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WP.No.13440 of 2025

In the High Court of Judicature at Madras

Reserved on 22.8.2025	Delivered on : 26.8.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.13440 of 2025
& WMP.Nos.15072, 15074 & 15076 of 2025

Consortium of Ashoka Buildcon
Limited & TECTON Engineering
& Construction LLC rep.
through its Authorized
Representative K.Suresh

...Petitioner

Vs

1.State Industries Promotion
Corporation of Tamil Nadu,
rep. through its Chairman,
having its registered office
at 19-A, Rukmani Lakshmipathy
Road, Egmore, Chennai-8.

2.State of Tamil Nadu,
Ministry of Industries,
Investment Promotion &
Commerce Department rep.
through its Secretary, having
its office at Secretariat,
Fort St.George, Chennai.
Tamil Nadu - 600009.

...Respondents



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PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to impugned communication dated 07.4.2025, quash the impugned communication dated 07.4.2025 issued by the respondent No.1 to the extent that it rejects the bid of the petitioner and consequently direct the respondent No.1 to consider the bid and documents submitted by the petitioner on their merits.

For Petitioner : Mr.C.Manishankar, SC for
M/s.Vivrti Law
Mr.R.Bharadwajaramasubramaniam

For R1 : Mr.J.Ravindran, AAG assisted by
Mr.Ramesh Venkatachalapathy
Standing Counsel

ORDER

The writ petition has been filed challenging a communication dated 07.4.2025 issued by the first respondent rejecting the bid submitted by the petitioner and for a consequential direction to the first respondent to consider the bid along with the documents submitted by the petitioner and permit the petitioner to participate in the further process of selection.



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2. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Additional Advocate General assisted by the learned Standing Counsel appearing for the first respondent.

3. The case of the petitioner is as follows :

(i) They are the consortium of M/s.Ashoka Buildcon Limited and M/s.TECTON Engineering and Construction LLC (for short, M/s.TECTON LLC). The said M/s.Ashoka Buildcon Limited is a company registered under the Companies Act, 1956 having registered office at Nashik, Maharashtra State with 74% stake. The said M/s.TECTON LLC is a foreign consortium partner and it is a company registered at United Arab Emirates (UAE) with 26% stake. Apart from that, M/s.TECTON Engineering and Construction (India) Private Limited is the wholly owned subsidiary of the said M/s.TECTON LLC.

(ii) The first respondent namely the SIPCOT decided to develop 60 MLD desalination plant at Mullakadu Village, Tuticorin District. Hence, the Notification for tender dated 07.6.2024 was issued inviting bids under two cover system through online mode from qualified bidders for an estimated value of work at Rs.904.07 Crores. A pre-bid meeting was held on 18.7.2024 where 29 bidders participated.



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Thereafter, four bidders submitted their bid including the petitioner.

The petitioner also submitted their technical bid and the price bid.

(iii) Originally, the date of opening of the bids was fixed on 23.8.2024. However, the bids were able to be opened only on 13.12.2024. On verification/scrutiny of the bids received, the petitioner did not satisfy the eligibility criteria and hence, the bid submitted by the petitioner was rejected. The decision was communicated by the first respondent to the petitioner through the impugned letter dated 07.4.2025. Aggrieved by that, the above writ petition has been filed before this Court.

4. The first respondent filed a counter affidavit wherein they took the following stand :

(i) The petitioner did not satisfy the requirement under Clause 2.3(b) of the Request for Proposal (RFP) Document since only those entities, which are registered under the Indian Statutes namely the Companies Act, 1956/2013 or the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, are eligible whereas the joint venture member namely M/s.TECTON LLC is a company, which was registered in UAE and was not registered under the Indian Statutes.



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Therefore, the petitioner has not satisfied the eligibility criteria and was technically non responsive.

(ii) The bid process in the present case follows a national competitive bidding framework and therefore, the foreign bidders cannot participate like in the case of international competitive bidding framework. That apart, the Manual for Procurement of Goods will not have an overriding effect and in the State of Tamil Nadu, the Acts and the Rules as prevalent in the other States like Assam and Rajasthan are being followed where only the entities registered under the Indian Statutes will be eligible to participate in the RFP. Ultimately, the first respondent sought for dismissal of this writ petition.

5. The issue that arises for consideration is as to whether the petitioner did not satisfy the eligibility criteria as provided under Clause 2.3(b) of the RPF.

