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W.P.No.38606 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2025

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THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.38606 of 2024

Refex Green Power Limited,
Represented by its Authorised Signatory,
Second Floor, Refex Towers, Sterling Road Signal,
313, Valluvar Kottam High Road, Nungambakkam,
Chennai – 600 034.

... Petitioner

Vs.

1. The Technical Evaluation & Scrutiny Committee,
Tamil Nadu, Principal Secretary Conference Hall,
MAWS Department, 8th Floor, NKM Building,
Secretariat, Chennai.
2. Directorate of Municipal Administration,
Government of Tamil Nadu.
3. The Commissioner,
Coimbatore City Municipal Corporation,
Town Hall, Coimbatore – 641 001.
4. The Commissioner,
Madurai City Municipal Corporation,
Arignar Anna Maligai, Thallakulam,
Madurai – 625 002.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in the order styled as Minutes of Meeting of Implementation of Bio CNG projects in Corporations of the State – Madurai, Coimbatore, Tiruppur, Tiruchirappalli, Tambaram and Salem on Public Private Partnership Tender Evaluation and Scrutiny Committee – Tamil Nadu held on 02.12.2024 at 01:00 p.m., through Video Conference, Chennai, and quash the same as far as it declares the petitioner to be ineligible for participating in the financial bids of the respondents 3 & 4, and consequently direct the first respondent to approve the technical bid of the petitioner herein to participate in the financial bids of the respondents 3 & 4.

For Petitioner : Mr.Srinath Sridevan, Senior Counsel
for Mr.Surya Teja SS Nalla

For Respondents : Mr.J.Ravindran,
Additional Advocate General
assisted by Dr.T.Seenivasan,
Special Government Pleader

ORDER



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This writ petition is filed with a prayer of Certiorarified Mandamus, calling for the records on the file of the first respondent relating to the minutes of the implementation of Bio-CNG projects in the Corporations of the State – Madurai, Coimbatore, Tiruppur, Tiruchirapalli, Tambaram and Salem on Public-Private Partnership Tender Evaluation and Scrutiny Committee, Tamil Nadu, held on on 02.12.2024 at 01:00 p.m. through video conference, Chennai, and to quash the same in as much as it declares the petitioner to be ineligible in participating in the financial bids of the respondents 3 and 4 and consequently, direct the respondents to approve the technical bid of the petitioner and permit the petitioner to participate in the financial bid.

2. The factual background in which the writ petition arises is that the respondents floated a tender on 02.03.2024, inviting bids on Public-Private Participation mode on Design, Built, Finance, Operate and Transfer basis for a period of 20 years with reference to the establishment of Municipal Solid Waste based Bio-CNG plant at Coimbatore. The last date for submission of the bid was 22.04.2024. Thereafter, the time was periodically extended and ultimately, the last date was 26.06.2024. The petitioner also



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submitted its technical bid. As per Clause 2.2 of the tender document, the eligibility criteria and qualification criteria were prescribed. As per Clause 2 of the qualification criteria, the single bidder/ lead member of the consortium should have reported an average annual turn over of atleast Rs.15 crores in the last three consecutive financial years. Clause 2.2.7 of the tender documents state that in computing the technical capacity, net worth and turn over of the bidder/ consortium members under clause 2.2.2(b), the net worth turn over and experience of the respective associates would also be eligible as mentioned thereunder.

3. It is further mentioned that for the purpose of the Request For Proposal (RFP), an “associate” means, in relation to the bidder/ consortium member, a person who controls or is controlled by or is under the common control with such bidder/ consortium member (Associate). Therefore, the petitioner formed a consortium with one Spectrum Renewable Energy Private Limited, whereby the petitioner was the lead partner and the said company was the technical partner for the purposes of submitting the bid. The petitioner, in compliance with Clause 2.2.7 of the RFP, has submitted an average annual turn over of Rs.30.44 crores of its associate company viz.,



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Sherisha Technologies Private Limited, which has controlling power over the petitioner herein to meet the financial eligibility criteria as per the RFP. Since the Sherisha Technologies Private Limited owns 44% of the equity shares in Refex Renewable and Infrastructure Limited and since the petitioner is a wholly-owned subsidiary of Refex Renewable and Infrastructure Limited, it can be seen that the Sherisha Technologies Private Limited is an associate of the petitioner, which is the lead member and their annual turn over can also be taken into account for the purpose of meeting the eligibility criteria.

