



W.P.Nos.27057 and 27067 of 2024
and W.M.P.Nos.29573 & 29585 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

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

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and W.M.P.Nos.29573 & 29585 of 2024

1. Tecton Engineering & Construction LLC

P.O. Box No.6039, Ajman,

United Arab Emirates.

Having Chennai address as

7th Floor, Olive Towers, Arcot Road,

Porur, Chennai - 600 116.

Represented by its authorised signatory

K.Sreenivasa Devakumar

2. Zuberi Engineering Construction Private Ltd.,

H-4/58 Azad Marg,

C-Scheme, Near Janta Girls School,

Jaipur - 302 001.

...

Petitioners

[in both W.Ps.]

Vs.

1. Chennai Metropolitan Water Supply and Sewage Board,

Represented by Superintending Engineer,

Contracts and Monitoring,

No.1, Pumping Station Road,

Chintadripet,

Chennai - 600 002.



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2.Mega Engineering Infrastructure Limited,
S-2, Technocrats Industrial Estate,
Balanagar, Hyderabad - 500 037.
Telangana, India. ...

Respondents
[in both W.Ps.]

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India praying to issue Writ of Mandamus, directing the first respondent to disqualify the second respondent on the ground of suppression of material facts, more specifically with respect to Annexure.1 - Initial Filter Criteria and further direct the first respondent to open the price bids of the other bidders including that of the petitioner relating to supply, erection & commissioning of Product Water Transmission Mains for the 400 MLD Desalination Plant at Perur on East Coast Road, and all allied works including O&M for 20 years – “Package No.CP3-A from CH:0 to CH:27100 with 5km of Ductile Iron K9 Branch Line” and “Package No.CP3-B from CH:27100 to CH:54000” and evaluate the bids in terms of the tenders.

For Petitioners : Mr.L.N.Rajah
[in both W.Ps.] for Mr.P.J.Rishikesh

For Respondent No.1 : Mr.P.S.Raman
[in both W.Ps.] Advocate General
Assisted by
for Mr.Krishna Ravindran
Standing Counsel

For Respondent No.2 : No Appearance
[in both W.Ps.]



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COMMON ORDER

Both the Writ Petitions have been filed for direction directing the first respondent to disqualify the second respondent on the ground of suppression of material facts, from the tenders relating to “supply, erection & commissioning of Product Water Transmission Mains for the 400 MLD Desalination Plant at Perur on East Coast Road, and all allied works including O&M for 20 years” - for two packages viz., “Package No.CP3-A from CH:0 to CH:27100 with 5km of Ductile Iron K9 Branch Line” and “Package No.CP3-B from CH:27100 to CH:54000” and evaluate the bids in terms of the tenders.

2. In both the Writ Petitions, the petitioners are one and the same and they filed for the same relief in respect of two packages and therefore, this Court is inclined to pass a common order.

3. The first respondent floated tenders for the work of “supply, erection & commissioning of Product Water Transmission Mains for the 400 MLD Desalination Plant at Perur on East Coast Road, and all allied



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works including O&M for 20 years” - “Package No.CP3-A from CH:0 to CH:27100 with 5km of Ductile Iron K9 Branch Line” and “Package No.CP3-B from CH:27100 to CH:54000”, in which the petitioners participated and submitted their bid. The second respondent also participated in the tenders by submitting their bid. The tenders were floated on 28.04.2023 and the last date for submission of bids was 27.07.2023. The petitioners submitted their bid on 26.07.2023. The bid was submitted online and which was in two parts i.e. technical bid and price bid. Totally, there are 3 bidders, who participated in the tenders floated by the first respondent.

4. As per the tender notification at Vol.1 of the bid forms, the bidders have to fill the “initial filter criteria” as follows:-

Sl.No.	Contents	Yes	No
1	<i>Has the Bidder's Contract with any Organisation ever been terminated due to poor performance?</i>		
2	<i>Has the Bidder's Security Deposit for any Contract has ever been forfeited in any Central/State Government PSU?</i>		
3	<i>Has the Bidder suffered insolvency/ bankruptcy in the last five years?</i>		
4	<i>Has the Bidder been blacklisted by any Organisation?</i>		
5	<i>Is the Bidder's Net Worth negative?</i>		



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“Note: 1. "Yes" answer to any of the above 1 to 5 points shall disqualify the Bidder. 2 The Bidder should also enclose the following undertaking on Rs.100/- Non- Judicial Stamp Paper duly notarized as per the format given below along with the Technical Bid.”

