

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2010

CORAM:

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

W.P.No.11159 of 2010
and M.P.Nos.1 and 2 of 2009

Classic Welding Products (P) Ltd.,
(Plastic Division),
Rep. by its Director,
N.C.Jayaraman,
No.7/2,SIPCOT Industrial Park,
Phase-II, Chennai-Bangalore H.H.,
Sriperumbudur,
kancheepuram District. Petitioner

Vs.

- 1.The Managing Director,
Tamil Nadu Co-op. Milk Producer's
Federation Ltd.,
Madhavaram, Chennai.
- 2.The Joint Managing Director,
Tamil Nadu Co-op. Milk Producer's
Federation Ltd.,
Plot No.29 & 30, Industrial Estate,
Ambattur, Chennai - 600 098.
- 3.Board Level Tender Committee,
Under the Head of the Secretary to Govt.,
Animal Husbandary, Dairying
and Fisheris Department,
Secretariate, Chennai - 9. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ Mandamus, directing the respondents 1 to 3 not to finalise the Tender for Poly End Film for the year 2010-2012, without considering the petitioner in the Part-II Commercial Bid and consequently direct the respondents to issue the tender in favour of the successful tenderer among the eligible tenderers including the petitioner.

For Petitioner	:	Mr.M.Hidayathulla Khan
For R -1	:	Mr.C.R.Dasarathan
For R - 2	:	Mr.V.Viswanathan
		Additional Government Pleader

O R D E R

On consent, the writ petition is taken up for final hearing.

2.The writ petition is filed for the issuance of writ of mandamus directing the respondents 1 to 3 not to finalise the tender for multilayer Poly End Film for the year 2010-2012, without considering the petitioner in the Part-II Commercial Bid and to consequently direct the respondents to issue the tender in favour of the successful tenderer among the eligible tenderers including the petitioner.

3.The brief facts which are relevant for consideration are as follows:

The petitioner is manufacturing and supplying of HM/HDPE, LDPE, LLDPE, Co-extrusion Polythene with and without Printing Bags, Sheets, Rolls, Liners, Pouches, Guzzetted Bags, Shirk Film, Strih Film and Cling Film etc., having its units at SIDCO Industrial Estate, Hosur and Sriperumputhur. While, the Hosur Unit indulges in manufacturing and supplying of the items above referred to except co-extruder multi layer Poly End Film, since 1995. The Sriperumputhur Unit indulging in manufacturing and supplying all the items as above referred to has commenced its production only since 2009. While so, the first respondent has during January to February called for tender applications for the supply of Co-extruded multi layer poly end film for three years 2010-2012. The tender application as called for consists of two parts Part-I pre-qualification/technical bid and part-II Commercial bid with price quote. The last date for submissions of tender application in two parts in accordance with and in compliance with the instructions contained in tender notice consisting of 1 to 40 pages and 1 to 7 pages respectively was till 3 p.m. on 03.02.2010 and the date and time of opening of Part-I Pre-qualification/tender technical bids was from 3.30 p.m. On 03.02.2010. The tender notice contains various instructions general terms and conditions relating to the particulars to be furnished, nature of documents to be enclosed along with the application, mode of sending the application supply of sample film for testing specification of the end film, eligibility criteria, right to reject the tender for non-compliance, post award supply conditions for acceptance of supplied film, rejection of the same, Site inspection during contractual period, tender technical evaluation criteria, legal jurisdiction and dispute arbitration clause etc.

4. As per the general terms and conditions, the first respondent authority has reserved the right to reject the tender for want of particulars, want of eligibility criteria, for want of proof and for the other reasons as contained in the tender notice. Out of various instructions, terms and conditions contained in the tender

notice only two conditions under the caption "pre qualification terms and conditions" are relevant to dispose of the issue involved in the present case. They are as follows:

"7.1.1The tenderer should be a domestic (Tamil Nadu based) MSME unit holding a MSMED certificate as defined under clause 2 (aa) of the Amendment Act 14 of 2001 read with Tamil Nadu Transparency in Tenders Act 1998.