6. For proper appreciation, Clause 2.3(b) of the RFP is extracted as hereunder :

"2.3 Eligibility of bidders :

.....

b) A Bidder may be a 'Company'



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incorporated under Companies Act 1956/2013 as amended/modified/replaced from time to time or a firm registered under Indian Partnership Act, 1932 or a Limited Liability Partnership (LLP) registered under the Limited Liability Partnership (LLP) Act, 2008 or an AIF or any combination thereof with a formal intent to enter into a legally binding agreement to form a Consortium. A Consortium shall be eligible for bidding subject to the conditions set out in this RFP."

7. A reference was also made to Clause 2.6(g) of the RFP and the same is extracted as hereunder :

"(g) The Bidder (single entity or consortium of entities) shall incorporate appropriate Special Purpose Vehicle (SPV) under the Companies Act, 2013, to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV comply with the following additional requirements:

i. Number of members in a consortium shall not exceed 3 (three):

ii. The Lead Member shall together with its other Members of the Consortium directly hold at least 51% (fifty one percent) of subscribed and paid up equity share capital of the SPV, until 5th anniversary of COD.



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iii. *Each Consortium Member whose Technical Capacity and Financial Capacity was evaluated for the purposes of qualification and award of Project in response to the Bidding Documents shall hold at least 26% (twenty six per cent) of the issued and paid up equity share capital until the 5th (fifth) anniversary of the date of commercial operation of the Project and that the Consortium Member whose O&M Experience was evaluated for the purposes of qualification and award of the Project in response to the Bidding Documents shall hold at least 10% (ten per cent) of the issued and paid up equity share capital until the 5th (fifth) anniversary of the date of commercial operation of the Project and;*

iv. *The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause shall apply only when the Bidder is a consortium.*

v. *By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of an*



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Associate whose Technical Capacity and/or Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with the Bidding Documents, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may in its sole discretion disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise;

vi. Subject to the provisions of Clause (a), the Bid should contain the information required for



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each member of the Consortium;

vii. Members of the Consortium shall nominate one member as the Lead Member (the "Lead Member"). The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium."

8. Clause 2.6(q)(v) of the RFP was also relied upon, which is extracted as hereunder :

"(q) The following conditions shall be adhered to while submitting a bid :

.....

(v) The following provisions shall apply to persons from any country as a Consortium Member:

1. Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in Bidder or its Member is held by persons resident outside India or where an Bidder or its Member is controlled by persons resident outside India; or

2. if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of



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the Bidder or its Member.

3. The continued Qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final, conclusive and binding on the Bidder. The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition. The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

4. For determining the eligibility of Bidder from a country which shares a land border with India the following shall apply:

a) Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the competent authority, specified in Annexure-I of Order (Public



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*Procurement No.1) issued by Ministry of Finance
Department of Expenditure Public Procurement
Division vide F.No.6/18/2019 PPD, dated 23rd July
2020, which shall form an integral part of RFP and
DCA.*

*b) The Selected Bidder shall not be allowed
to sub-contract works to any contractor from a
country which shares a land border with India
unless such contractor is registered with the
competent authority."*

9. The learned Senior Counsel appearing on behalf of the petitioner submitted as follows :

(a) Clause 2.3(b) of the RFP, by itself, cannot be a bar to stop the petitioner from participating in the bid process since the word used is **"may"**. This Clause must be read along with the other clauses. Clause 2.6(g) talks about the bidder (a single entity or a consortium), which can incorporate the appropriate special purpose vehicle (SPV) to execute the concession agreement and implement the project. Thus, it will be open to the petitioner, which is a consortium to form an SPV and register it in India and thereby execute the concession agreement.

(b) He also placed reliance upon Clause 2.6(q) of the RFP and it talks about the subscribed and paid up equity share capital controlled



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by persons resident outside India. Thus, on a overall reading of the document, it was clear that there was no absolute bar in a consortium participating in the bid just because one of the partners in the consortium is a company registered outside India.

(c) He also brought to the notice of this Court the Manual for Procurement of Goods of the Government of India issued in the year 2024 and placed reliance upon Clause 4.2.1(6) and (7). Even foreign bidders can participate and submit their bid provided that they must submit their bid in Indian rupees and that they should not make any payment in foreign currency.

