

W.P.(MD)Nos.23924 and 25856 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 19.11.2024

Delivered On : **18.02.2025**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.23924 and 25856 of 2024

and

W.M.P.(MD)Nos.20265, 20267, 20268, 21944, 21946 and 21947
of 2024

M/s.Coresonant Systems Pvt. Ltd.,
No.303, Navketan Complex,
Opposite Clock Tower, SD Road,
Secunderabad,
Telangana - 500 003,
Represented by its Managing Director,
Shankara Krishna Sridev,
S/o. S.K.Nair

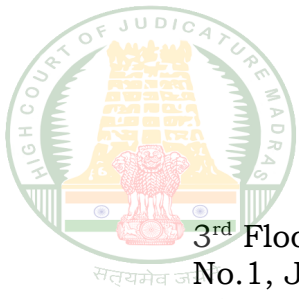
... Petitioner in both W.P.s

Vs.

1.V.O.Chidambaranar Port Trust,
Represented by its Chairman,
Administrative Office,
Harbour Estate,
Tuticorin - 628 004

2.The Traffic Manager,
V.O.Chidambaranar Port Trust,
Administrative Office,
Harbour Estate,
Tuticorin - 628 004.

3.M/s. ITI Lts.,
Rep. by its Managing Director,



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3rd Floor, Panagal Building,
No.1, Jeenis Road, Saidapet,
Chennai - 600 015.

... Respondents in both W.Ps.

(R3 is Impleaded Vide Court Order Dated
21.10.2024 in W.M.P.(MD)No.21400 of 2024 in
W.P.(MD)No.23924 of 2024 by NSKJ)

PRAYER in W.P.(MD)No.23924 of 2024 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the issuance of the impugned communication No.NIT.TRA-COMMORRFID(RFCO)/4/2023-Traffic(e.5003) dated 31.07.2024, issued by the 2nd respondent to quash the same as arbitrary, illegal and unjustified and consequently direct the respondents 1 and 2 to permit the petitioner herein to participate and open the price bid in the tender notification No.TRA-COMMORRFID(RFCO)/4/2023-Traffic(e.5003) dated 12.02.2024.

PRAYER in W.P.(MD)No.25856 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the issuance of the impugned order in TRA-COMMORRFID(RFCO)/4/2023-Traffic (e.5003) D.470 dated 04.09.2024 and the letter of award in TRA-COMMORRFID(RFCO)/4/2023-Traffic (e.5003) D.565 dated 12.10.2024 issued by the 2nd respondent to quash the same as arbitrary, illegal and unjustified and consequently direct the 1st and 2nd respondents to award tender in favour of the petitioner by opening its price bid submitted in pursuant to the tender notification No.TRA-COMMORRFID(RFCO)/4/2023-Traffic (e.5003) dated 12.02.2024.

For Petitioner (in both W.Ps.)	: Mr.Issac Mohanlal, Senior Counsel For Mr.A.Joseph Jerry
For Respondents 1 & 2 (in both W.Ps.)	: Mr.B.Saravanan, Senior Counsel For Mr.A.Arivu Chandran
For 3 rd Respondent (in both W.Ps.)	: No Appearance



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COMMON ORDER

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The prayer in W.P.(MD)No.23924 of 2024 reads as follows :-

“Writ Petition is filed, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the issuance of the impugned communication No.NIT.TRA-COMMORRFID(RFCO)/4/2023-Traffic(e.5003) dated 31.07.2024, issued by the 2nd respondent to quash the same as arbitrary, illegal and unjustified and consequently direct the respondents 1 and 2 to permit the petitioner herein to participate and open the price bid in the tender notification No.TRA-COMMORRFID(RFCO)/4/2023-Traffic(e.5003) dated 12.02.2024.”