7.2The tenderer shall have minimum five years experience and enclose film registration/tax certificate etc., as supportive document."

5. According to the petitioner he has duly participated in pre bid meeting with the second respondent and has duly submitted his application after due compliance with all the formalities as per terms and conditions and as he was one of the eligible tenderers part-1 technical bid was opened and his sample was tested and found to be complied with the specifications prescribed and his factory was duly inspected by team of officers and he has validly, as sought for by the respondent, extended his tender period and he was also duly intimated by the 1st respondent that the tender is under finalisation process and despite his having satisfactorily fulfilled all the conditions prescribed in the tender notice, the petitioner's tender was rejected and he was not permitted to participate in part II commercial bid.

6. It is strenuously argued by the learned counsel for the petitioner that once he was considered eligible to participate for technical bid there is no valid ground to exclude him for part II commercial bid and the same is contrary to and in violation of the terms and conditions and is due to some external pressure exercised upon the first respondent, to prevent the petitioner to participate in the commercial bid and the action of first respondent is hence highly arbitrary, illegal and is in violation of Article 14 of the Constitution of India.

7. It is also further contended by the petitioner in his rejoinder that 1. M/s.Immens Packaging Pvt. Ltd., Athipet, Chennai-58, 2. M/s.Sathya Prakash packaging Pvt. Ltd., Hosur and 3. M/s.Blossom Plastics Pvt. Ltd., Hosur, which are all the three tenderers participated along with the petitioner in the technical bid and who are now considered for part II Commercial bid suffer from disqualification and are ineligible to participate in commercial bid. According to him M/s.Immens Packaging Pvt. Ltd having its registered office at Mumbai, commenced its production only on 20.04.2007 and is involved in manufacture of only printing films for liquid of milk pouch and not multilayer Poly end film and is hence not satisfied the two conditions as referred to above and the action of the first respondent in exempting M/s.Immens Packaging Pvt. Ltd., highly suffers from arbitrariness and is in violation of terms and conditions.

8. Such contention raised on the side of the petitioner is seriously opposed by the respondents mainly on the ground that the petitioner is, by reason of his not satisfying the condition relating to five years experience, not permitted to participate in the commercial bid and the testing of sample film, inspection of the factory and seeking extension of validity of tender period done during the course of part-I technical bid are only procedural formalities and the same will not guarantee any right to the petitioner to participate in the commercial bid and as the petitioner is not having required five years experience in manufacturing co-extruded multilayer end film, the tender was rightly rejected.

9. It is the further case of the respondent that as far as other three tenderers, who are allowed to participate in commercial bid are concerned, they have as per the particulars furnished by them with supportive documents fully satisfied the pre general terms and conditions and the petitioner can have no grievance and the petitioner cannot raise any valid ground against the same.

10. Heard the rival submissions made by the learned counsel for the petitioner and the learned Government Advocate. This Court has also perused the documents produced in the typeset Nos.1 and 2 on the side of the petitioner and the files relating to the tender applications of the petitioner, and other three tenderers i.e. M/s.Immens Packaging Pvt. Ltd., M/s.Blossom Plastic Pvt. Ltd. and M/s.Sathya Prakash Packaging Pvt. Ltd.

11. It is not in dispute that tender applications are called for subject to various terms and conditions and it is made very clear in the tender notice that the failure to satisfy pre bid general terms and conditions so laid down will result in rejection of the tender application. It is equally not in dispute that the petitioner herein, has not satisfied one of the general tender conditions relating to five years experience in manufacturing co-extruded multi layer end film. The registration certificates produced on the side of the petitioner disclose that the Hosur Unit commenced during 1995 does not indulge in manufacturing multi layer poly end film and Sriperumputhur Unit is manufacturing multi layer poly end film, in respect of which tender is called for, only from 2009 as such the petitioner has not satisfied one of the important tender conditions. However, the petitioner is seeking right to participate in the commercial bid mainly on two reasons;

1. He was allowed to participate in technical bid and
2. one of the other tenderers under the name and style of M/s.Immense Packaging Pvt. Ltd., also suffers ineligibility in the matter of location of the office outside Tamil Nadu and lack of five years experience in manufacturing the item and the relaxation of tender condition to the above mentioned industry is also to be extended to

the petitioner to enable the same to participate in the commercial bid.

