

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :24.01.2025

PRONOUNCED ON :25.02.2025

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CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.38829 of 2024
and WMP.No.42038 of 2024

Ram Taranga Solutions Private Limited,
Rep. By its Managing Director, Ravishankar,
Somashekar, No.20, Ground Floor, 3rd Main Road,
11 Block, 2nd Stage, BDA Layout,
Naagarabhavi, Bengaluru, Karnataka – 560 072.

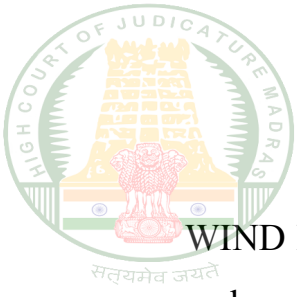
... Petitioner

Vs.

NCL India Limited,
Represented by its Secretary, No.135,
EVR Periyar High Road,
Kilpauk, Chennai – 600 010.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 26.02.2024 in Lr.No.CO CONTS/0013P/50MW



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WIND PROJECT/e-contrs/2023 passed by the respondent and quash the same and consequently direct the respondent to forthwith allow the petitioner and its associated companies to participate in the bidding process of the tenders of the respondent and its associated companies.

For Petitioner : Mr.Sathish Parasaran
Senior Advocate
for M/s.Chandini Pradeep Kumar

For Respondent : Mr.Kishore Balasubramanian

ORDER

The writ petition is filed challenging the order passed by the respondent dated 26.02.2024 blacklisting the petitioner from participating in the tender floated by the respondent and its subsidiaries for a period of two years and for further direction to the respondent to allow the petitioner and its associate companies to participate in the tenders floated by the respondent and its associates.

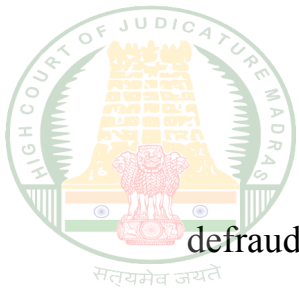
2. The petitioner is a company engaged in the business of renewal energy generation for the past 15 years and has experience in providing services to multiple Government entities and public sector undertakings. The respondent is a public sector enterprise engaged in the



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business of renewable energy Generation. The respondent issued a tender dated 04.05.2023 for setting up Wind Power Projects on Pan India basis with operation and maintenance for ten years. As per the tender notice issued by the respondent, the bid documents submitted by bidders shall be accompanied with a Bank Guarantee. As per the tender conditions, any bank guarantee submitted in physical form, must also be verified through the respondent's platform for Structured Financial Messaging System (herein after referred to as SFMS), failing which the bid will be summarily rejected.

3. The petitioner submitted its technical and financial bid as per the terms of tender along with Bank Guarantee for a sum of Rs.1,91,84,000/- which was arranged by one Ashok Kumar and Varadarajan. It is claimed by the petitioner that in the Bank Guarantee submitted by the petitioner, a typographical error with regard to the date was pointed out by the respondent. The Federal Bank, who issued a Bank Guarantee, sent an e-mail to the petitioner dated 26.06.2023 acknowledging the typographical error with regard to the date. Subsequently, on the basis of the information furnished by the respondent, the petitioner came to understand that it had been



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defrauded by Ashok Kumar and Varadarajan, who furnished it with an improper Bank Guarantee. Therefore, the petitioner was constrained to file a police complaint against the said persons on 10.07.2023 with Karnataka State Police and informed the same to the respondent. In spite of the action taken by the petitioner against the person who defrauded the petitioner, the respondent issued a show cause notice on 25.11.2023 stating that the petitioner submitted a bogus Bank Guarantee and hence why action should not be taken against the petitioner by invoking Clause 3.9.1(vii) (e) of Section 3 of (Volume -IA). The petitioner submitted a reply to the respondent on 01.12.2023 explaining that bonafidely the petitioner availed the services of Ashok Kumar and Varadarajan for securing Bank Guarantee to be submitted along with bid and they defrauded the petitioner by furnishing fake bid guarantee. The respondent was also informed that the criminal action had been lodged against the said two persons. Further it was stated by the petitioner that as per Clause 3.9.1 (vi) of tender, if any bid submitted without bid guarantees or submitted with part amount etc., the bid shall be summarily rejected. In the case on hand, the bid guarantee submitted by the petitioner found to be invalid and therefore as per the Clause 3.9.1 (vi) of tender, the