2.The prayer in W.P.(MD)No.25856 of 2024 reads as follows :-

“Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the issuance of the impugned order in TRA-COMMORRFID(RFCO)/4/2023-Traffic (e.5003) D.470 dated 04.09.2024 and the letter of award in TRA-COMMORRFID(RFCO)/4/2023-Traffic (e.5003) D.565 dated 12.10.2024 issued by the 2nd respondent to quash the same as arbitrary, illegal and unjustified and consequently direct the 1st and 2nd respondents to award tender in favour of the petitioner by opening its price bid submitted in pursuant to the tender notification No.TRA-COMMORRFID(RFCO)/4/2023-Traffic (e.5003) dated 12.02.2024.”

3.The writ petitioner Company is a Private Limited Company, having its registered office at Hyderabad in the State of Telangana. The same is an organization, which possess persons with expert knowledge and multiple



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years of experience in the business of design, development, use, install, implement and support of RFID based access control systems including comprehensive annual maintenance contracts in 7 ports out of the 13 major ports including the first respondent Port. On 12.06.2024, the respondents issued an e-tender notification through the authorized traffic department, for supply, installation, testing, commissioning, operating, manning and maintenance of RFID based access control system on air basis with necessary hardware and software with all cabling at all entry/exit gates in the Port premises including comprehensive maintenance (inclusive of warranty) for a period of 5 years. Among the various companies which participated in the aforesaid tender, the petitioner Company also submitted their tender bid documents dated 18.03.2024, at 02.11 p.m., before the first and second respondents. During the pendency of the same, the respondents issued tender disqualification letter dated 31.07.2024, by a communication No.NIT: TRA-COMMORRFID(RFCO)/4/2023-Traffic (e.5003). Out of the 5 bidders, 3 including the petitioner Company were not considered for further valuation.

4.In response to the said tender disqualification letter dated 31.07.2024, the petitioner Company submitted an explanation on 02.08.2024, requesting the respondents to permit the petitioner Company to participate in the said tender notification dated 12.02.2024. The petitioner's explanation and request was not considered by the respondents and hence,



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the Writ Petition in W.P.(MD)No.23924 of 2024, came to be filed, challenging the impugned communication, disqualifying the tender of the petitioner Company and seeking to further direct the respondents 1 and 2 to permit the petitioner to participate in the tender notification dated 12.02.2024. The petitioner's tender came to be disqualified by the disqualification letter dated 31.07.2024, by citing the pending dues. The act of the second respondent refusing to take out the tender for non-settlement of dues is nothing, but indirectly taking away the right to claim the petitioner's security deposit and other dues in relation to an earlier contract of the petitioner Company with the second respondent Port.

5.While the matter was taken up for hearing in W.P.(MD)No.23924 of 2024 on 16.10.2024 before this Court, the learned counsel for the respondents 1 and 2 filed a typeset dated 14.10.2024, by which produced four documents including an impugned order of disqualification of bidders in TRA-COMMORRFID(RFCO)/4/2023-Traffic(e.5003) D.470 dated 04.09.2024 and the letter of award in favour of the third respondent dated 12.10.2024 and submitted that the tender was already awarded in favour of the third respondent. Challenging the same, the petition in W.P.(MD)No. 25856 of 2024 came to be filed.

6.The learned Senior Counsel appearing for the petitioner Company submitted that the reasons stated in the tender disqualification letter dated



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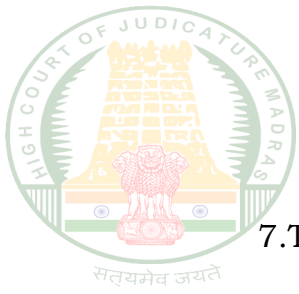
31.07.2004, is that the petitioner Company has pending dues for the work executed in the project *“Management and operation to Toll Gate at Check Post No: I and II of VOC PT - collection of penalty amount on over staying of vehicles and capturing dwell time of commercial vehicles for a period of 5 years”*.

