

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.21326 of 2015
and
M.P.Nos.1 to 2 of 2015

V.K.S.Transport,
A Registered Firm, Chennai 106
Rep. by its Managing Partner,
K.Ashok Kumar

... Petitioner

Vs.

1. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Government of Tamil Nadu(Undertaking),
No.12, Thambusamy Road,
Kilpauk,
Chennai-600 010.

2. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office,
No.12, Thambusamy Road,
Kilpauk,
Chennai-600 010.

... Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondents from appointing anyone as a contractor in connection with the tender 1. Chennai North Railhead, 2. Tiruvallur Region Non-FCI Movement and 3. Krishnagiri Region Non-FCI Movement for handling and transport contract work for a period between July 2015 and June 2017 by the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation, Government of Tamil Nadu Undertaking, No.12, Thambusamy Road, Kilpauk, Chennai-600 010, the first respondent herein as the petitioner firm is L1 and consequently direct the respondents to consider the petitioner firm as a contractor for the above centres.

For Petitioner : Mr.E.C.Ramesh, SC
for Mr.D.Ashok Kumar

For Respondents : Mr.P.H.Arvinth Pandian, AAG
Assisted by Mr.L.P.Shanmuga Sundaram

O R D E R

Heard the learned Senior counsel for the petitioner as well as the learned Additional Advocate General appearing for the respondents.

2. The petitioner is one of the tenderers for transportation of the ration commodities for non- FCI Movement for Chennai North Railhead, Thiruvallur Region Non-FCI Movement and Krishnagiri Region Non-FCI Movement for 2015-2017 for a period of three years.

3. The petitioner herein is a partnership firm registered in the year 2007. At the time of registration of the partnership firm, there were three partners by name V.R.Ravikumar, G.Baskaran and C.Valsalam. The partnership deed comes into effect from 22.06.2007 onwards, as seen from the very document itself. The communications pertaining to the Office of the Registrar also indicate that neither there was any renewal subsequently, nor any change in the constitution.

4. There are Eleven tender conditions. The conditions are to the effect that there has to be a valid PAN Card of the tenderer, a certificate of firm registration in the name of the tenderer or there should be a registered partnership deed. A registered partnership deed with Bylaws has to be made available as well as an average turn over tender of Rs.20,00,000/- for the preceding 3 years experience for the assessment years i.e., 2012-2013, 2013-2014 and 2014-2015 along with certificate from the authorities to whom the contract was carried out for the above said years.

5. The petitioner's tender was rejected on the ground that it has produced the PAN Card of the year 2007. Incidentally the petitioner was registered by the creation of new partnership deed dated 06.07.2015, constituting totally new persons including the Managing Partner Mr.K.Ashok Kumar. The other ground on which the tender was rejected was that the petitioner

has produced the certificate for the three assessments years in the name of ''V.K.S.Transports'' and not ''V.K.S. Transport.'' The name of the Managing partner was not found in the form in the Office of the registration of the Firms. There is no experience certificate produced for the relevant years. There is a discrepancy in the names of the Firm partners of the firm, registered in the year 2007 and at present there are 6 partners in the new Firm registered on 06.07.2015, which can be termed as only a ''Contract for Business''.

6. Mr.E.C.Ramesh, the learned Senior counsel appearing for the petitioner has submitted that in law there is no compulsory registration of a firm required for its existence. There are material evidence to show that the firm was in existence from 2002 onwards. Merely, it was registered in the year 2007, the PAN Card of the year 2002 cannot be rejected. Similarly, the experience of the one of the partners by name Mr.K.Ashok Kumar, the Managing Partner can be taken into account and certificates has been issued for the three preceding years as sought for. Thus, there is a compliance of the partnership firm once registered would continue. Thereafter, a change of constitution being internal, the same cannot affect the nature of the firm. Therefore, the writ petition will be allowed. The learned Senior counsel appearing for the petitioner, in support of his contentions placed reliance upon the following decisions.

(i)Arvind Constructions Company (P) Ltd Vs. Kalinga Mining Corporation and Others ((2007) 6 SCC 798.)