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respondent can only reject the tender submitted by the petitioner and it is not open to the respondent to invoke Clause 3.9.1 (vii) of tender and impose a

ban of two years. Subsequently, the second respondent without properly considering the explanation submitted by the petitioner, by impugned order blacklisted the petitioner for a period of two years from participating in any of the tenders floated by the respondent or its subsidiaries. Aggrieved by the same, the petitioner has come before this Court.

4. The learned Senior Counsel appearing for the petitioner would submit that reading of show cause notice issued by the respondent would indicate that the respondent came to the conclusion about invalidity of Bank Guarantee submitted by the petitioner based on non confirmation through SFMS. The non confirmation of bid Bank Guarantee submitted by the petitioner will entitle the respondent to invoke Clause 3.9.1 (vi) of tender and reject the bid summarily. However, non confirmation of Bank Guarantee submitted by the petitioner will not entitle the respondent to impose two years ban on the petitioner which will actually have the effect of Civil death. The learned counsel further submitted that the petitioner bonafidely believed one



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Ashok Kumar and Varadarajan, who arranged Bank Guarantee to enable the petitioner to submit the same along with its bid. When the fraud committed

by the said persons was brought to the notice of the petitioner, it promptly had taken action against them by making a police complaint. Therefore, there is no wilful negligence on the part of the petitioner in submitting bogus Bank Guarantee along with bid and accordingly the imposition of two years ban on the petitioner is highly disproportionate. The learned Senior Counsel further submitted that Clause 3.9.1 (vii) (e) only enables the respondent to impose two years ban if the bidder furnished the bogus certificate. The respondent in the impugned order clandestinely included the word "document" to Clause 3.9.1 (vii) (e) of tender and came to the conclusion, the Bank Guarantee submitted by the petitioner is a forged document and therefore, said Clause can be invoked against the petitioner. In other words, it is the submission by the learned senior counsel that the petitioner has not submitted any forged certificate along with bid documents and Bank Guarantee is a document which cannot be treated as a certificate and hence Clause 3.9.1 (vii) (e) of tender could not be invoked. He further submitted that the impugned order is a Non-Speaking one and therefore liable to be set aside.



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5. In support of his contention, the learned counsel appearing for the petitioner relied on the following decisions:

(i) *Blue Dreamz Advertising Private Limited and another Vs. Kolkata Municipal Corporation and others* reported in 2024 SCC OnLine SC 1896;

(ii) *Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others* reported in (1978) 1 SCC 405;

(iii) *Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others* reported in (2014) 14 SCC 731;

(iv) *Erusian Equipment Vs. State of West Bengal and another* reported in (1975) 1 SCC 70.

6. The learned counsel appearing for the respondent would submit that in the Bank Guarantee submitted by the petitioner, e-stamp paper was purchased on 08.06.2023 and whereas, the Bank Guarantee was executed on 07.06.2023. Further the signatures appeared in the stamp paper is with the date of 07.06.2023. After noting the serious discrepancy in the Bank



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Guarantee, the respondent by e-mail dated 13.06.2024 requested its
beneficiary bank(State Bank of India, Neyveli Branch) to confirm whether it

has received any Bank Guarantee confirmation through SFMS from Federal Bank (Bank which said to have furnished Bank Guarantee to the petitioner).

