IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2015

CORAM

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

W.P.No.38288 of 2015
and M.P. Nos.1 and 2 of 2015

Sri Krishna Logistics
rep. by its Prop. C.Lakshmi Kant Sharma,
No.5/3, Srinivasa Iyer Street,
Near Jain Temple,
Seven Wells, Chennai-600 001. ... Petitioner

Vs.

1.Divisional Railway Manager (Commercial),
Southern Railway, Chennai Division,
Park Town, Chennai-600 003.

2.M/s.Om Cargo Service,
No.22, Laxmanapuram 2nd Street,
Pappanaickenpalayam,
Coimbatore-641 037. ... Respondents

Prayer:Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertains to the impugned order No.M/C.441/PHC/MAS/15 dated 23.11.2015 of the first respondent herein and quash the same and further direct the 1st respondent to award the contract for parcel handling using Battery Operated Cargo Vehicles at Chennai Central Railway Station for 3 years to the petitioner.

For Petitioner : Mr.A.R.L.Sundaresan,
Senior Counsel for
Mr.K.Kannan

For Respondents: Mr.P.T.Ramkumar for R1
Mr.V.Anand for R2

O R D E R

The petitioner is one of the tenderer, for the purpose of award of contract for parcel handling. The petitioner's tender was not accepted, though he was the lowest bidder, by accepting the tender of the second respondent. Challenging the order dated 23.11.2015, by which, the second respondent was awarded the contract for a period of three years, the present writ petition has been filed.

2.Heard the learned Senior counsel for the petitioner and the learned counsel for the respondents.

3.Before going into the submissions made on merit, it is appropriate to go into the eligible criteria. The relevant criteria reads as follows:

> "1.The tenderer should have executed works worth at least 35% of the advertised annual tender value in the field of handling/transportation of materials during the preceding three financial years and current year. Copy of the audited balance sheet or profit and loss account reflecting the earnings from handling/transportation of materials duly certified by chartered accountant shall be produced as documentary proof. Orders received from Government organizations or from reputed companies in original or copy attested by a Gazetted officer shall only be accepted as proof of experience.
>
> 2. The turnover of the tenderer during the last three financial years and current year put together, should not be less than 150% of the advertised tender value. Copy of audited balance sheet and profit and loss in original or copies certified by a chartered accountant shall be accepted as documentary proof."

4.The learned Senior counsel appearing for the petitioner submitted that it has satisfied the eligible criteria but, however, the petitioner's case has been wrongly rejected. The reliance has been made on the documents filed with respect to the Auditor's report 2011-12, 2012-13 and 2013-14.

5.The learned counsel for the first respondent produced the entire records before this Court and contended that the petitioner has come to this Court with unclean hands. The document filed in page 27 of the typed-set of papers, dated 01.12.2015, being the profit and loss for the year ending 31.03.2013 has not been annexed to the tender. In other words, the petitioner has only annexed the very same document pertaining profit and loss for the year ending 31.03.2012. Similarly, the document pertaining profit and loss for the year ending 31.03.2012 in the name of G.Lakshmikanth Sharma is also found to be forged.

6.The learned counsel for the petitioner submitted that document filed in page 27 of the said typed-set of papers in favour of M/s.Sri Krishna Logistics, even assuming is true, though not filed before the respondents cannot be accepted since it has been in the name of the Proprietor. It is further submitted that petitioner has produced the income tax returns for the year 2011-12 and 2012-13.

7.As per the eligible criteria, the petitioner has to produce the relevant documents for the year 2013-14, 2014-15 & 2015-16, being the three preceding financial years. Therefore, looking from any angle, the petitioner does not have a legal right.

8.This court has perused the original records produced by the first respondent as directed by this Court. Certainly, there are lot of discrepancies available. There are changes with reference to the year in two documents produced before the first respondent. Apart from the said documents filed before the first respondent, the income tax returns are filed for the academic year 2011-12and 2012-13. These are the documents filed by the petitioner. As per the eligible criteria as referred supra, these documents cannot be taken into consideration, for assuming the request, since the turn over leading to some tender value of Rs.2,60,77,748/-. Though the learned Senior counsel for the petitioner submitted that there is a mistake, this Court cannot accept the said plea, as the documents are filed by the petitioner itself. Therefore, explanation sought to be given on the discrepancies found out, cannot be accepted. Suffice it to state that even goes by the documents filed by the petitioner along with the tender before the first respondent, admittedly, it lacks the eligible criteria. The verification has been done by the Authorities concerned, there is nothing to suggest that wrong methodology has been adopted, petitioner has been denied the benefit though he is said to be the lowest bidder. So this Court is not in a position to extend helping hand to the petitioner. Therefore, the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petitions are also closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

DP

To
Divisional Railway Manager (Commercial),
Southern Railway, Chennai Division,
Park Town, Chennai-600 003.

+1cc to Mr.V. Anand, Advocate, S.R.No.69578
+1cc to Mr.K. Kannan, Advocate, S.R.No.69701
+1cc to Mr.P.T. Ramakumar, Advocate Sr.69741

SCD(CO)
EU(8/01/2016)