the same



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and consequently direct the respondents to release a sum of Rs.16,80,82,589/- which was deducted towards liquidated damages in respect of the supplies made under Phase II, III, IV and V of table fan and mixers to the 3rd respondent.

For Petitioner : Mr.S.Sivasurya

For R1 & R2 : Mr.T.Chandrasekaran
Special Government Pleader

For R3 : Mr.D.Ravichander
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 26.04.2021, thereby rejected the request made by the petitioner to return the damages amount.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner is the highest bidder in the tender called for by the third respondent. The Government, as per G.O.Ms.No.5, Special Programme Implementation Department dated 02.05.2012 (Phase-II), ordered to procure 35 lakh packages of electric table fans, G.O.Ms.No.7, dated 09.05.2013 (Phase-III) ordered to procure 35 lakh packages of electric table



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fans and 35 lakh domestic electric food mixer respectively and by

G.O.Ms.No.14 dated 25.07.2014 (Phase IV & V) ordered to procure 90 lakh packages of electric table fans and 90 lakh domestic electric food mixer, to implement the scheme of free distribution to the women beneficiaries belonging to families holding family cards eligible for drawing rice for the year 2012-2013, 2013-2014, 2014-2015 and 2015-2016. The petitioner was awarded contract for the supply of table fan and food mixer by the proceedings dated 04.06.2015.

4. The petitioner was originally awarded contract only a limited quantity of supply of table fans and food mixer but later since the some other suppliers who have originally awarded contract failed to supply the goods and as such contract for additional quantity of supply has also been awarded to the petitioner. However, the petitioner failed to supply the goods on time. Admittedly, the petitioner supplied the goods belatedly. As per the Clause 17 of the terms and conditions of the tender, a penalty clause has also been provided wherein it is clearly provided that if the successful tenderer fails to deliver the materials as per the delivery schedules specified, the third respondent will have the right to levy 1% of the value of the delayed quantity for every week of delay after the due date as penalty and the maximum penalty imposable by 5% of the



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value of the goods delivered belatedly. According to the petitioner, they requested further time to supply the goods and for waiver of penalty. Therefore, there was a delay of 120 days from the due date in supplying the goods.

5. A perusal of Clause 17 of the terms and conditions reveals that the Tamil Nadu Civil Supplies Corporation has the right to cancel the order partially or in full and entrust the supply orders to another tenderer at the risk and cost of the supplier, if the supply is delayed beyond 30 days after the due date. Further the jurisdiction in respect of any dispute arising out of non-fulfillment of any of the terms and conditions of the tender shall be subject to the jurisdiction of the Court in the city of Chennai. Therefore, the petitioner was imposed penalty from the petitioner's deposit. That apart, the said amount was deducted in the year 2006 towards the penalty. Whereas the petitioner made request in the year 2021 to repay the said amount by relaxing the period of time to supply the goods. Therefore, the respondents rightly rejected the request made by the petitioner and this Court finds no infirmity or illegality in the order passed by the third respondent. Thus the writ petition is devoid of merits and is liable to be dismissed.



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6. Accordingly, this writ petition stands dismissed. Consequently,

connected miscellaneous petition is closed. No costs.

02.04.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Special Programme and Implementation Department,
Secretariat, Fort St.George, Chennai-600 009.

2.The Principal Secretary to Government,
Co-operation, Food and Consumers Protection Department,
Secretariat, Fort St.George,
Chennai-600 009.

3.The General Manager,
Tamil Nadu Civil Supplies Corporation,
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G.K.ILANTHIRAIYAN. J.

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