BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.7589 of 2024
and
W.M.P.(MD).Nos.6947 to 6949 of 2024

M/s.Abacus Logistics Solutions,
Private Limited,
Rep by its Managing Director,
14, Third Floor, Baba Towers,
No.1 Sterling Avenue,
Nungambakkam,
Chennai - 600 034. ... Petitioner

Vs

1.The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli - 627 012.

2.M/s.Trillom Blonetsoft India Private Ltd.,,
Rep by its Director,
C1/12, Jaibarath Avenue,
Eri Scheme 6th Main Road,
Mogappair, Chennai 600 037.

3.Sri Sakthi Promotional Litho Process,
Rep by its Managing Director,
283, Masani Amman Nagar,
Anna Nagar, Coimbatore - 641 025.

4.M/s.Bakthavachalam and Co
Chartered Accounts, Rep by its Partner,
343, K.S.Annalakshmi Street,
Near Saibaba Temple,
K.K.Purdur, Coimbatore – 641 038. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, culminating in the impugned order dated 13.03.2024 made in MSU/R/C.Pur./e-tender/ Exam Automation / 01-14/2024 and quash the same and consequently direct the first respondent to confirm the tender upon this petitioner as the next eligible tenderer pursuant to the en-tender Notification No.MSU/R/CoE/Exam.Automn./2023-001 dated 03.11.2023.

For Petitioner	: Mrs.G.Thilagavadi, Senior Counsel for Gopinath Radhakrishnan
For R-1	: Mr.H.Mahaboob Athiff, Standing Counsel
For R-2	: Mr.Shaji Chellan
For R-3	: Mr.Arun Anbumani
For R-4	: Mr.A.Saravanakumar (Given Up)

O R D E R

Heard the learned Senior Counsel appearing for the petitioner, learned Standing Counsel appearing for the first respondent / University and the learned Counsel appearing for the second and third respondents.

2. M.S.Sundaranar University issued E-Tender Notification calling for sealed tenders under two cover system from IT based Companies for implementation of automated examination processes through an Enterprise solution and supply of examination related stationary items in respect of examination works of University on Build, Operate, and Transfer of Electronically editable date (BOT) basis for a period of Three years (Six Semesters) from April 2024 semester examination. The notification was followed by a Corrigendum / Addendum. As a result of which, the participation in the tender by consortium of two different entities was also permitted. The writ petitioner was one of the tenderers, who applied in response thereto.

3. The second and third respondents formed a consortium and they also applied and they turned out to be successful. The Work Order

was issued on 22.03.2024 and a formal agreement was also entered into between the University and the consortium on 22.03.2024, Challenging the award of tender in favour of the consortium (Respondent Nos.2 and 3 herein), this Writ Petition came to be filed on 25.03.2024.

4. The matter was listed under the caption “For Admission” on 26.03.2024. The learned Standing Counsel appearing for the University as well as the learned counsel appearing for the private respondents took notice.

5. The learned Senior Counsel appearing for the petitioner first contended that the E-Tender Notification permits the participation only by an incorporated Company and that therefore, the consortium should also comprise only incorporated Companies. In this case, the third respondent is not a Company. It is only a partnership firm. In order to make it appear as if the consortium is entitled to participate in the tender, the fourth respondent herein, which is a Chartered Accountant Firm had given Certificate as if the third respondent is also an incorporated Company. Copy of the Certificate issued by the fourth respondent has

been enclosed in the typed-set of papers. The said Certificate dated 28.11.2023 describes the third respondent as M/s. Sri Sakthi Promotional Litho Process Private Limited. The petitioner has given a complaint before the Institute of Chartered Accountants of India, who in turn had issued notice to the fourth respondent on 01.03.2024.

6. The E-Tender Notification states that the bidding tenderer should be an IT based Company registered under the Indian Companies Act or with equivalent bodies. If the intention of University was to permit only an Incorporated Company to take part in the bidding process, then, the expression “equivalent bodies” would not have found place in the Tender Notification. One can take judicial notice of the fact that the company can be registered only under the Indian Companies Act and not under any other statute. I conclude that the University wanted participation by registered entities. An entity can be registered under the provisions of the Societies Registration Act, 1860, The Tamil Nadu Co-operative Societies Act, 1983 or the Indian Partnership Act, 1932. In this case, the third respondent has been registered as a ‘firm’. That apart, the Corrigendum issued by the University clearly states that even a consortium

by two different entities can take part. The learned Standing Counsel for University draws my attention to the decision of the High Court of Himachal Pradesh, Shimla in ***CWP No.601 of 2017*** in the case of ***Ashok Leyland Limited Vs. the Himachal Pradesh Road Transport Corporation and another***. The judgment was authored by Mr.Justice.K.Sanjay Karol (as His Lordship then was). It was held therein as follows:

