



W.P.No.4803 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.4803 of 2025
and W.M.P.No.5326 of 2025

Peter & Miller Packers,
Represented by its Proprietor,
K.Asokan

.. Petitioner

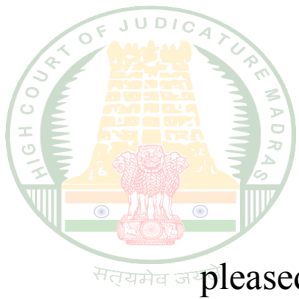
Versus

1. The Chief General Manager (Contracts),
Indian Oil Corporation Ltd.,
South Regional Office,
No.139, Uthamar Gandhi Salai,
Chennai - 600 034.

2. The Chief Manager (Contracts),
Indian Oil Corporation Ltd.,
Marketing Division,
South Regional Office, 8th Level,
No.139, Uthamar Gandhi Salai,
Chennai - 600 034.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,



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pleased to issue a Writ of Mandamus directing the respondents to consider the representation of the petitioner, dated 06.02.2025 and re-verify validate and approve the credentials of the petitioner as MSE both online in GeM profile and also in the bid documents being eligible under the preferential bidder category in respect of the bid document submitted by the petitioner bearing Bid Number GEM/2024/B/5618922, dated 17.12.2024 with regard to Tender No.SRCC/JAK/PT/146/SRO-LBP/2024-25 for filling of 2T Supreme oil in 20 ml/40 ml/60 ml pouches in Southern Region in order to enable the petitioner to participate in the bid as a registered MSE for the purpose of availing purchase preference.

For Petitioner : Mr.K.S.Viswanathan,
Senior Counsel,
Ms.T.Hemalatha

For Respondents : Mr.Mohammed Fayaz Ali

ORDER

This Writ Petition is filed with a prayer to consider the representation of the petitioner, dated 06.02.2025 and re-verify and validate and approve the credentials of the petitioner as MSE both online in GeM profile and also in the bid documents being eligible under the preferential bidder category in

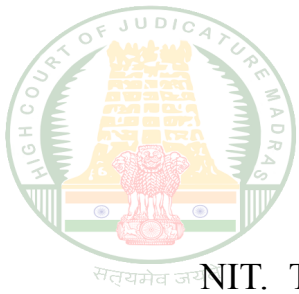


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respect of the bid documents submitted by the petitioner on 17.12.2024 in respect of the tender that is floated for filling up of 2T Supreme Oil in 20 ml, 40ml and 60 ml pouches in southern region in order to enable the petitioner to participate in the bid as a registered MSE for the purpose of availing purchase preference.

2. The brief facts, in which, the Writ Petition arises is that the respondent had issued a notice inviting tender on 19.11.2024 through the Government e-Marketplace (GeM portal) launched by the Government of India to facilitate the purchase of goods and services. The estimated value of the work is Rs.11,68,60,135.61 ps including GST at 18% for a period of two years. The Earnest Money Deposit is Rs.2,95,500/-. The Earnest Money Deposit is exempted for the applicants who are registered as MSE (Micro and Small Enterprises) under the Micro, Small and Medium Enterprises Development Act, 2006. The intending bidders are required to furnish proof of their pre-qualification experience as provided under the



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NIT. The bidders should also own their own land premises or should have a lease for a minimum area of 3,500 Sq.ft for the purpose of storage facility with a filling capacity of 6 Kilo litre per day. The bidding process shall have a technical evaluation consisting of two stages. In the first stage, the pre-qualification criteria shall be examined such as verification of documents like financial documents, work experience and land documents. The Stage-II comprises of a Technical Committee comprising of three members who shall instruct the storage facility offered by the bidders. The first stage of evaluation was completed on 03.02.2025 and the second stage of technical evaluation commenced on the said date.

3. It is at this stage, the petitioner has filed the present application to consider the petitioner's bid under the MSE category. It is stated that while filling up the application in the GeM portal, when there is a specific column with reference to whether the petitioner is willing to be brought under preferential bidder option as MSE, the petitioner categorically selected the



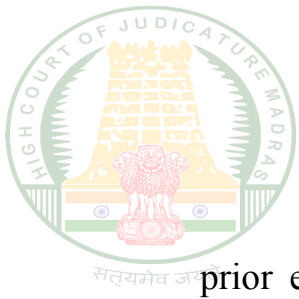
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option 'NO' instead of 'YES'. Therefore, the petitioner, though is being considered along with the other candidates in the technical bid, he is not considered in the preferential quota of MSEs. Therefore, when the petitioner did not prefer the same, he was not considered.

4. Heard *Mr.K.S.Viswanathan*, learned Senior Counsel for the petitioner and *Mr.Mohammed Fayaz Ali*, learned Counsel for the respondents.

5. *Mr.K.S.Viswanathan*, learned Senior Counsel for the petitioner would submit that there is a process of revaluation in GeM portal regarding the MSE enterprises. Perhaps, because of the fact that the revaluation was not done and the same was not updated on the date of application, the relevant column with the option 'YES' was not consumed by the portal and the petitioner is an MSE. It is availing the benefit of MSE even with reference to the existing contracts with the respondent organisation. It has



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prior experience. Even in the present application, the petitioner claimed exemption even for payment of Earnest Money Deposit. Therefore, it can never be the intention of the petitioner to select 'NO' and not to avail the benefit of MSE category. It is the mistake of the portal or bonafide mistake while filling up the online form.

6. For the bonafide mistake which does not result in any qualification of the petitioner being lacking as on the date of tender condition, the petitioner is now sought to be excluded from the MSE category. Therefore, this is a fit case where this Court should interfere.