(ii)Girdharmal Kapur Chand Vs. Dev Raj Madan Gopal (AIR 1963 Supreme Court 1587(V 50 C 236).

(iii) New Horizons Limited and Another Vs. Union of India and Others (1995) 1 Supreme Court Cases 478).

(iv)S.Kireetendranath Reddy Vs. A.P.Transco Rep. by its Board of Directors, Hyderabad and Another (2000(4) RAJ 188 (A.P.).

(V) Jay Engineering Work Vs.The Chairman, Tamil Nadu Electricity Board (W.P.No.5915 of 2008 dt.27.04.2009)

7. Per Contra Mr.P.H. Arvindh Pandian, learned counsel for the respondents has submitted that there is a clear violation of the conditions of the terms as stipulated, which the petitioner is bound to adhere to. The petitioner cannot rely upon the document produced at first time before this Court and based upon the same seek the relief. The documents relied upon between the years 2007-2015 which have not been registered, cannot be looked into, as the petitioner has not complied with the essential conditions and hence no interference is required.

8. The petitioner did produce a copy of the PAN Card dated 10.07.2002. Curiously, there is no subsequent PAN Card thereafter from the year 2002 to till date. It is not known as to whether the present petitioner's partnership Firm which is registered in the year 2015 was in existence at the earliest point of time. It is also not known whether the very same was continued from the year 2007. Suffice to say that neither in the partnership deed registered on 22.06.2007 and thereafter on 06.07.2015, there is any existence of earlier unregistered partnership deed at least from the year 2002 onwards. The documents produced for the first time to substantiate change of Constitution have not been produced before the respondents earlier and therefore, the respondents have rightly rejected the same. While exercising the powers conferred under Article 226 of the Constitution of India, the disputed questions of fact particularly the documents of the unregistered firm starting regarding the existence of partnership deed in the year 2002 and there after in the year 2015-2016 cannot be looked into. With respect to reconstitution and retirement of the partners is concerned, suffice it to say that the document registered on 22.06.2007 and 06.07.2015 clearly speak about such registration and existence for the first time. Thus, there is also no reference to any other fact regarding the change of Constitution.

9. It is settled law that a party to the document cannot go beyond the terms mentioned therein. Furthermore, under section 90 to 92 of the Indian Evidence Act, an unregistered document cannot be allowed to assail the content of the registered documents.

10. In the matters with respect to tenders, the powers of Judicial Review is very limited. Therefore, this Court does not find any arbitrariness in the decision made by the respondents. The respondents has relied upon the letters sent by the office of the registration of the Firms. What transpires atleast from 2007 till 2015 is a matter of evidence. Admittedly, these documents have not produced before the respondents. There is no reason as to why the petitioner has chosen to register the subsequent document in the year 2015 if it is his case that the earlier Partnership firm continues atleast from the year 2002 onwards.

11. Thus, in view of the above stated position the other non compliance are not required to be looked into. It is also to be seen that the erstwhile Managing Partner has said to have been

retired on 10.12.2014. The circumstances in which it was done and the reconstitution said to have been done was not known. This Court cannot go into the disputed question of fact when it is the case of the respondents 1 and 2 that these documents have not even put before it. Hence, this Court is of the considered view that the decisions relied upon by the learned Senior Counsel appearing for the petitioner are not required to be looked into.

12. In view of the above said reasons, the writ petition is dismissed. Consequently, connected miscellaneous petitions are also closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dn/arr

To

1. The Senior Regional Manager,
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Government of Tamil Nadu(Undertaking),
No.12, Thambusamy Road,
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Chennai-600 010.
2. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office,
No.12, Thambusamy Road,
Kilpauk,
Chennai-600 010.

+1cc to Mr.D.Ashok Kumar, Advocate, S.R.No.58524

+1cc to Mr.L.P.Shanmuga Sundaram, Advocate, S.R.No.58194

W.P.No.21326 of 2015

and

M.P.Nos.1 to 2 of 2015

EV(CO)
CA(16/11/2015)