

**(2006) 12 MAD CK 0043**

**In the Madras High Court**

**Case No :** W.A. No. 1616 of 2006 and M.P. No. 1 of 2006

Chettinad Logistics Pvt. Ltd.

APPELLANT

Vs

The Tamil Nadu Electricity Board and The Global Coal and Mining Pvt. Ltd.

RESPONDENT

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**Date of Decision :** 21-12-2006

**Acts Referred:**

**Citation :** (2006) 12 MAD CK 0043

**Hon'ble Judges :** A.P. Shah, C.J;K. Chandru, J

**Bench :** Division Bench

**Advocate :** R. Muthukumarasamy for R. karthikeyan, for the Appellant; P.S. Raman, A.A.G. assisted by Raja Kalifullah, Govt. Pleader for Respondent Nos. 1 and 2 and Sundar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

A.P. Shah, C.J.—The appellant company is the original writ petitioner. The appellant company has filed the writ petition, challenging the tender floated by the Tamil Nadu Electricity Board in Specification No. Coal-35 dated 2.9.2005 for the supply of one lakh tonnes of Washed Coal per month for a period of six months.

2. The main ground of challenge is that as per para-1.6 (a) in Section I of the Tender Specification specifying the Bid Qualification Requirement, it was stipulated that a tenderer should have an established washery in Talcher Area of Mahanadhi Coal Fields Limited. There was only one individual company owning two washeries in the said place and no other washeries are available in that area and therefore, tender specification has been manipulated and tailor made to favour only one party.

3. Secondly, it is contended that though more than 90% of the contract involved transportation coal by rail-cum-sea mode and only 10% of the contract related to washing the coal, paragraph 1.7 of Section I of the Tender Specification shifted

the emphasis of the contract from transportation to washing thereby distorting the nature of the work to be performed.

4. Opposing the writ petition, it was contended by the respondent Board that such deviation in the contract terms become inevitable in view of a notification issued by the Ministry of Environment and Forests, Government of India prescribing that the ash content of coal used in Thermal Stations situate more than 1000 kilometers from the pit head should not exceed more than 34%. Therefore, the Electricity Board became obliged in law to shift the emphasis from a mere transportation of raw coal to the supply of washed coal.

5. The learned single Judge following the decisions of the Supreme Court in *Tata Cellular v. Union of India* (1994) 6 SCC 651 and *Association of Registration Plates Vs. Union of India (UOI) and Others*, held that the tender condition cannot be said to be malicious or misuse of statutory powers and dismissed the writ petition.

6. We have heard Mr. R. Muthukumarasamy, learned senior counsel appearing for the appellant and Mr. P.S.Raman, learned Additional Advocate General, appearing for the respondents 1 and 2 and Mr. M.Sundar, learned Counsel appearing for the 3rd respondent at length.

7. In our opinion, there is no warrant to interfere with the order of the learned single Judge. By the Original Notification issued by the Ministry of Environment and Forests dated 19.12.1997, it has been directed that the Coal based Thermal Power Plants shall use beneficiated coal with an ash content not exceeding 34% if the plant is beyond 1000 kms from the pit head. Further, by the amended notification dated 30.6.1998, the Ministry of Environment and Forests has allowed blending of coal in order to maintain the 34% in an annual average basis. It has been pointed out by the respondent Board this necessarily involves use of coal containing higher calorific value and lower ash content and as a part of need to reduce use of imported coal, thrust has been given for setting up washing plants within India. It has been pointed out that such plant costs approximately Rs. 50 crores to set up a possible capacity of around 2000-3000 TPD. This beneficiated washing units have to necessarily be located near the coal mines and not the thermal unit. It has been further pointed out that the present tender is exclusively for handling coal from the Talcher Mines in Orissa Limited (Mahanadhi Fields) and therefore, necessarily washing plants must be located in and around Talcher area. It is also the case of the Board that there are other units in and around Talcher area and therefore, the charge that the tender was formulated only to suit a particular party is without any basis. It is also pointed out that washery is a specialised job involving technical expertise and huge investment whereas the power coal handling as a logistic exercise can be handled by labour contractor and there are several operating in Tamil Nadu itself.

8. The main contention of Mr. R. Muthukumarasamy, learned senior counsel is that there is only one company owning two washeries in Talcher Area and hence

the specification that a tenderer should own a washery in the area, would confine the choice of the respondent to one person, who can dictate terms and would make the tender process a mockery. On the other hand, learned Additional Advocate General contended that there are more than four washeries located in Talcher area and the contention that tender would confine the choice to one party is baseless. Even assuming that there is only one party which is capable of complying with the condition, that by itself cannot be a ground for striking down the tender condition. It is well settled that in the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring proper compliance of the terms of contract certain pre-conditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and resources to successfully execute the work. Unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, tender conditions are unassailable. In the present case, In view of the notification issued by the Ministry of Environment and Forests, it is obligatory on the part of the Board to use only washing coal in terms of the notification. The decision to shift emphasis from a mere transportation of raw coal to the supply of washed coal has been arrived at on account of statutory requirement prescribed by the Ministry of Environment and Forests. We do not find any illegality or irrationality in the tender condition prescribed by the respondent Board. The writ appeal is devoid of merits and accordingly, it is dismissed. No costs. Consequently, M.P. No. 1 of 2006 is also dismissed.