Contending that the said tender work order was issued to the petitioner Company as early as by order dated 10.12.2024, the petitioner Company being the successful bidder of the aforesaid tender work, the project was commenced on 31st March 2015 and the operation started from 1st April 2016. While the petitioner Company was operating the said project till October 2018, the second respondent issued termination of contract dated 19.10.2018, without giving any opportunity of hearing to the petitioner Company, without any valid reason and without following any due process of law. More particularly, before giving the termination letter, the second respondent was supposed to follow the Rules and Regulations of the Micro, Small and Medium Enterprises Development Act, 2006. The second respondent ought to have given an advance notice before a period of 30 days from the date of foreclosing the tender and should have also released the security deposit back to the petitioner Company before foreclosure of the contract. Further, whenever a conflict arises between the Port Authority and the contractor, the matter should be referred for dispute resolution, following the mandates of the tender notification. From the date of the aforesaid foreclosure of contract, despite various letters and emails by the petitioner Company to the second respondent Port seeking to refer the



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matter to Conciliation Settlement Company over a period from 2018 to 2023, so far the respondents did not refer the dispute to the Conciliation Settlement Committee as per Section 31 of the tender notification. During the pendency of the same, the second respondent Port ought not to have rejected the tender bid submitted by the petitioner Company with respect to the tender notification dated 12.02.2024. Categorically, contending that an outstanding due, that is, disputed by the petitioner Company cannot be a disqualification for the petitioner Company to participate in a tender/future tender, he further submitted that, a total amount of Rs.11 lakhs as performance guarantee and Rs.11 lakhs as security deposit and the charges for the services rendered for the erstwhile tender work to a tune of Rs.32 lakhs, is the outstanding due payable by the second respondent Port to the petitioner Company. In response to the letter dated 23.08.2018, of the Traffic Manager demanding Rs.26 lakhs from the petitioner Company, the same was duly replied by the petitioner Company that there cannot be any outstanding due and further required to refer the dispute to the Conciliation and Arbitration Settlement Company. But having not chosen to do so and having kept the petitioner's request pending for more than 3 years, now when the petitioner Company has submitted their bid in response to the tender notification dated 12.02.2024, the same could not have been pointed out by the second respondent as disqualification for participating in the aforesaid tender by the second respondent Port.



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7.The learned Senior Counsel further categorically contended that the third respondent has quoted Rs.7 Crore and 77 lakhs and the petitioner Company is the lowest bidder, who had quoted Rs.7 crore and 35 lakhs. Only for the purpose of evading the petitioner Company from participating in the tender process further, the impugned orders came to be passed. On that basis, categorically contending that the impugned orders are *per se* illegal and have been passed violating all the principles of natural justice, the learned Senior Counsel pressed for setting aside the same and allowing the Writ Petition.

8.Per contra, the learned Senior Counsel appearing for the respondents submitted that, the learned counsel for the petitioner ought to have convinced this Court at the first instance on the question of maintainability of these Writ Petitions, for the sole reason that, the legal jurisdiction was mandated in the tender notification is that, the award of the aforesaid work is subject to the jurisdiction of the local Courts of Tuticorin and no other Court other than the Courts at Tuticorin (Tamil Nadu) will have jurisdiction regarding any matters concerning the contract. When the petitioner had submitted a tender bid under the said tender notification, the Writ Petitions filed before this Court is not maintainable and are liable to be dismissed in limine. He further categorically contended that in the absence of arbitration clause in the tender document, the question of referring the dispute raised by the petitioner Company for conciliation would not arise.



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The outstanding amount was communicated as early as in the year 2021 to the petitioner Company and the same was not relegated for arbitration and the petitioner Company was well aware of the same. He further contended that even assuming that he had been a successful bidder in the latest tender dated 12.02.2024, it would have been cancelled later for fabricated certificates. To substantiate the said submission, he filed a paper book dated 13.11.2024 and placed before me, the certificate of registration awarded to the petitioner Company in recognition of the Company's quality management system which complies with ISO 9001: 2015 as issued by one HMC, namely, Hive Mind Certification and the certificate of registration awarded by HMC to the petitioner company in recognition of the organization information security management systems, which complies with ISO 27001: 2022.

