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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.12.2023

Pronounced On : 03.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.25418, 25541, 26026, 26047, 25442, 25537, 25538,
25539 & 25540 of 2023

and

W.M.P.(MD)Nos.22396, 21718, 21719, 21720, 22397, 22408, 21714,
21715, 21716, 21717, 21712, 21713, 21590, 21614, 21709, 21710 &
21711 of 2023

W.P.(MD)No.25418 of 2023

AL Ameen Timbers

Represented by its Proprietor Sakeer Hussain

S/o.Samsudeen,

Door No.12-3/12-9-2B,

Nazar Manzil, Maniyankuzhi Junction,

Maniyankuzhi Post,

Kalkulam Taluk,

Kanyakumari-629 161.

... Petitioner

Vs.

Arasu Rubber Corporation Limited,

Represented by its Managing Director,

Nagercoil-629 001.

Kanyakumari District,

Tamil Nadu.

... Respondent



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of rejection e-auction cum e-tender in C.No.D1.9967/2023, dated 09.10.2023 for right to do slaughter tapping of latex, feeling and removal of mature rubber trees in Kallur Taluk of Kodayar Division (Coupe No.86 Bit II) issued by the respondent and quash the same as illegal and consequently, direct the respondent to confirm the said tender in favour of the petitioner herein.

For Petitioner : Mr.P.Puhazhgandhi

For Respondent : Mr.A.K.Manickam
Additional Government Pleader

COMMON ORDER

Heard both sides.

2. Arasu Rubber Corporation, a Government of Tamil Nadu undertaking, issued notices dated 19.07.2023 inviting tenders for right to do slaughter tapping of latex, felling and removal of matured rubber trees in Arasu Rubber Corporation. The process was through e-tendering mode. The notices were in respect of various divisions/coupe/bids. The petitioners herein submitted their tenders in response thereto. The



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petitioners figured as the highest bidders in the respective tender processes. However, the respondent rejected the tenders on the ground that they were single bids. The impugned orders were issued on 09.10.2023. Though they are in respect of different works, the following stereotyped reason was set out in all the rejection orders:-

“Only single bid received. Hence, this e-auction cum e-tender is rejected.”

Challenging the rejection orders, the writ petitions have been filed.

3. The learned counsel for the petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions and called upon this Court to grant relief as prayed for. He relied on a few decisions of the Hon'ble Supreme Court in support of his contentions.

4. The respondent corporation filed common counter affidavit. Their stand is that the petitioners have not offered competitive rates and that there was lack of competition and that the bidding pattern by a small set of contractors raises serious suspicion of collusion among them to rig the tender process. The respondents contend that this was the only reason for cancelling the tender process. Reliance is placed on a few



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decisions of the Hon'ble Supreme Court in support of the proposition that the highest bidder has no vested right to have the auction concluded in his favour and that the State or authority is not bound to accept the highest tender or bid. ***AIR 2023 Supreme Court 2717 (Tata Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking (Best) and others)***. The learned Additional Government Pleader took me through the contents of the counter affidavits and pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The only ground for cancellation of the tender process was that only single bids were received in response to the tender notices. It is well settled that the order passed by a public authority should speak for itself and that additional reasons cannot be supplemented in the form of counter affidavits. I am therefore called upon to see if the reason set out in the impugned orders is correct. It is obvious from the very face of the record that each tender notice received more than a single bid. For instance, in respect of Coupe No.87, bid 1 kodyar Division, 4 bids were received. Al Ameen Timbers, EVAT Enterprises, Shaaren Timbers & Works Contractor C.Jayasekar were the



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bidders. They were technically qualified. That is why, their price bids were opened. Copy of the tender scrutiny report has also been enclosed.

When there are four eligible participants, the tender process could not have been nullified on the ground that only a single bid has been received. All the 9 tender notices elicited multiple responses. Therefore, I have no hesitation to come to the conclusion that the reason set out in each of the impugned orders is incorrect.

6. It is true that a tenderer has no right to insist that he should be awarded the contract on the sole ground that he was the highest bidder. It is equally true that the tender inviting authority can cancel the tender process itself. But as rightly pointed out by the learned counsel for the petitioners, such a decision cannot be arbitrarily taken. Article 14 of the Constitution of India is very much applicable to tender processes conducted by State instrumentalities. The Hon'ble Supreme Court in the decision reported in *MANU/SC/0986/2023 (EVA Agro Feeds Private Limited Vs. Punjab National Bank and others)* held as follows:-

“34.1. A conjoint reading of the aforesaid provisions would make it clear that while the highest bidder has no indefeasible right to demand acceptance of his bid, the Liquidator if he does not want to accept the bid of the highest bidder has to apply his mind to the



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relevant factors. Such application of mind must be visible or manifest in the rejection order itself. As this Court has emphasized the importance and necessity of furnishing reasons while taking a decision affecting the rights of parties, it is incomprehensible that an administrative authority can take a decision without disclosing the reasons for taking such a decision.

42. Thus, mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to incurring of avoidable expenses but also erode credibility of the auction process itself. That apart, post auction it is not open to the Liquidator to act on third party communication and cancel an auction, unless it is found that fraud or collusion had vitiated the auction. The necessary corollary that follows therefrom is that there can be no absolute or unfettered discretion on the part of the Liquidator to cancel an auction which is otherwise valid. As it is in an administrative framework governed by the rule of law there can be no absolute or unfettered discretion of the Liquidator. Further, upon a thorough analysis of all the provisions concerning the Liquidator it is evident that the Liquidator is vested with a host of duties, functions and powers to oversee the liquidation process in which he is not to act in any adversarial manner while ensuring that the auction process is carried out in accordance with law and to the benefit of all the stakeholders. Merely because the Liquidator has the discretion of carrying out multiple auction it does not necessarily imply that he would abandon or cancel a valid auction fetching a reasonable price and opt for another round of auction process with the expectation of a better price. Tribunal had rightly held that there were no objective materials before the Liquidator to cancel the auction process and to



opt for another round of auction.”

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7. Respectfully applying the ratio laid down above, I hold that the impugned orders are liable to be set aside. The reason set out therein is false. The offers made by the petitioners are without doubt higher than the upset price fixed by the corporation. Nothing prevented the corporation from fixing a competitive minimum rate in the tender notification itself. In this view of the matter, the impugned orders are set aside. Work orders shall be issued in favour of the petitioners as expeditiously as possible. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

03.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

Arasu Rubber Corporation Limited,
Represented by its Managing Director,
Nagercoil-629 001.
Kanyakumari District,
Tamil Nadu.

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G.R.SWAMINATHAN, J.

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W.P(MD)No.25418 of 2023 etc., batch

03.01.2024