IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2015

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THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.37526 of 2015 and
M.P.No.1 of 2015

KGR Industries
Handling and Transport Contractor Head
Office: Shed No.70-72 Plot No.194 Phase II
IDA Cheriapally Hyderabad Rep. by
Proprietor K.Govinda Reddy.
and the New Branch Office
at No.40/83 Avadhana pappaier st
Choolai, Chennai. .. Petitioner

Vs.

The Tamil Nadu Warehousing
Corporation A Govt. of Tamil Nadu Sponsored
undertaking No.82 Anna Salai Guindy
Chennai-32 Rep. by its Managing Director. .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus declaring that the conditions laid down in the tender duly called for by the Managing Director Tamil Nadu Warehousing Corporation Chennai-32 the respondent herein for the appointment of handling and transport contractors for the period of 2015-2017 for the purpose of Tamilnadu warehousing Corporation as shown in the petition.

For Petitioner .. Mr.N.C.Ramesh senior counsel for M/s.D.Ashok Kumar

For Respondent .. Mr.A.L.Somayaji, Advocate General assisted by Mr.S.T.S.Murthi, Govt. Pleader

ORDER

This writ petition has been filed by the petitioner raising a challenge to the condition laid down in the tender called for by the respondent for the appointment of handling and transport contractors for the period of 2015-2017. Tenders have been called for, for the purpose of appointment of handling of transport contractors in respect of warehouses under grade A,B,C and D. The Food Corporation of India dispatches rice and wheat allotted from the Central Pool of food grain stocks of the Government of India from various states to the state of Tamil Nadu through the Railways meant to be stored at various goodsheds in the state. The respondent corporation is the bailee of the bailor, viz., Food Corporation of India. The nature of goods being food grains, the transportation has to be effected at a reasonably fast clip.

2. The petitioner has challenged the criteria 1 B which is extracted hereunder:

> " The Tenderer must have tie up arrangements with Registered Lease Deed in the name of the tenderer or in the name of the firm, in the case of partnership firm, for additional No. of road worthy Lorries mentioned as above in respect of Grade A to Grade C in each local area of the Warehouse."

3. The grievance of the petitioner for the said clause appears to be that it is merely impossible to have the tie-up arrangement with the registered dealers for additional number of roadworthy lorries in each local area of the warehouse. In other words, according to the petitioner, the tenderers will have to be given the option of having tie-ups for the lorries without restriction from the local area of the warehouse.

4. After the filing of the writ petition, the additional grounds have been raised challenging the other conditions with respect to the production of Income Tax Clearance Certificate. The said condition mandates the production of the said certificate failing which the tenderer is liable for rejection. The request clause also provides that in the event of failure to furnish the original Income Tax Certificate within one month from the date of acceptance of the tender, all payments from the contractor will be frozen till the same is furnished. While assailing the condition made in the production of Income Tax Certificate, the learned senior counsel appearing for the petitioner has made reliance upon the circular No.2 of 2004 issued by the Income Tax Department which indicates that the said practise has been dispensed with. The learned senior counsel also submits that even otherwise the petitioner will have to be given an opportunity to participate in the tender since after participation, it is not open to it to challenge the tender conditions.

5. The learned Advocate General appearing for the respondent submitted that the challenge has been made on the ground that the conditions have been imposed just to help the existing tenderers. Since number of tenderers have participated, the allegations made is not correct. Further, the conditions have been imposed

considering the nature of goods sought to be transported in a reasonably quick time. Thus, it has got a nexus to the object sought to be achieved. Considering the challenge made to other conditions, it is submitted that if it is impossible to perform, the same shall be dispensed with as the petitioner has chosen to challenge the condition with respect to the lease agreement qua lorries from the local area of the warehouse. No discretion has to be shown. Reliance has been made in the decision of this Court in the case of Vishnu Electricals Vs Tamilnadu Generation and Distribution Corporation Ltd., (2015) 8 MLJ 287 wherein it is observed that the power of judicial review in such matters is rather limited.

6. As rightly submitted by the learned Advocate General, this Court does not find any arbitrariness or irrationality on the conditions imposed. There is certainly an urgency in transporting the goods which are perishable in nature. Therefore, in the absence of any arbitrariness to be demonstrated by the petitioner, the contention raised in this regard, cannot be accepted.

7. Going to the other conditions sought to be raised, subsequent to the filing of the application before this Court, in view of the stand taken by the learned Advocate General, the same also cannot be accepted. When the petitioner is not able to successfully assail the first condition with regard to the supply of vehicles from local area warehouse, he cannot succeed based upon the subsequent challenge made. Therefore, the submission made by the learned senior counsel that the petitioner may be given the opportunity now also, cannot be accepted since having taken a chance before this Court, it is not open to him to accept the condition, thereafter and this Court cannot extend the time limit.

8. The learned Advocate General has also expressed the urgency involved in this matter, particularly, the additional supply effected by the Government in view of the recent calamity in several parts of the state including the capital.

9. In view of the above, there is no ground to allow this writ petition and hence, the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

The Tamil Nadu Warehousing
Corporation A Govt. of Tamil Nadu Sponsored
undertaking No.82 Anna Salai Guindy
Chennai-32 Rep. by its Managing Director.

1 cc to Mr.D. Ashokkumar, Advocate, Sr. 69381
2 ccs to Mr.STS. Murthy, Sr. 69360

W.P.No.37526 of 2015

VGI (CO)
KR 23/12