9.The learned Senior Counsel further submitted the mail transactions between the second respondent Port and the accreditation expert of the certification body's, accreditation department, which would reveal that both the certificates relied upon by the petitioner Company, which were submitted along with the tender documents were fake and have no value. On that basis, the learned Senior Counsel submitted that even if the petitioner's bid had been successful, later the same would have definitely been cancelled for producing fabricated certificates. Hence, having not approached this Court with clean hands, now the petitioner company



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cannot take an U turn, without declaring the disputed amount of the earlier contract by declaring the same in Form 5. Having not complied with the conditions of Clause 5 of the tender document, the Writ Petitions are liable to be dismissed and pressed for dismissing the Writ Petitions.

10.Heard the rival contentions of either parties and carefully perused the materials available on record.

11.The learned Senior Counsel for the respondents 1 and 2 without filing a counter affidavit has filed two type sets dated 14.10.2024 and 13.11.2024. The long and short of the factual matrix of this case is as follows:-

The petitioner Company was awarded with a contract vide work order No.TRA-OPNOP-MIS-REPLI-V1-13 (4809)/D3141 dated 23.12.2015, to carry out the management and operation of toll gate at check post No.I and II of VO Chidambaranar Port Trust-Collection of Penalty Amount on overstaying vehicles and capturing of dwell time of commercial vehicles for a period of 5 years for an amount of Rs. 2,32,12,849/-. In this regard, an agreement bearing 1 of 2015 was executed between the petitioner company and the Port on 02.03.2016, the work was commissioned on 01.04.2016. While being so, a Gazette notification on issue of entry permit for vehicles/equipment/persons (amendment) Regulations, 2018, was published in the Central Gazette on 01.06.2018 and the same was



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communicated to the petitioner Company by the second respondent Port by letter No.TRA-OPNOP-VEH-DWELL-V3-17 (40809) D.1278, dated 07.06.2018. Due to the implementation of the said regulations, penalty was not collected by the petitioner's Company citing the requirement of POS machine for collection of penalty amount. The same was also duly communicated by the petitioner Company to the second respondent Port on 10.09.2018. Under such circumstances, the second respondent Port terminated the aforesaid contract by termination of contract dated 19.10.2018 bearing No.TRA-OPNOP-MIS-REPLI-V1-13 (40809)/D.2155. **The aforesaid termination letter in para no.4 made it clear that it is decided to foreclose the said contract with effect from 01.01.2018, as discussed with the petitioner company in the month of August 2018.** In response to the same, the petitioner Company on 25.10.2018, submitted a reply to the second respondent Port, refusing to accept the termination of contract for the reason that the termination on the mentioned grounds and levying of penalty is not as per the communication in the meeting of August 2018 in the presence of the Deputy Chairman of the second respondent Port and the authorities of the petitioner company.

12.Further it was reiterated in the said reply that the termination of contract under Clause 13-A with penalty would leave the petitioner with no other option rather submitting their grievance for arbitration and seeking for amicable consideration. Since the same was not acted upon, further the



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petitioner Company made another application on 22.11.2018, requesting to release the pending payments claiming an amount of Rs.32,21,741/-. Since the same was also not responded by the second respondent Port, the petitioner Company further made another representation in the month of December 2018, stating that during August 2018, on the visit of the Managing Director of the petitioner Company to the second respondent Port, it was communicated to the Managing Director of the petitioner Company that the project was no longer required for VOCPT as the then newly commissioned RFID project had a similar scope of work. It was only on goodwill terms, the Managing Director of the petitioner Company agreed for termination with the request that since the same was a mutually agreed termination for the benefit of VOCPT, the termination should be clean without any blame or any claim or any charges against the petitioner Company. The said request was accepted by VOCPT members in the meeting held during August 2018 and that the termination will not cause any impact or burden on the petitioner Company and further it was also assured that a completion certificate will be issued for the said period of work. However, defying all the expectations of the petitioner Company, the termination of contract with respect to the management and operation of toll gate at check post No.I and II of VOCPT came to be terminated on 19.10.2018.