12. As far as the first ground is concerned the same is totally unacceptable. Though the technical bid was opened and sample film was tested and the factory was inspected that will not in any way cure the disqualification suffered by the petitioner relating to experience criteria. In as much as the petitioner has no required years of experience, any communication received by him about the stage of the tender process cannot be taken advantage of by him. It can be at the best treated only as communication in nature without any assurance for his further participation in the further process.

13. As far as other three tenderers Ms.Immense Packaging Pvt. Ltd., M/s.Sathya Prakash and Company Hosur and M/s.Blossom Package Pvt. Ltd., are concerned the particulars provided by the other three tenderers with relevant documents would not support the grievance raised by the petitioner that the tender is relaxed in so far as the other tenderers particularly M/s.Immense Packaging Pvt. Ltd. M/s.Immense packaging is as per the particulars and documents of registration contained in the file, having its office at Athipet, Chennai and is indulging in manufacturing Multi layer poly end film from 2002 onwards and M/s.Sathya Prakash and company has its registered office at Hosur and is dealing in co-extruded multi layer Poly end film from 1988. Whereas M/s.Blossoms Plastic and Packaging Company Private Ltd having its office in the same SIDCO Industrial Estate, Hosur is dealing in the same product from 1988 onwards.

14. Thus all the three remaining tenderers do not at all suffer from any disqualification and they are, having fully satisfied other requirements and having successfully passed technical bid, rightly allowed to participate in the commercial bid and no exemption in whatsoever manner is granted to any of them and the action of the authority concerned in allowing them and rejecting the petitioner in part II Commercial bid is only in accordance with the procedure and well within the authority vested on the same under the terms and conditions.

15. As a matter of fact, the petitioner has at para 7 at page 4 of his affidavit filed in support of this writ petition clearly stated that the petitioner and the remaining three tenderers are fit to be considered for commercial bid about the price quote. The so called ineligibility of the other three tenderers is sought to be high lighted only in the rejoinder filed by the petitioner and the same is sought to be supported by the first document purported to be the copy of registration certificate of M/s.Immense Packaging Pvt. Ltd., dated 20.04.2007 and extract of M/s.Glory Poly films Ltd. Dated 24.04.2007 enclosed in the additional type set. The copy of these documents are admittedly obtained by the petitioner from website and no authenticity can be attached to the same particularly in the light

of the particulars furnished in and the original documents produced along with the tender application contained in the concerned files produced herein.

16. Thus the facts as referred to above would reveal that there is no irregularity or illegality in the impugned action of the authority concerned in not allowing the petitioner to participate in the commercial bid and the exclusion of the petitioner is only as per the general terms and conditions and the petitioner is hence disentitled to get any relief in this writ petition.

17. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vsm

To

- 1.The Managing Director,
Tamil Nadu Co-op. Milk Producer's Federation Ltd.,
Madhavaram, Chennai.
- 2.The Joint Managing Director,
Tamil Nadu Co-op. Milk Producer's Federation Ltd.,
Plot No.29 & 30, Industrial Estate,
Ambattur, Chennai - 600 098.
3. The Secretary to Government,
Board Level Tender Committee,
Animal Husbandary, Dairying
and Fisheris Department,
Secretariate, Chennai - 9.

- 1 cc To Mr.C.R.Dhasarathan, Advocate, SR.47267.
1 cc To Mr.M.Hidayathullakhan, Advocate, SR.46884.

W.P.No.11159 of 2010

GK(CO)
RVL 07.07.2010