10. Per contra, the learned Additional Advocate General appearing on behalf of the first respondent submitted as follows :

(a) The case in hand involves a national competitive bidding framework where the foreign entities will not be permitted. Only the companies/consortium registered under the Indian Statutes will be permitted except in cases where it is an AIF (Alternate Investment Fund). The interpretation that was given by the first respondent will carry weight since it will only able to explain the actual intent behind including those clauses in the RFP.

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(b) Clause 2.3(e) of the RFP contemplates disqualification of a bidder for poor performance or non performance or inordinate delay in completion, etc., against whom, action can be initiated. It also contemplates action against the member of the consortium also. This would mean that even the member of the consortium must be an entity registered in India.

11. A plain reading of Clause 2.3(b) of the RFP makes it clear that the bidder has to be a company incorporated under the Indian Statutes namely the Companies Act 1956/2013 or a firm registered under the Indian Partnership Act, 1932 or a Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 or an AIF or a combination thereof. Even a consortium will be eligible for bidding subject to the conditions stipulated in the RFP. Thus, if the bid is made by a consortium, all the entities forming part of the consortium must have been registered under the Indian Law.



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12. It is true that the bidder, which can be a single entity or a consortium, can incorporate an SPV under the Companies Act, 1956/2013 to execute the agreement and implement the project. Hence, even if one of the consortium members is not registered in India, such consortium can create an SPV and participate in the bid. In the considered view of this Court, this cannot be done after the submission of the bid and this eventuality should have taken place even at the time of submitting the bid. In other words, it will be the SPV, which has to submit the bid and it cannot come into existence after the consortium submits the bid. This is in view of the fact that the eligibility criteria will be determined only at the time of presentation of the bid.

13. On a careful reading of the entire terms and conditions of the RFP together, this Court finds that the project involved wanted a national competitive bidding framework and that is the reason as to why such stipulation is made under Clause 2.3(b) of the RFP. The usage of the word "**may**" does not take away the object behind the terms and conditions, which contemplate that the entity or consortium can only be the national player and it cannot involve a foreign entity.



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14. The reliance placed on the Manual for Procurement of Goods, 2024 will not come to the aid of the petitioner since the first respondent has not chosen to adopt the same. Instead, they had chosen to proceed in line with the Procurement Rules in the States of Assam and Rajasthan, etc. Thus, they restricted the qualified bidders within India.

15. In so far as the interpretation of the terms of a contract is concerned, the scope of judicial review is very limited. Useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***Silppi Constructions Contractors Vs. Union of India*** [reported in 2020 (16) SCC 489] wherein the relevant portions read thus :

"19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear - cut case of arbitrariness or mala fides or bias or



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irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of [Article 12](#) of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As [laid down in](#) the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law [laid down in the judgments referred to above](#) is the exercise of restraint and caution; the need for



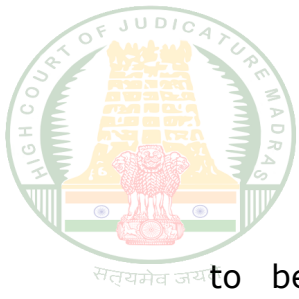
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overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

16. A reference can also be made to the judgment of the Hon'ble Supreme Court in the case of ***Utkal Suppliers Vs. Maa Kanak Durga Enterprises [reported in 2021 (14) SCC 612]*** wherein the same proposition of law was reiterated and it was held that the Authority, which floats the contract or tender and authored the tender document, is the best judge to explain as to how the documents have



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to be interpreted, that if two interpretations are possible, the interpretation of the author must be accepted and that the Court will interfere only to prevent arbitrariness, irrationality, bias, mala fides or perversity.

17. In the case in hand, the first respondent is the author of the RFP and they understood the terms and conditions to the effect that both the entity and the consortium should be incorporated under the Indian Law and that a foreign entity will not be permitted to participate in the tender. Just because a different meaning can be given to Clause 2.3(b) of the RFP by reading it along with other clauses, this Court cannot sit over the decision of the first respondent when it comes to understanding the terms of the RFP and giving them a different interpretation.

18. In the light of the above discussions, this Court does not find any ground to interfere with the decision taken by the first respondent.



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19. Accordingly, the above writ petition is dismissed. No costs.

Consequently, the connected WMPs are also dismissed.

26.8.2025

To

1.State Industries Promotion
Corporation of Tamil Nadu,
rep. through its Chairman,
having its registered office
at 19-A, Rukmani Lakshmipathy
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2.State of Tamil Nadu,
Ministry of Industries,
Investment Promotion &
Commerce Department rep.
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