13.Having not responded to the various representations made by the petitioner Company on 28.01.2019, the respondent board required the



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petitioner Company to furnish the copy of explanation for the audit query given on May 2018 towards the pending payments to a tune of Rs. 26,33,741/- payable by the petitioner Company to the Port, for which, the petitioner Company required the Port to refer the matter for arbitration before the conciliation and settlement committee. In this regard, as many mails and several communications were made by the petitioner Company to the second respondent Port, more particularly, mails dated 06.04.2023, 21.07.2022, 17.11.2022 and 20.03.2023. However, the petitioner Company's request was kept pending for more than 3 years without referring the matter for conciliation. While being so, the second respondent Port called for bid document for the work of supply installation, testing, commissioning, operating, manning and maintenance of RFID, based access control system on higher basis with necessary hardware and software with all cabling at all entry/exist gates in port premises including comprehensive maintenance (inclusive of warranty) for a period of 5 years, by tender notification number: TRA-COMMORFID (RFCO)/4/2023- Traffic (e.5003), dated 12.02.2024. In response to the same, the petitioner submitted the completed tenders online to the second respondent Port. Other than the petitioner company four others also submitted their tender bids, however, the impugned disqualification letter 31.07.2024, came to be issued by the second respondent citing the pending dues with respect to the earlier work explained supra. In the aforesaid tender disqualification letter dated 31.07.2024, it was requested that objections/observations if any, on the



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said rejection may be raised in writing to the respondent office within 7 days from the date of issue of the aforesaid letter. Promptly responding to the said disqualification letter on 02.08.2024, the petitioner Company submitted its objection requiring the second respondent Port to revoke the remarks made against the petitioner Company with respect to the pending dues cited in the technical evaluation of the earlier contract work done by the petitioner company during the year 2015, citing the reason that the petitioner Company had required the second respondent Port for referring the same before conciliation and settlement committee. However, negating the same, the decision was finally, taken by the second respondent Port on the objections raised by the disqualified bidders by the impugned proceedings dated 04.09.2024. It was concluded that though vide petitioner's email dated 02.08.2024, their pending dues to the Port was disputed and was insisted to be considered as a matter sub judice awaiting the decision of the conciliation and settlement committee, the same cannot be considered at all, since the Port did not refer the matter to conciliation and settlement committee. Clause 6.0 of the conciliation and settlement guidelines of the second respondent Port deals with the commencement of conciliation proceedings and the same is extracted as follows:-

“6.0 Commencement of conciliation proceedings

6.1 If any commercial dispute or a dispute which may have commercial aspects in the future arises between the Port and Contractor the Port authorities and the contractor may mutually decide to settle the dispute through the conciliation and settlement process.



6.2 Either the Port or the contractor may send a reference about the dispute to the other party. The party initiating conciliation shall send to the other party a written invitation to settle or conciliate under this Part, briefly identifying the subject of the dispute. The concerned Technical Division in the Port shall send a request or response within 7 working days if a reference is received from the contractor thereby inviting the Contractor to depute a team of their representatives to interact with the Contract Management Division(CMD) constituted by each Port. A template response is attached herewith as Annexure-2.

6.3 The CMD will obtain and examine the correspondence/ documents of the parties relating to the disputes, within 15 days, hold discussions with the team of the Contractor and the Technical Division to crystallize the issues, prepare the agenda containing the gist on dispute. 6.4 Port shall offer/agree with the other party to refer the matter to the CSC as conciliation is intended to be one consolidated package of settlement. Upon receipt of the consent of the Contractor for making a reference to the CSC, the Chairman Port Trust shall refer the matter to the Committee. The consent of the Contractor for conciliation shall also be deemed to be the consent to the Committee in terms of sections 63 and 64 of the Arbitration and Conciliation Act, 1996.

6.5 Any issue arising out of TAMP guidelines of the order between the major ports and concessionaire / contractor may also be included for resolving through this process.

6.6 The proceedings, shall commence when the Port or the other party accepts in writing the invitation to settle/ conciliate.