7. Per *contra*, Mr.Mohammed Fayaz Ali, learned Standing Counsel for the respondent would submit that the Tender committee will evaluate the tender strictly as per the processes. It is the petitioner's own making that the petitioner selected the option 'NO' with reference to the preferential category of MSE. Even though the mistake may be trivial in nature, yet, with



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reference to tender process, since it effects the third parties, the Tender Committee will not give any preferential treatment to the petitioner alone to correct the mistake. No mistake will be permitted to be corrected. In view thereof, as per the petitioner's own application, the Committee has evaluated and the petitioner is still in the fray, not under the MSE category but under the General Category. There are other candidates who selected 'YES' in respect of MSE category and are in the fray also. Therefore, when the rights of the third parties are involved especially in matters of tender, neither the Tender Committee can extend any special concession to the petitioner nor this Court should interfere in the matter under the Article 226 of the Constitution of India.

8. The learned Counsel would rely upon the judgment of this Court in ***Hero Ecotech Ltd., rep. by its Authorized Signatory Vs. Commissioner of Backward Class Welfare***¹, more specifically relying upon paragraph No.23

which reads as follows:-

¹ 2018 (4) CTC 47



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"23. It is not that the Petitioner is participating in this Tender process as a first time. Therefore, they must be fully aware of the Tender conditions and the specific requirements of the samples to be supplied for testing. If they fail to supply such samples conforming to 100% satisfaction of the Technical specifications, they cannot find fault with the Respondents, if their Technical Bid is rejected on the reasons that the same does not conform to the Technical specification."

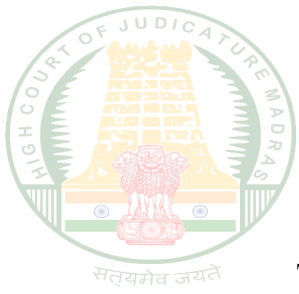
9. The learned Counsel would also rely upon a Division Bench judgment of this Court in ***Tamil Nadu Police Housing Corporation Limited***

Vs. P & C Projects (P) Limited², more specifically relying upon paragraph

No.36 which reads as follows:-

"36. In the light of the above law, laid down by the Hon'ble Supreme Court, in various decisions cited supra we are constrained to conclude that the learned Single Judge was not right in going into the nature of the conditions and the violations. We are of the considered opinion that whether the bidder/ tenderer should be given an opportunity to correct the mistakes or the bid should be rejected at the stage of technical evaluation itself for non-compliance with the tender conditions is a matter which is solely within the purview of the Tender Evaluation Committee and this Court cannot substitute its own reasons."

² 2018 (5) CTC 387



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Thus, the learned Counsel would submit that even for trivial mistakes, if the Tender Committee is of the opinion that the same cannot be corrected, the Courts will not interfere.

10. I have considered the rival submissions made on either side and perused the material records of the case.

11. This Court firstly takes into consideration that the petitioner had claimed exemption even for payment of Earnest Money Deposit. The same is claimed only as an MSE category. In support thereof, the petitioner has uploaded the relevant documents that it comes under the MSE category. As a matter of fact, the bid has not been rejected by the respondents. The only question is that with reference to preference that is to be given as MSE category, the petitioner has not clicked the option 'YES' and instead clicked the option 'NO'. It is common knowledge that everyone has a difficulty with reference to uploading of online application. On several occasions,



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inadvertent errors occur on account of clicking the wrong option or the persons not able to scrutinise the online application in such a manner as they scrutinise the physical objections. Such innocuous mistakes do occur.

12. The cases that are relied upon by the learned Counsel relate to certain substantial procedural formalities that are to be complied with such as furnishing of samples etc. This is not a case that the petitioner did not upload the MSE certificate at all in the portal. Certificate has been uploaded. The petitioner has all the qualifications as MSE. The very purpose of the scheme that is floated itself is to encourage the MSEs. In that view of the matter, even the Division Bench judgment is not with reference to filling up of an application in online portal. The filling up of an application in an online portal is on a totally different consideration. Any person, sitting before the Computer and filling column after column, naturally undergoes certain difficulties while clicking or selecting the options.



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13. The matter has to be considered in a different perspective when it comes to merely selecting of different option in the online portal especially when no other qualification is lacking and no other substantial compliance of procedure is lacking. In that regard, I am of the view that this case is exceptional in nature while finding no fault with the Tender Committee's action, this is one case where the Court can come to the aid of the petitioner. The Court also considers the submission that is made on behalf of the respondent in the counter-affidavit that the first phase of the verification is over and the second phase of the technical verification is still on. Therefore, no prejudice will be caused to the respondents to consider the petitioner also under the MSE category if they find otherwise the petitioner is eligible to consider under the said category by placing the credentials that are submitted along with the application without insisting for any subsequent credentials, that is, by ignoring the option that is clicked in the online application alone.



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14. In view thereof, this Writ Petition is disposed of on the following terms:-

(i) The respondents are directed to consider the petitioner's bid under the MSE category notwithstanding the fact that the petitioner clicked 'NO' in the online portal and consider his claim in accordance with law with reference to all other aspects and include him in the process of selection;

(ii) Needless to mention that the petitioner will be considered under MSE category for the purpose of price preference if the respondents find that he is otherwise eligible and is in order;

(iii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

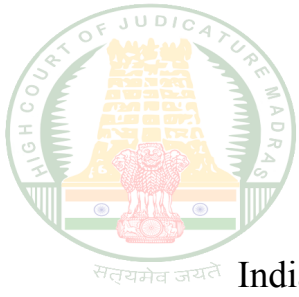
18.02.2025

Neutral Citation : no
grs

To

1. The Chief General Manager (Contracts),

<https://www.mhc.tn.gov.in/judis>



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South Regional Office,
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D.BHARATHA CHAKRAVARTHY, J.

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and W.M.P.No.5326 of 2025



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