In response, the respondent's beneficiary bank by e-mail dated 14.06.2023 informed that it had not received any such Bank Guarantee confirmation through SFMS. Subsequently, the respondent sent an e-mail to Federal Bank,

Chandni Chowk Branch, New Delhi (which said to have furnished the Bank Guarantee to the petitioner). The said e-mail was sent to the e-mail address

referred to in the bank guarantee. However, these emails bounced back/returned without being delivered, with an endorsement “5.1.0 unknown

address” and “550-5.4.1 Recipient address rejected”. Thereafter, the respondent obtained e-mail address from the official website of Federal Bank

and sent an e-mail dated 22.06.2023 to Federal Bank, Chandni Chowk Branch, New Delhi and the respondent received a reply from the said bank

that Bank Guarantee submitted by the petitioner did not belong to their branch. Therefore, the learned counsel appearing for the respondent

submitted that Federal Bank itself confirmed that the Bank Guarantee



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submitted by the petitioner was a bogus one. He further submitted that the petitioner clearly admitted that the Bank Guarantee submitted by it was a bogus one. But, however shifted the blame on one Ashok Kumar and Varadharajan who said to have procured the Bank Guarantee for the petitioner. By taking this Court to the complaint made by the petitioner to police, he submitted that in the police complaint, the petitioner clearly admitted that Ashok Kumar was a co-worker of the complainant (Managing Director of petitioner). It is further submitted that though in the affidavit filed in support of the writ petition it was asserted by the petitioner that Ashok Kumar and Varadharajan furnished forged Bank Guarantee to it and the petitioner bonafidely believing them submitted the same along with the bid, the petitioner in it's affidavit failed to reveal that said Ashok Kumar was it's employee. However, in the police complaint it was clearly admitted by the petitioner that said Ashok Kumar was it's employee and therefore, the petitioner is guilty of suppression of material facts and consequently, the writ petition is liable to be dismissed on the very ground itself.

7. The learned counsel by taking this Court to the affidavit filed

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in Annexure 'D' to the bid document submitted that the petitioner clearly

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undertook that if any information or document submitted by it was found to be fabricated/false/incorrect, the bid submitted by it shall be considered null and void and action may be taken against it including action of suspension/banning of the petitioner's company as per the tender conditions and law. Therefore, the petitioner having agreed for action of suspension by submitting an affidavit is not entitled to turn around and question the impugned order.

8. The learned counsel further submitted that Clause 3.9.1 (vii) (e) of tender clearly provides for banning of the bidder who submitted forged/bogus documents and in the case on hand the petitioner submitted bogus bank guarantee and therefore, the respondent was justified in invoking the said Clause. He further submitted that as per Clause 3.30(ii) of tender, any bidder who furnishes wrong information / manipulated / forged documents is liable to be disqualified from participating in the tender, for a period of two years and therefore, the respondent is justified in passing the impugned order.

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9. As far as genuineness or otherwise of the Bank Guarantee submitted by the petitioner is concerned, it is an undisputed fact, the Bank Guarantee submitted by the petitioner along with its bid was not a genuine document. It has been clearly confirmed by the e-mail of the Federal Bank, Chandni Chowk Branch which said to have issued Bank Guarantee to the petitioner. The petitioner in its affidavit clearly admitted that based on information furnished by the respondent it came to understand that the Bank Guarantee submitted by it was not genuine and hence it preferred a police complaint against Ashok Kumar and Varadharajan who said to have procured Bank Guarantee for the petitioner. In this regard, it would be appropriate to extract the averment in Para No.11 of writ affidavit which reads as follows:

“11. It is submitted that immediately, thereafter, on 10.07.2023, the Petitioner informed the Respondent that they are taking action against Mr.Varadarajam and Mr.Ashok Kumar and through its director lodged a complaint with the Karnataka State Police regarding the fraud committed by Mr.Varadarajan and Mr.Ashok Kumar.”