6.7 If the other party rejects the invitation, there will be no settlement/ conciliation proceedings.

6.8 If the party initiating settlement/ conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the

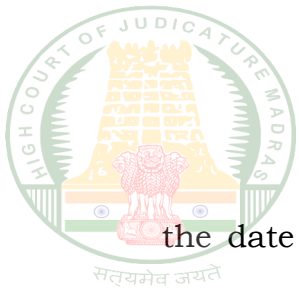


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invitation, he may elect to treat this as a rejection of the invitation to settle/conciliate and if he so elects, he shall inform in writing the other party accordingly.

6.9 It may be noted that this is an alternate dispute resolution mechanism being put in place and if the Contractor is not willing to take recourse to this process or has any reluctance whatsoever in this behalf, there is no compulsion and they are free to follow the provisions as per law.”

14.Immediately after the contract for management and operation of toll gate at check post Nos.I and II of VO Chidambanar Port Trust awarded to the petitioner company by work order dated 23.12.2015, came to be terminated by proceedings dated 19.10.2018, the petitioner Company required the second respondent Port by communication dated 25.10.2018, 22.11.2018, December 2018, mail dated 06.04.2023, 21.07.2022 and 17.11.2022 and 20.03.2023, to refer the matter with respect to the pending dues as claimed by the second respondent Port to the petitioner Company for conciliation and arbitration before the conciliation and settlement committee (CSC). In terms of the conciliation and settlement guidelines implemented in the major ports by the National Institution for Transforming India (Nidhi Aayog), Government of India, in proceedings number N-14070-14-2016-PPPAU dated 05.09.2016, the CMD of the second respondent Port ought to have examined the correspondence/documents of the petitioner Company relating to the dispute raised within 15 days from



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the date of receipt of the first communication by the petitioner Company, requiring to refer the dispute to conciliation and settlement committee, that is, from 25.10.2018.

15.Having failed to do so, without holding discussions with the petitioner Company and the technical division of the Port having failed to crystallize the issues raised by the petitioner company by preparing agenda containing the gist of the dispute, the petitioner Company is left with no other option rather to treat the said situation as a rejection of invitation raised by the petitioner Company to settle/conciliate, due to the nil response from the second respondent Port for more than 30 days, more particularly, for more than 3 years.

16.Now, the precise legal aspect, which has to be decided is that when a party to a contract had raised a dispute for reference of the same to the conciliation and settlement committee and when the other party to the contract has opted not to respond to the said requisition, can that be an impediment/bar for the party requesting for a reference of a dispute before conciliation and settlement committee to participate in a fresh tender invited by the other party, during the pendency of the earlier requisition.

17.The learned Senior Counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in the case of **B.S.N. Joshi and sons**



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Limited versus Nair Coal Services Limited and others reported in (2006)

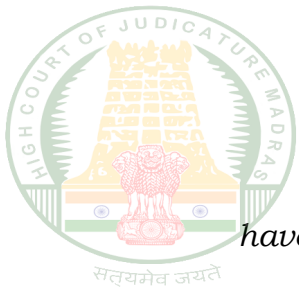
11 SCC 548 and the relevant portion of the same is extracted as follows:-

“41. When it is proclaimed or published affecting the rights of the parties, in the sense in which it has been used, so far as the affected person is concerned, its effect, would be akin to black-listing. When a contractor is black-listed by a department, he is debarred from obtaining a contract, but in terms of the notice inviting tender when a tenderer is declared to be a defaulter, he may not get any contract at all. It may have to wind up its business. The same would, thus, have a disastrous effect on him. Whether a person defaults in making payment or not would depend upon the context in which the allegations are made as also the relevant statute operating in the field. When a demand is made, if the person concerned raises a bona fide dispute in regard to the claim; so long as the dispute is not resolved, he may not be declared to be defaulter.”

18. In yet another case of the **Blue Dreamz Advertising Private Limited and another versus Kolkata Municipal Corporation and others in Special Leave Petition (Civil) No. 11682 of 2018**, the Hon'ble Apex Court by its judgment dated 07.08.2024, has held as follows:-

“22. Blacklisting has always been viewed by this Court as a drastic remedy and the orders passed have been subjected to rigorous scrutiny. In Erusian Equipment & Chemicals Ltd. vs State of West Bengal & Anr. (1975) 1 SCC 70, this Court observed that

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to



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have an objective satisfaction....”