4. It is the further case of the petitioner that when the Tender Scrutiny Committee took up the issue of scrutinising the tender, they found the petitioner to be eligible. The Tender Committee, in its meeting, had considered the said turn over and with reference to both Coimbatore and Madurai had taken into account the said turn over of Rs.30.44 crores and it clearly made an entry that the qualification is verified and satisfied. However, three months later, the very same Tender Committee, for the reasons best known to them, once again seems to have taken up the concluded issue of verifying about the technical qualification, and the impugned order is passed, stating that since the Sherisha Technologies Private Limited holds only 44%



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in RPFL, the same proportion of the turn over alone will be considered and therefore, if 44% is calculated that comes only to Rs.13.39 crores and therefore, the petitioner was found to be not qualified in its technical bid by the impugned proceedings against which this writ petition is filed.

5. The writ petition is resisted by the respondents by filing a detailed counter-affidavit. It is the case of the second respondent that the technical capacity was duly ascertained and was in line with the RFP. It is further stated that on scrutiny of the petitioner's financial criteria, it revealed that the petitioner had claimed qualification by mentioning the Refex Green Power Limited as the lead member and Spectrum Renewable Energy Private Limited as a consortium member. On a further scrutiny, it is seen that the lead member is a 100% owned subsidiary of Refex Renewable and Infrastructure Limited and the said consortium member, Sherisha Technologies Private Limited holds 44% only in the said Refex Renewable and Infrastructure Limited and the remaining is held by third parties. It is further to be noted that even the financials of the said consortium partner, Sherisha Technologies



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Private Limited was only 2.17 crores with reference to the financial year 2020-2021 and 7.62 crores with reference to the financial year 2021-2022 and only in the year 2022-2023, it suddenly rose to Rs.81.52 crores because of a merger. Since the RFP mentions that the turnover of their respective associates will also be considered eligible, accordingly the turn over of the associate was considered. The entire turnover of the associate cannot be considered, since the associate will be bound to the extent of ownership only and any relaxation can potentially lead to bidders with lesser financial strength qualifying for the tender, which can potentially derail the projects like Bio-CNG, which has a long contractual period up to 20 years. In view thereof, the Tender Committee considered the 44% turn over of the said associate and rightfully restricted the turn over only to the extent of 44% of the turn over of its associate and if it restricted to 44%, it comes only to 13.39 crores, which is lesser than the 15 crores which is essential and therefore, the petitioner's technical bid has rightly been rejected.

6. Heard Mr.Srinath Sridevan, learned Senior Counsel appearing on behalf of the petitioner and Mr.J.Ravindran, learned Additional Advocate for the respondents.



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7. While reiterating the above submissions that are made in the affidavit filed in support of the writ petition, the learned Senior Counsel would only submit that firstly it can be seen that there is absolutely no stipulation in the RFP/ Tender documents that the eligibility will be calculated only to the extent of the share holding of the associate. Therefore, the Tender Evaluation Committee cannot change the rules of the game in the course of the game and introduce a new rule. Secondly, it is his contention that when the very same Tender Evaluation Committee has evaluated the tender and as early as on 02.09.2024 found that the petitioner's technical bid is valid and the petitioner's eligibility is valid and satisfactory, no ground whatsoever existed for the Tender Committee to once again revisit the technical bid of the petitioner. Pointing out to the counter, he would submit that even in the counter-affidavit, no reason whatsoever is forthcoming from the respondents as to why again in the month of December, the Tender Committee revisited the technical bid of the petitioner alone. Therefore, he would submit that the petitioner's technical bid should be held to be valid and their financial bid should also be opened along with the other eligible members, especially when there is no other impediment whatsoever.



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8. Per contra, Mr.J.Ravindran, learned Additional Advocate General appearing on behalf of the respondents would submit that in matters of tender, the Tender Committee should have a say. It consists of the experts and they evaluate the technical bids. Once they evaluate the technical bids and come to the conclusion, the scope for this court to interfere under Article 226 is very less. In this matter, the Tender Committee had considered the aspects that the contract is a long standing contract. The company that enters the fray should have a robust financial background and backup. Even the case of the petitioner is not a straight case that the petitioner or its consortium partner is having the turn over. The petitioner, being the lead partner, is claiming the said Sherisha Technologies Private Limited as its associate. It can be seen that it is claimed to be an associate only because of its share holding in the holding company. When it holds only 44% in the holding company, no exception whatsoever can be taken for the Tender Committee to restrict the turn over only up to 44%. As a matter of fact, the entire tender process is being conducted in a transparent manner. M/s.ITCOT were also appointed as an expert consultant to advice through the entire process. Therefore, only on their expert suggestions and advices, the Tender



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Committee along with the other experts have taken a decision. This court should not, in exercise of power under Article 226, supplant the views of the Expert Committee with of its own and therefore, there is no arbitrariness or unfairness in the entire exercise and therefore, there is nothing for this court to interfere in the matter.