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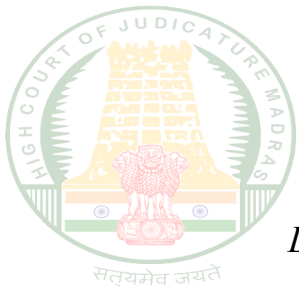
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10. Therefore, it is the specific case of the petitioner that Bank Guarantee was procured by Ashok Kumar and Varadharajan and reposing faith in them, petitioner submitted a Bank Guarantee procured by them along with its bid. It is submitted by the learned senior counsel appearing for the petitioner that though there was negligence on the part of the petitioner, in not verifying the genuineness of the Bank Guarantee procured by the petitioner's agents, the same cannot be treated as wilful negligence, when petitioner was not aware of real facts at the time of submission of bids. The submission made by the learned senior counsel appearing for the petitioner regarding the bonafide belief of the petitioner cannot be accepted for the simple reason that the above said Ashok Kumar is none other than the employee of the petitioner. A perusal of the police complaint preferred by the petitioner would indicate that complaint was lodged by one Ravishankar, Managing Director of petitioner's company. In the complaint, said Ravi Shankar has stated that the above mentioned Ashok Kumar is his co-worker. The relevant averment in the complaint reads as follows:

“The complainant Sri.Ravi Shankar .S. came to the station and filed a complaint, the summary of the complaint is that, the complainant is working as Managing

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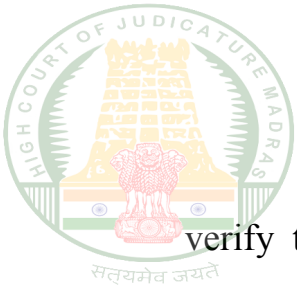


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Director of AMPOLT Electrical Contractor Company. One Sri.Vardarajan Chinnaswamy owner of the JOY ENTERPRISES acquainted with complainant through Ashok Kumar, the Co-worker of the complainant. The said person said that he has got Bank Guarantee Limit and he assured that, out the said guarantee he will give Bank Guarantee for a sum of Rs.1,91,84,000/- on behalf of AMPOLT Company in the Name of NLC LIMITED Company owned by the Government of India. Accordingly, he gave original copy of the Bank Guarantee on dated: 12.06.2023. Later on, when scrutinized the same by NLC LIMITED Neyveli, the Bank Guarantee is found to be bogus.”

11. The police complaint was lodged by the petitioner only against Varadharajan and not against Ashok Kumar, who is the employee of the petitioner's company as per the averment in the complaint. However, in the affidavit filed in support of the writ petition, the petitioner asserted as if, the police complaint was laid against both Ashok Kumar and Varadharajan who were 3rd parties. Therefore, it is clear, one of the employees of the petitioner company arranged for Bank Guarantee with a help of Varadharajan. When the petitioner submits a bid along with Bank Guarantee it has a duty to

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verify the genuineness of Bank Guarantee procured and submitted by it.

When the bogus Bank Guarantee submitted by the petitioner is procured by petitioner's own employee, the submission made by the learned senior counsel for the petitioner that the petitioner's company was not aware of its invalidity and it bonafidely believed the above said Ashok Kumar and Varadharajan is not acceptable to this Court. In any event, the petitioner is liable for the action of its agent who procured the Bank Guarantee on its behalf. Therefore, the contention of the petitioner that without knowing the forged nature of the Bank Guarantee it was submitted by the petitioner is not acceptable to this Court.

12. It was vehemently contended that the word 'document' is not available in Clause 3.9.1 (vii) (e) of tender and the same was conveniently included by the respondent in the impugned order and therefore the impugned order gets vitiated. Clause 3.9.1 (vii) (e) of tender reads as follows:

“(vii) The Bid Guarantee shall be forfeited and the bidder will be banned for two years for breach of the following condition(s);

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.....

(e) *The bidder furnished Forged/Bogus Certificates.*”

13. A reading of above Clause would make it clear that in case of submission of forged/bogus certificate, the bidder shall face two consequences, firstly, the bid guarantee will be forfeited and secondly, the bidder is liable to be banned for two years and by invoking this Clause the two years ban has been imposed by the respondent. Now the question has to be decided is whether the expression forged/bogus certificate would include bogus documents. It was vehemently contended by the learned senior counsel that relevant clause does not include the expression 'document' and the same has been clandestinely included in the impugned order. The word certificate is defined by *Merriam webster dictionary* as follows:

“A document containing the certified statement especially as to the truth of something.”