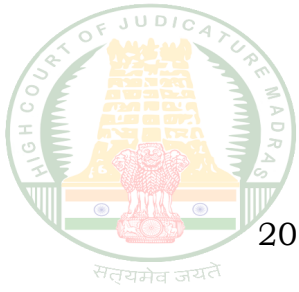
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23. In Mr. B.S.N. Joshi (supra), this Court held that

“41. ... When a contractor is blacklisted by a department he is debarred from obtaining a contract, but in terms of the notice inviting tender when a tenderer is declared to be a defaulter, he may not get any contract at all. It may have to wind up its business. The same would, thus, have a disastrous effect on him. Whether a person defaults in making payment or not would depend upon the context in which the allegations are made as also the relevant statute operating in the field. When a demand is made, if the person concerned raises a bona fide dispute in regard to the claim, so long as the dispute is not resolved, he may not be declared to be defaulter.” (Emphasis supplied)

26. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.”

19.The learned Senior Counsel appearing for the second respondent Port submitted that even if the petitioner is assumed to have been a successful bidder, later the work would have been cancelled for submission of fake documents.



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20.Despite proper several opportunities given to the second respondent Port for filing counter affidavit, without filing a counter affidavit only based on the documents submitted before this Court by two paper books dated 14.10.2024 and 13.11.2024, the learned Senior Counsel appearing for the respondents 1 and 2 categorically submitted that the petitioner Company despite pending dues with the second respondent Port in their declaration on litigation and blacklisting, had declared that the Company was not involved in any litigation for the past five years and that the same was neither blacklisted nor debarred for the past three years from providing service to any Central Government, State Government, Autonomous bodies, nationalized banks etc. He has also further declared that the information regarding any litigation and arbitration against the Port during the past five years prior to the date of publication of NIT, the parties concerned and the disputed amount as nil. Citing the said declaration as suppression of the pending dues with the second respondent Port and also claiming that the certificate of registration with respect to ISO 27001: 2022 and ISO 9001: 2015, produced by the petitioner Company as fake, the learned Senior Counsel for the respondents 1 and 2 contended that by all means the petitioner's bid is liable to be dismissed and hence, the Writ Petitions are also liable to be dismissed.

21.However, I am of the considered view that none of these arguments or none of these reasons are set out in the impugned orders dated



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12.10.2024 and 31.07.2024. The argument of the learned Senior Counsel for the respondents 1 and 2 that the petitioner had suppressed information regarding the pending dues is not sustainable for the sole reason that the said format for declaration on litigation and blacklisting itself would reveal that unless and until the petitioner is blacklisted or unless and until there is a pending litigation, it is not necessary for the petitioner to declare the details in the aforesaid form.

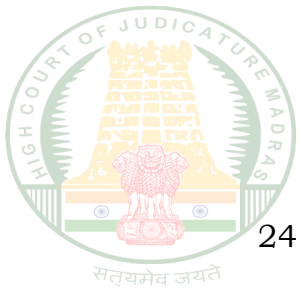
22.As far as the dispute between the petitioner Company and the second respondent with respect to the pending dues pertaining to the earlier contract awarded to the petitioner Company is concerned, already a dispute has been raised by the petitioner Company with the second respondent Port, requiring to refer the same for conciliation and settlement before the conciliation and settlement committee. Willfully the second respondent had opted to remain silent for all those requests made by the petitioner Company. No doubt, in terms of the conciliation and settlement guidelines within 30 days from the non-response on the side of the second respondent for the requisition of the petitioner, the petitioner Company can conclude that his invitation to settle/conciliate has been rejected by the second respondent Port.

