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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Appeal(MD) No.1066 of 2015 &
MP(MD)NO.1 OF 2015

Poovammal

... Appellant / Petitioner

Vs.

1.The Tamil Nadu Civil Supplies Corporation,
rep by its Managing Director,
12, Thambusamy Road,
Kilpauk,
Chennai 600 010.

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tirunelveli Region,
Tirunelveli.

3.N.Kumaresan

... Respondents/Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 25.09.2015 made in W.P.(MD)No.13130 of 2015.

Prayer in WP(MD). 13130/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records in connection with the impugned order passed by the 1st respondent vide proceedings ref. Na.ka.No.MD9/32307 dated 24.07.2015 and quash the same and consequently direct the 1st respondent to conduct an enquiry as to the fraudulent conduct of 3rd respondent by producing forged documents and pass appropriate orders on the qualification of 3rd respondent before finalizing the tender for the appointment of transport contractor for the transportation of essential commodities from FCI depots to the storage points of TNCSC in Tirunelveli Region.

For Appellant : Mr.S.S.Sundar

For 1st Respondent : Mr.D.Mayarajan

For 3rd Respondent : Mr.P.Wilson,
Senior Counsel for
Mr.A.Thiayarajan

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J)

<https://hcservices.ecourts.gov.in/hcservices/>

This writ appeal is directed against the order passed by the



learned single Judge dated 25.09.2015 in W.P(MD)No.13130 of 2015.

2.The writ appeal deserves to be rejected at the outset because we find no justification to accept the order impugned in the writ petition. It has no legal basis for challenge.

WEB COPY 3.Ground No.3 is an issue on fact. Therefore, we do not want to enter on that.

4.There is a plea of non application of mind by the learned single Judge does not merit consideration because the fact in dispute need not be gone into by the Writ Court exercising power under Article 226 of the Constitution of India. The appellant participated in a tender for appointment of transport contractors through out the State for transportation of essential commodities from FCI depots to the storage points of TNCSC in Tirunelveli region. The third respondent also participated in the tender. At that point of time, one P.Vinayagam/unsuccessful tenderer made an appeal to the authorities not to award tender in favour of the third respondent. He has also filed W.P.No.20833 of 2015 seeking for a direction to the first respondent therein to disqualify the third respondent therein not to award the contract for transportation of food grains to the third respondent therein for the Kancheepuram region for the period from 01.07.2015 to 30.06.2017. The said writ petition was disposed of on 13.07.2015 directing the first respondent therein to consider and dispose of the representation of the petitioner dated 07.07.2015. Pursuant to the said direction, enquiry was conducted by the first respondent and that complaint ended with a finding of mistake of fact. The appellant has also given a complaint before the first respondent and after enquiry, the same was rejected by the first respondent on 24.07.2015 which was challenged in W.P(MD)No.11354 of 2015. In the meanwhile, on 27.07.2015, the first respondent issued an order finalizing the contract and the third was declared as successful bidder and he was appointed as transport contractor.

5.Be that as it may, the tender was awarded in favour of the third respondent. Originally, the learned single Judge granted interim order and finally, the writ petition came to be dismissed.

6.At the outset, we would like to point out that the objection of the appellant was considered and rejected by the Managing Director, Tamil Nadu Civil Supplies Corporation, Chennai, the competent authority. If at all, there was grievance against that, the appellant could have gone before the Secretary to Food Department to ventilate her grievance.

7.Be that as it may, the appellant being an unsuccessful tenderer has a right to file an appeal against the order granting tender in favour of the third respondent to the authorities specified under the Tamil Nadu Transparency in Tenders Act, 1998. Without exhausting such remedy, the writ petition has been filed to disqualify the successful bidder is not maintainable. The learned single Judge was right in not going into the merits of the case because rejection by the authority does not create any right in favour of the present appellant to pursue a cause under Article 226 of the Constitution. We find no error or infirmity in the order of the learned single Judge.



8. Further, the judgment relied on by the learned counsel for the appellant in *M/s. Kulja Industries Limited Vs. Chief General Manager W.T. Proj*, BSNL reported in AIR 2014 SC 9 is relating to blacklisting of contractor where a right of an individual is affected and therefore, he justified in approaching the Court of law that principle will not enure to the appellant an unsuccessful tenderer.

9. For the aforementioned reasons, the writ appeal devoid of merits is dismissed. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (Crl Side)

/TURE COPY/

Sub Assistant Registrar

sms

TO

1. The Managing Director,
The Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road, Kilpauk,
Chennai 600 010.

2. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tirunelveli Region,
Tirunelveli.

+1 cc to MR.S.S.SUNDAR, ADVOCATE, SR NO: 60896

+1 cc to MR.D.MAYARAJAN , ADVOCATE, SR NO: 60468

+1 cc to MR.A.THIAGARAJAN , ADVOCATE, SR NO: 60563

JAM /02/11/2015/ ARK/3P-6C

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