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W.P.No. 10101 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No. 10101 of 2024
WMP.Nos.11136 & 11137 of 2024

M/s.Priyam Industries & Engineering
Private Limited, represented by its Director
C.K.Gnanavel s/o.Krishnan
Factory address at 48/88, Old Palani Road,
Kolinjivadi Agraharam,
Dharapuram, Tirupur District – 638 673.

... Petitioner

Vs.

1.The Secretary to Government
Government Rural Development and
Panchayat Raj Department,
Fort St.George, Chennai – 600 009.

2.The Director
Directorate of Rural Development and
Panchayat Raj Department,
Panakal Building, Saidapet, Chennai – 600 015.

3.The District Collector
O/o. The District Collector
Collectorate Complex,
Coimbatore 641 001.

4.The Project Director
District Rural Development Agency
Collectorate Complex,
Coimbatore – 641 001.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified mandamus to call for the records pertaining to new tender requirement made through GeM Portal under reference No.GEM/2024/B/4788293 dated 15.03.2024, issued by the 4th respondent and quash the same and consequently direct the 3rd and 4th respondent to classify the petitioner as “L1” to execute the further process for the supply of E Cart Garbage (V2)(Q3) BoVs vide reference No.GEM/2024/B/4551265 for 126 BoVs.

For Petitioner : Mr.B.Thirunavukkarasu

For respondents : Mr.M.Shahjahan, Spl.GP for R1 to R3.
Mrs.V.Yamuna Devi, Spl.GP for R4.

ORDER

This writ petition is filed to call for the records pertaining to new tender requirement made through GeM Portal under reference No.GEM/2024/B/4788293 dated 15.03.2024, issued by the 4th respondent and quash the same and consequently direct the 3rd and 4th respondent to classify the petitioner as “L1” to execute the further process for the supply of E Cart Garbage (V2)(Q3) BoVs vide reference No.GEM/2024/B/4551265 for 126 BoVs.



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2. The petitioner is the Managing Director of the Company incorporated on 02.05.2016 and bearing CIN No.U34109TN2016PTC110179 under the provisions of Companies Act, 2013 and also under the MSME Sector, pursuant to the registration under UDYAM TN-02-0059498 dated 02.06.2021 and carrying on manufacturing and trading of Fabricated metal products, primary cells and primary batteries and rechargeable batteries, cells containing manganese oxide, mercuric oxide silver oxide or other material, motor vehicles, other transport equipment such as push carts, handcarts etc and also manufacturing the E-cart Garbage Vehicles.

3. The second respondent issued notification under RC.No.56583/2023/SBM(G)-3 dated 20.01.2024 issued to 3rd respondent in respect to procurement of E-cart Garbage vehicles capable of carrying upto 310kgs garbage in a single trip through GEM portal issued together specification in Annexure I & II with detailed specification of vehicles contains with Brushless DC Motor having output power of 1200W, 100Ah capacity of Battery, 48v with Nominal Battery Voltage and having type of battery of Lithium Ion/Lithium Ferro Phosphate and together with other specifications in Annexure I and model template for the procurement of



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e-carts, capable of carrying upto 310kg of garbage in a single trip through the GeM Portal under the head of Bid Document and Bid details.

4. On 31.10.2023, the 2nd respondent under RC.No.56583/2023/SBM/(G)-3 issued the notification to the 3rd respondent to adhere the instructions and complete the procurement of e-cart together with Annexure-I containing the details of district wise panchayats with numbers and category and further, Annexure-II containing the details of District Wise overall requirements of BoVs (Battery Operated Vehicles), wherein the quantity procurement of BoVs for Coimbatore District is mentioned as 278 numbers and Annexure III contains the details of abstract of panchayats having funds under SBM(G) for procurement of all the required BoVs.

5. According to the petitioner, the company submitted the bid documents as per norms in respect of 4 items, under details of Bid End date as on 09.02.2024 for items 1, 3 and 4, under details of Bid End date as on 08.02.2024 for item 2 and participated by uploading the required documents on 30.01.2024 in respect of items 1, 3 and 4 and on 29.01.2024 in respect of item 2 through the official web portal. The bid



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document for all the 4 requirements contains the type of Motor requirement is for DC Motor.