9. I have considered the rival submissions made on either side and perused the material records of the case. Parties are bound by the terms of tender. Clause 2.2.2 is the one which prescribes the qualifying criteria, which is extracted hereunder for ready reference:-

“2.2.2. To be eligible for pre-qualification and short-listing, the Bidder shall fulfil the following eligibility and qualification criteria:

a. Eligibility Criteria:

<i>Clause</i>	<i>Eligibility Criteria</i>	<i>Supporting Documents/ Remarks</i>
<i>i.</i>	<i>i. The bidder shall be a registered legal entity in India and should be in existence for the past three years as on 31st March 2023.</i>	<i>(i) In case of Private/ Public Limited Companies, •Copy of Incorporation Certificate issued by the Registrar of Companies •Copy of Memorandum and Articles Association</i>



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	(ii) In case of Partnership Firm • Copy of Registered Partnership Deed
ii. In case of Consortium of bidders: a. Consortium of Bids is allowed with maximum of two members. b. One of the partners shall be designated as Lead member. c. Each partner of the Consortium should be a Registered Legal Entity in India and should be in existence for the past three years as on 31st March 2023. d. No partner of the Consortium should bid individually or be a partner of another Consortium	(i). The Consortium partners individually should submit the following: a. In case of Private/ Public Limited Companies, • Copy of Incorporation Certificate issued by the Registrar of Companies • Copy of Memorandum and Articles of Association b. In case of Partnership Firm, • Copy of Registered Partnership Deed (ii) The original Consortium Agreement should be submitted. The Consortium Agreement shall contain statement that all partners of the Consortium shall be liable jointly and severally for the execution of the



		<i>contract in accordance with the terms of concession agreement</i> <i>(iii) Joint Bidding Agreement as per Annexure – VIII.</i>
ii.	<i>The single bidder/ all of the Consortium should not have been blacklisted by Central Government, any State Government, as a Statutory Body, any Public Sector Undertaking, Banks or Financial Institutions and declared as NPA by Banks or Financial Institutions as on the date of issue of RFP.</i>	<i>(i) The declaration form as per Annexure IX should be enclosed. In case of Consortium, each partner should submit a separate declaration form.</i> <i>(ii) Further, if the bidder is found blacklisted in India before award of contract by any Government Agency, the bid will be rejected</i>

B. Qualification Criteria

Clause	Qualification Criteria	Supporting Documents/ Remarks
i.	<i>The single bidder/ partners of the Consortium should have successfully installed Municipal Solid Waste based Bio-CNG plant and completed commercial operation for a period of atleast 1 year as on the bid due date.</i> <i>a. 1 plant with a minimum capacity of 100 TPD</i> <i>(or)</i>	<i>Letter from the concerned local body covering the scope of work of the bidder, installed capacity, date of commencement of commercial operation and successful completion of operation & Maintenance for atleast 1 year.</i>



	<i>b. 2 plants with a minimum aggregate capacity of 125 TPD</i> <i>(or)</i> <i>c. 3 plants with a minimum aggregate capacity of 150TPD</i>	
ii.	<i>The single bidder/ lead member of the consortium should have reported an Average Annual Turnover* of at least Rs.15.00 Crores in the last three consecutive financial years i.e., 2020-21, 2021-22 and 2022-23.</i>	<i>(i) The average annual turnover statement duly certified by Chartered Accountant as per Annexure III</i> <i>(ii) The Annual report/ Certified copies of balance sheet, profit or loss statement for the last 3 consecutive financial years i.e., 2020-21, 2021-22 and 2022-23.</i>
iii.	<i>The single bidder/ lead member of the consortium should have reported a positive networth* as on 31st March 2023</i>	<i>Net worth certificate duly certified by Chartered Accountant as per Annexure IV.</i>

10. Further, the clause 2.2.7 reads as follows:-

“2.2.7. In computing the Technical Capacity, Net Worth and Turnover of the Bidder /Consortium members under Clause 2.2.2 (b), the Net Worth, Turnover and experience of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who



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controls, is controlled by, or is under the common control with such Bidder/ Consortium Member(the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of not less than 26% (Twenty six per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law. It is clarified that a certificate from the Statutory Auditor who audits the book of accounts or the Company Secretary of the Bidder or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium as the case may be."