23.It is pretty clear that the demand raised by the petitioner Company remains unresolved by the second respondent Port and unless and until the



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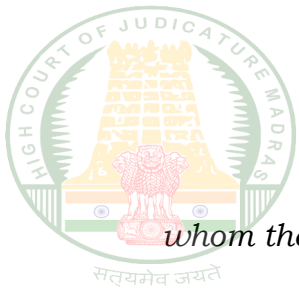
said dispute is resolved, the petitioner Company cannot be declared to be a defaulter. The bonafide dispute raised by the petitioner Company should have been diligently dealt with by the second respondent Port in terms of the conciliation and settlement guidelines in this regard. Having opted not to do so and reject the petitioner's requisition for reference of the genuine dispute before settlement and conciliation committee, the petitioner's tender bid ought not to have rejected on the grounds of pendency of an unresolved dispute raised by the petitioner Company. Such an exercise would cripple the business of the petitioner Company and the same would tantamount to blacklisting him without giving him a proper opportunity of hearing and ventilating his grievance. Rejecting a tender bid citing an unresolved dispute between the contractor and the second respondent Port would amount to commercially ostracizing the petitioner Company's business resulting in serious repercussions of penalizing the petitioner Company without resolving a genuine dispute raised by the said Company. Though the Senior Counsel for the second respondent Port categorically contended that even if the tender had been finalized in favor of the petitioner Company, the same is liable to be cancelled later for furnishing fabricated documents, the said argument loses its sheen for the sole reason that the scope of the said narration deviates from the reasoning in the rejection of the petitioner's tender bid in the impugned orders.



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24. Without filing a counter affidavit, the second respondent Port is not entitled to enlarge the scope of the impugned orders with the support of additional documents. Evaluation and acceptance of a tender is a step-by-step process and the tender accepting authority shall cause an objective evaluation of the tenders taking into consideration the various parameters of the respective tender schedule which should conclude by accepting the lowest tender submitted by the various tenderers. The tender accepting authority cannot reject a tender for the obvious reasons of an unresolved earlier dispute pending between the tenderer and the tender inviting authority. Unless and until the tenderer is blacklisted or debarred from participating in the tender by the department concerned, there cannot be any impediment for the tenderers to participate in a tender process. The reasons for rejection of a tender at the evaluation stage cannot be explained by a later development.

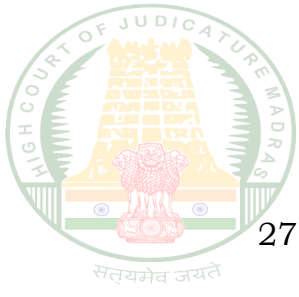
25. The Hon'ble Apex Court has held in the case of **Mohinder Singh Gill and Others vs. The Chief Election Commissioner, New Delhi and Others** reported in **MANU/SUPREME COURT/0209/1977** has categorically held that *'the public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to*



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whom they are addressed and must be construed objectively with reference to the language used in the order itself.'

26. Fully fortified by the above said judgment of the Hon'ble Apex Court, I am of the considered view that either by filing a counter affidavit or without filing a counter affidavit with the help of documents after the date of impugned order, the actions/statutory duties of the statutory authorities should not be explained. Jurisprudential discipline warrants the statutory authorities to justify their action taken in the exercise of their statutory duties relating the sequence of events up to the date of the impugned order. The impugned order cannot be justified by stretching the same and connecting it to a later event which had popped up later. Accordingly, there is no justification on the part of the second respondent Port in disqualifying the petitioner's tender bid on the basis of an unresolved dispute between the tenderer and the second respondent Port. Accordingly, the impugned communication No.NIT.TRA-COMMORRFID(RFCO)/4/2023-Traffic(e.5003) dated 31.07.2024, TRA-COMMORRFID(RFCO)/4/2023-Traffic (e.5003) D. 470 dated 04.09.2024 and the letter of award in TRA-COMMORRFID(RFCO)/4/2023-Traffic (e.5003) D.565 dated 12.10.2024 issued by the 2nd respondent are hereby quashed.



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27. Accordingly, the Writ Petitions are allowed. There shall be no order as to Costs. Consequently, connected miscellaneous petitions are closed.

18.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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L.VICTORIA GOWRI, J.

Mrn

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