6. The petitioner uploaded the required documents for evaluation and the details are contained in the Bid Participation Document through reference No.Bid No.GEM/2024/B/4553817 dated 10.02.2024, Bid No.GEM/2024/B/4557577 dated 08.02.2024, Bid No.GEM/2024/B/4551265 dated 10.02.2024 and Bid No.GEM/2024/B/4550768 dated 10.02.2024 respectively. In respect of Item No.3 technical evaluation results and status uploaded in GeM Portal contains the details of 12 Nos of participants, out of 12 Nos, 4 Nos were qualified (i)M/s.Eroyce Motors India Pvt Ltd (ii) M/s.Priyam Industries & Engineering Pvt Ltd / Petitioner herein (iii)M/s.Raja Arts Hitech Engineering and (iv)M/s.Ravi Metal Works and the remaining 8 other participants were disqualified to proceed for further tender norms. The financial evaluation results and status uploaded in GeM portal contains the details of 4 Nos of technical norms qualified participants price details and the petitioner company has given the best quote for a sum of Rs.3,94,25,400/- was declared as “L1” and a sum of Rs.3,12,900/- is quoted per unit price by the petitioner company. In this regard, the



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respondent has made a disclaimer condition *“These are offered prices in bid and not approved/accepted prices. These may change if buyer resorts to negotiation or price matches per bid conditions”*.

7. The petitioner is under the impression that the 3rd respondent will call upon to issue the acceptance letter and for further process of the requirement of the vehicles pursuant to the declaration of the above financial evaluation results. As on 24.03.2024, the petitioner was not called upon for any negotiation in respect to the price evaluation and to declaring them as “L1”. Whereas, the respondents called for fresh bids for the requirement of 126 Nos of E-cart Garbage (V2)(Q3) under reference No.GEM/2024/B/4788293 dated 15.03.2024 and fixed the date of bid opening on 25.03.2024. The same is contrary to the requirement of notification issued by the 2nd respondent under RC.No.56583/2023/SBM(G)-3 dated 20.01.2024 issued to 3rd respondent.

8. On 15.03.2024, the petitioner issued a letter to the 4th respondent requesting not to proceed on the new tender and further to call for any negotiation, if any. Further, on 22.03.2024, another request letter was issued by highlighting the irregularities of the specification change of



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AC Motor instead of DC Motor to 4th respondent. On 24.03.2024, the petitioner made an another representation to 3rd respondent by highlighting all the circumstances and requested to stop all further process pursuant to the issuance of the new bid offers issued under Ref.No.GEM/2024/B/4788293 dated 15.03.2024 and requested for price negotiation and particularly declared on price evaluation as “L1” to our company with a least quote for a sum of Rs.3,12,900/- per vehicle. The representation dated 24.03.2024 is duly served on the 3rd and 4th respondents in person on 25.03.2024. The petitioner left with no other effective alternative remedy, filed this writ petition to quash the reference No.GEM/2024/B/4788293 dated 15.03.2024.

9. The learned Special Government Pleader submits that only for an administrative reasons the earlier auction was cancelled and according to them notification was issued on 20.01.2024 for purchase of E-cart Garbage (V2) (Q3) 126 numbers through E-tender at GEM Portal. In the said auction 11 persons were participated and the petitioner was declared as “L1”. Thereafter, as per General terms and conditions on GeM 3.0 (Version 1.10) xiii e-Bidding and Reverse Auction (RS) on GeM Section (g) & (j), the authority is empowered to cancel the contract or to call for



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fresh notification, due to change in prices as on 20.01.2024 notification was cancelled and a fresh notification was issued on 15.03.2024.

10. It is further submits that GeM Portal was is in Active Status, the order for fresh notification has been obtained from the District Collector on 14.03.2024 in Na.Ka.No.4081/2023/A4. Due to the technical defects in the portal it has been wrongly uploaded as E-Cart Garbage (V2)(Q3) and it is not possible to register Brushless AC Motor instead of DC Motors and hence, the subsequent notification dated 15.03.2024 stands cancelled, stating that a fresh quotation will be called for on subsequent dates. Further, as per General terms and Conditions on GeM 3.0(version 1.10) xiii. E-Bidding and Reverse Auction (RS) on GeM Section (j), the authority is empowered to cancel or postpone the proceedings, and there is no question or negotiation for bid prices. It is also left open for the petitioner to participate in the fresh tender process, as per the procedures and as like the other bidders. Hence, the learned counsel prays for dismissal of the writ petition.

11. Recording the above submissions, this writ petition is disposed of. With liberty to the petitioner to participate in the fresh tender



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process, the respondents are also directed to issue notice to the petitioner, if any fresh notification is issued in this regard. No costs. Consequently, connected miscellaneous petitions are closed.

16.04.2024

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Internet : Yes

Index : Yes

Speaking order : Yes / No

To

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Panchayat Raj Department,
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2.The Director
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