The Oxford dictionary defines the word 'certificate' as follows:

“an official document that may be used to prove that the facts it states are true;”



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14. Therefore, as per the dictionary meaning the word

'certificate' includes a document because it has been defined as documents containing a certified statement especially as to the truth of something contained therein. In the Bank Guarantee submitted by the petitioner, the Federal Bank, Chandni Chowk Branch, New Delhi, undertook to pay immediately on demand by Neyveli Lignite Corporation India Limited, a sum of Rs.1,91,84,000/-. The word 'certificate' is also defined as a document evidencing ownership of an item or fulfilment of legal requirements. Therefore, the Bank Guarantee certified by Federal Bank is a document which will fit into the definition of the word 'certificate'. Therefore, the respondent is not at fault in including the word 'documents' along with certificates in the impugned order. Even in the absence of the inclusion of the word 'documents' in the impugned order, the word 'certificate' which is already available in relevant clause, includes a document as per the dictionary meaning and therefore, the respondent is fully justified in invoking Clause 3.9.1(vii) (e) of tender for imposing ban of two years on the petitioner for its fault of submitting a bogus Bank Guarantee along with its bid.

15. The respondent issued a show cause notice mentioning its

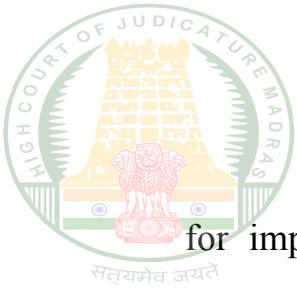


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proposal to invoke Clause 3.9.1(vii) (e) of tender for imposing a ban on the petitioner. The petitioner submitted its reply and thereafter the impugned order was passed clearly referring to the e-mail of Federal Bank, disowning the Bank Guarantee submitted by the petitioner and non receipt of SFMS confirmation. The explanation offered by the petitioner that it was cheated by above mentioned Ashok Kumar and Varadharajan was found to be unsatisfactory, therefore, the impugned order was passed by invoking Clause 3.9.1(vii) (e). Therefore, before passing the impugned order, sufficient opportunity has been given to the petitioner and hence there is no violation of natural justice principles. Submitting a forged/bogus Bank Guarantee, in order to fulfil the tender conditions can not be treated as an ordinary breach of contract. As admitted by the petitioner in the police complaint, the above mentioned Ashok Kumar is none other than the employee of the petitioner. In such circumstances, the petitioner cannot disown him and say it was carried away by the action of third parties. In the light of the said position, the judgments pressed into service by the learned senior counsel for the petitioner will not advance their case.

16. As discussed earlier, Clause 3.9.1 (vii) (e) of tender provides



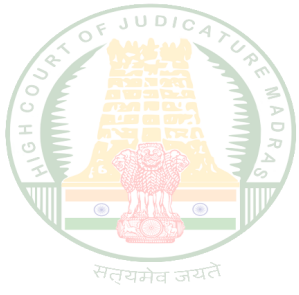
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for imposition of two years ban in case of submission of bogus/forged certificate. This Court has already come to the conclusion that the expression 'certificate' includes a document and therefore, the respondent is justified in invoking said Clause. Further, as rightly pointed out by the counsel for the respondent, the petitioner submitted an affidavit in annexure “D” agreeing for any action including suspension/banning, in case any information or document submitted by it was found to be false or fabricated or incorrect. Therefore, the impugned order blacklisting the petitioner for a period of two years from participating in the tender floated by the respondent and its subsidiaries is justified, having regard to the seriousness of the act committed by the petitioner in submitting a forged document along with bid. Therefore, this Court finds no reason to interfere with the impugned order and accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.02.2025

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
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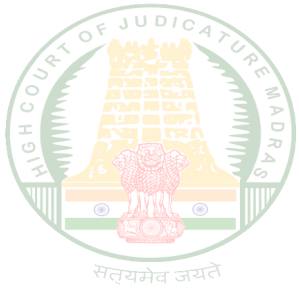
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NCL India Limited,
Represented by its Secretary, No.135,
EVR Periyar High Road,
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S.SOUNTHAR, J.

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Pre-delivery order made in
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