11. Therefore, on a reading of both the clauses together, it can be seen that the lead partner can show its own turn over or that of an associate. It is not the case of the respondents that the said company viz., Sherisha Technologies Private Limited is not an associate. Once it is an associate, as per the tender conditions, the turn over of the associate can also be relied upon. It is the rule/term that is framed by the respondents themselves. Therefore, the respondents are bound to adhere to the same and cannot



introduce a new rule that would change the original position.

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12. Now, by the impugned exercise of power, the respondents are contending that they will take into account the turn over only to the extent of the share holding of the associate in the holding company. When such a rule is not there, the respondents cannot take such a stand. It is further to be seen that the respondents were in a dominant position to frame the tender conditions/ RFP. Therefore, the absence of any clause would only be held as adverse against them following the contra preferentem rule. In the absence of any such rule enabling the Tender Committee to restrict the turn over only to the extent of shareholding in the tender clauses/ RFP, the respondents or the Tender Committee ought not to have relied upon such a criteria. It would amount to introducing a new rule or altering the tender conditions. Therefore, I am of the view that the second exercise, which is done by the Tender committee, which is impugned in this writ petition is totally uncalled for, especially when already the petitioner's bid has been evaluated and it has been found that the petitioner's qualification is verified and satisfactory. As rightly pointed out by the petitioner, no reason is also mentioned as to why for the second time the Tender Committee took up the exercise as far as the



petitioner is concerned.

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13. In any event, the respondents have to go only by their own tender conditions and on a perusal of the above tender conditions, there is no express provision enabling them to restrict the turn over only to 44% and accordingly, I hold that the decision made in the impugned minutes unsustainable.

14. It is stated that the matter is at the stage of opening the financial bid. If there is no other impediment, the petitioner's technical bid shall also be taken as a valid technical bid and the petitioner's case shall also be included for the purposes of opening the financial bid. The learned Special Government Pleader also would bring to the notice about the difficulties as the GEM portal is not made as a party in the writ petition. However, the opening of the bids is very well in the realm of the respondents herein and therefore, there cannot be any difficulty for the respondents to consider the petitioner also as having qualified in the technical bid and including them in the further process. It is further brought to the notice that the Tender Committee/ respondents have also made a request by way of an e-mail, to

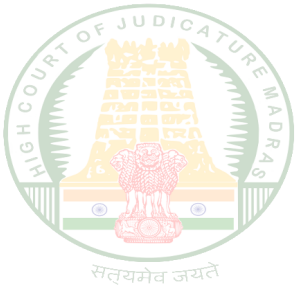


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create a corrigendum menu with reference to the Tender ID to make corrections in respect of the entries that are made. If the National Informatics Centre makes the arrangement in respect of the current tender immediately, the same can also be resorted to. Even otherwise, by making a physical record of the file, the respondents have to implement the order of this court.

15. In view thereof, this writ petition is disposed of with the following terms:-

- (i) The impugned proceedings dated 02.12.2024, being the minutes of the Tender Evaluation and Scrutiny Committee, thereby holding that the petitioner as unqualified, stands quashed;
- (ii) The respondents are directed to consider the petitioner as qualified with reference to the turnover as far as the technical bid is concerned and include the petitioner for further processes of the tender, including the opening of the financial bid, if there is no other impediment; and
- (iii) The same shall be done by way of compliance of this order, either physically or if they are empowered to make



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a corrigendum by the concerned digital portal through the
National Informatics Centre. No costs.

21.02.2025

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Neutral Citation : Yes

To

1. The Technical Evaluation & Scrutiny Committee,
Tamil Nadu, Principal Secretary Conference Hall,
MAWS Department, 8th Floor, NKM Building,
Secretariat, Chennai.
2. Directorate of Municipal Administration,
Government of Tamil Nadu.
3. The Commissioner,
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D.BHARATHA CHAKRAVARTHY, J.

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