> "68. *The purpose of accepting the Consortium Bidding is that in modern commercial tenders where varied fields of expertise are required, a single party may or may not possess all the requisite qualifications and therefore, Consortium Bidding is permitted. In that, the members of the Consortium may collectively bring with them, their varied expertise into the tender bid. Whenever Consortium Bidding is done, it is necessary, at least for any one of the constituents of the Consortium, to satisfy each of the tender qualifications. The term "Consortium" literally means a combination of several companies, banks, etc. for a common purpose. In the case of a Bidding Consortium, the Lead Developer/Lead*

Consortium Member shall be that Consortium Member vested with the prime responsibility of developing the project. The Lead Consortium Member shall necessarily make the maximum entity contribution in the project among the consortium members. As long as the norms are clear and properly understood by the decision-maker and the bidders satisfy the requirements, then, there is no difficulty in accepting Consortium Bidding.”

7. There is considerable merit in the stand of the contesting respondents that the lead bidder / tenderer should be a registered entity. In this case, admittedly, the second respondent herein was the lead tenderer and it is a very much an incorporated Company. I have already held that since the third respondent is also a registered entity it being a registered partnership firm, I do not find any error committed by the University in choosing the said consortium. Hence, I am not in a position to endorse the first contention advanced by the learned Senior Counsel appearing for the writ petitioner.

8. The second contention urged by the learned Senior Counsel is that the GST Registration Certificate filed by the consortium is

incorrect. This contention is sought to be made good by pointing out that the document uploaded by the consortium. It contains the names of the persons, viz., Ramasamy, Arivuselvam, Nagarajan and Muthumani. On the other hand, the details found in the ROC website would indicate that as on 31.03.2023, Ramasamy, Arivuselvam, Indulakshmi, Nagarajan and Muthumani were Directors of the second respondent Company. In other words, Indulakshmi was not one of the Director when the document was uploaded. The question whether on this ground the consortium should have been shown the doors is the next point for consideration.

9. The learned counsel appearing for respondent Nos.2 and 3 would point out that all that the notification required was that the copy of the GST Registration Certificate issued by the Government of Tamil Nadu should be uploaded. In this case, the Certificate uploaded by the consortium was issued in the year 2019. I find considerable merit in the contention of respondent Nos.2 and 3 that the object of incorporating this requirement is that the entity participating in the tender should have GST registration. That the Certificate uploaded by the applicant did not contain the updated particulars will not go to the root of the matter. Of course, the

learned Senior Counsel appearing for the petitioner emphasized that as per Rule 19(1) of the CGST Rules, 2017 r/w Section 22 (1D) of the GST Act, the office of Director is a matter of considerable significance. But in the matter of tender, this does not go to the root of the matter. The uploaded document is genuine; it did not contain updated particulars. Therefore, I am not able to agree with the second contention advanced by the learned Senior Counsel appearing for the petitioner.

10. The learned Senior Counsel then contended that the consortium is utterly lacking in experience and that they had submitted incomplete documents. The materials enclosed in the typed-set of papers clearly show that the second respondent had supplied software solutions to quite a few educational institutions. My attention is drawn to the Certificate issued by the Tamil Nadu Teachers Education University as well as the Mother Terasa Women's University, Kodaikanal and Tamil University, Thanjavur. There is again not much of merit in the contention that annual turn-over certificate issued by the Chartered Accountant is false. At best, it can be described as a typing error.

11. The learned counsel appearing for the third respondent convincingly demonstrated that the particulars set out in the said Certificate are in consonance with income returns filed by the third respondent. It is also seen that the third respondent had filed other documents such as the partnership deed etc. Even the agreement entered into between the parties describes the third respondent only as a firm, I am satisfied that the University was not in any way misled by the typing error in the Certificate issued by the Chartered Accountant.

12. The learned Standing Counsel appearing for the University points out that the agreement is for a period of three years. As a result of accepting the bid of the consortium, the University stood to gain to the tune of Rs.7.93 Crores. It is also stated that the examinations are due to commence on 22.04.2024 and that even before the Writ Petition was filed, work order was issued and agreement has also been entered into between the parties.

13. I am satisfied that the first respondent / University has not breached any of the principles relating to tender laws in accepting the bid of the consortium.

14. In the result, the Writ Petition stands dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

15.04.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG
To
1.The Registrar,
Manonmaniam Sundaranar University,
Abishekapatti, Tirunelveli - 627 012.

2.M/s.Trillom Blonetsoft India Private Ltd.,,
Rep by its Director,
C1/12, Jaibarath Avenue,
Eri Scheme 6th Main Road,
Mogappair, Chennai 600 037.

3.Sri Sakthi Promotional Litho Process,
Rep by its Managing Director,
283, Masani Amman Nagar,
Anna Nagar, Coimbatore - 641 025.

4.M/s.Bakthavachalam and Co
Chartered Accounts, Rep by its Partner,
343, K.S.Annalakshmi Street,
Near Saibaba Temple,
K.K.Purdur, Coimbatore – 641 038.

G.R.SWAMINATHAN, J.

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