5. Accordingly, the petitioners as well as the second respondent filled up the relevant information as sought for in Annexure.1 of the tender notification and submitted their bid. On 27.07.2023, the bid was opened in the presence of the representatives of the bidders and it was also videographed.

6. The case of the petitioners is that they found that the second respondent had suppressed the crucial information of the questionnaire serialized as Serial No.2 of Annexure.1 and stated the answer as “No”. The second respondent’s security deposit was forfeited for the work allotted in its favour related to “Narmada Valley Development Authority” by the State of Madhya Pradesh. Aggrieved by the same, the second respondent approached the High Court of Madhya Pradesh and the forfeiture of the security deposit was confirmed.



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7. Therefore, the petitioners submitted representations to the first respondent to take appropriate action as per the terms of the tender conditions on 13.10.2023. Whereas on the complaint lodged by the second respondent, the petitioners have issued with the notice dated 18.04.2024 for the very same set of allegations and thereby sought for an explanation. The second respondent alleged that the second petitioner was banned by M/s.Central Coal Fields, Ranchi, for a period of two years i.e. from 05.07.2021 to 04.07.2023 and the same was suppressed by the second petitioner while filling the Annexure.1 of the tender document.

8. Heard the learned counsel on either side and perused the materials available on records.

9. On perusal of the counter filed by the first respondent and also the submissions made by the learned Advocate General it is seen that, in order to meet out the requirement for water supply, the first respondent issued two tenders *via* E-Bids from the eligible bidders for



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“supply, erection & commissioning of Product Water Transmission Mains for the 400 MLD Desalination Plant at Perur on East Coast Road, and all allied works including O&M for 20 years” - “Package No.CP3-A from CH:0 to CH:27100 with 5km of Ductile Iron K9 Branch Line” and “Package No.CP3-B from CH:27100 to CH:54000”. The above said work was divided into two packages, in which there are totally 3 bidders, who had participated in both the tenders.

10. Apart from the petitioners and the second respondent, the third one is M/s.Jindal Water Infrastructure Limited. The bid evaluation is at an advanced stage and the technical evaluation has been completed and placed for approval by the competent authority and on approval, the financial bids of the responsive bidders will be opened.

11. As per Annexure.1, to ensure that all the bidders make a full and true disclosure of their antecedents so that the tender evaluation committee can take an overall view of the bidder's suitability. Admittedly, the second petitioner was disqualified by M/s.Central Coal Fields Ltd.,



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Ranchi and blacklisted them for two years. The tender conditions do not limit the bidder from even giving any explanation about the blacklisting. Therefore, the petitioners suppressed the said fact and still their tender has been evaluated for technical qualification. On the representation submitted by the petitioners dated 13.10.2023, the first respondent had examined the allegations.

12. In the meanwhile, another representation was received by the first respondent as against the second petitioner alleging that the second petitioner already suffered blacklisting and forfeiture of bid security, by M/s.Central Coal Fields, Ranchi, for a period of two years. Therefore, the first respondent has issued letter dated 18.04.2024 to the petitioners seeking clarification. As far as the allegations alleged by the petitioners as against the second respondent are concerned, the forfeiture of the security deposit of the second respondent was confirmed by the High Court of Madhya Pradesh.



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13. In view of the above facts and circumstances, the first respondent is directed to evaluate the bid of the petitioners as well as the second respondent and after considering the objection raised by the petitioners as well as the second respondent and third bidder namely, M/s.Jindal Water Infrastructure Limited and pass appropriate orders on merits and in accordance with law, within a period of two weeks from today.

14. With the above directions, these Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

01.10.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri

To

The Superintending Engineer, Contracts and Monitoring,
Chennai Metropolitan Water Supply and Sewage Board,
No.1, Pumping Station Road,
Chintadripet,
Chennai - 600 002.



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