

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2016

Coram

The Honourable Mr. Justice HULUVADI G. RAMESH
and

The Honourable Mr. Justice V. PARTHIBAN

W.A. No. 1761 of 2015 and
M.P.No.1 of 2015 & CMP 514 of 2016

V.K.S. Transport,
a Registered Firm,
functioning at No.18/126,
Panchaliamman Koil Street,
Arumbakkam,
Chennai-600 106
represented by its Managing Partner
K.Ashok Kumar ... Appellant/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/Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent, seeking to set aside the order dated 27.10.2015 passed in W.P.No.21326 of 2015 by the learned single Judge of this Court. Wherein it was prayed that this court may be pleased 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-10 the 1st 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 Appellant : Mr.N.C.Ramesh, SC for
Mr.D.Ashok Kumar
For Respondents : Mr.S.T.S.Murthy, AAG for
Mr.L.P.Shanmugasundaram
Standing counsel

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This Writ Appeal has been directed against the order of the learned single Judge passed in W.P.No.21326 of 2015 dated 27.10.2015. in and by which, the writ petition filed by the appellant, challenging the rejection of the tender by the respondents, came to be dismissed.

2. Pursuant to the tender notifications issued by the Tamil Nadu Civil Supplies Corporation, inviting tenders for Non-FCI internal movement for various centres, for transportation of stocks from places other than Food Corporation of India Depots to field points of Tamil Nadu Civil Supplies, for a period between 01.07.2015 and 30.06.2017, the appellant offered a tender for the centres, viz., Chennai North Railhead, Tiruvallur Region Non-FCI and Krishnagiri Region Non-FCI Movement, by enclosing due payment of Rs.12 lakhs towards EMD. According to the appellant, it is a registered partnership firm, registered in the year 2007 engaged in seasoned handling and transport contracts in Tamil Nadu and operates many railheads within the limits of Tamil Nadu for various corporations. According to the appellant, despite all the tender terms and conditions were fulfilled, the respondents rejected the tender.

3. It appears that there are as many as 11 tender conditions stipulated in the tender document, to be fulfilled by the intending tenderers. As per the said conditions, the appellant has to produce average turnover of Rs.20 lakhs preceding 3 years along with 3 years experience for the assessment years 2012-2013, 2013-14 and 2014-15 besides PAN Card of the firm and Certified statement of the Chartered Accountant for the turnover along with certificate from the authorities/organization to whom

the contract was carried out for the above three assessment years.

4. According to the respondents, the appellant produced one certificate of experience from Food Corporation of India, for the financial year 2014-15 alone which covered the assessment year 2015-16 and thereby, failed to produce the experience certificate for the above said three years. The said certificate was in the name of V.K.S.Transports and not in the name of V.K.S.Transport, by which name, the tender was offered. In the Income-tax return filed for the assessment year 2012-13, 2013-14, 2014-15, the appellant quoted the PAN card obtained in 2002 for VKS Transport, but the said firm was registered only in the year 2007 with three partners, namely, V.K.Ravikumar, G.Baskaran and Valsalam and as such PAN Card of 2002 cannot be taken as that of PAN Card obtained for the appellant firm which was registered only in 2007. Further, the firm has not produced any experience certificate for its existence with the partners during the assessment years 2011-12, 2013-14 and 2014-15 and as per the document in the Office of the Registrar of Firms, there is no record showing that appellant partnership firm was existing as on the date. It is also stated that appellant partnership firm was registered on 26.6.2007 with three partners, however, it has not been renewed till date and as such, the firm has no legal support or sanctity to enter into any contract in the name and style M/s.VKS Transport after 2007 onwards. With these defects, the respondents have rejected the tender offered by the appellant having held that it was technically not qualified. Aggrieved by the same, a writ petition was moved by the appellant.

5. The learned Judge, having taken note of the above aspects and having heard the learned senior counsel for the petitioner and the learned Additional Advocate General for the State and having observed that it is not known as to whether the present appellant partnership firm which was registered in the year 2015 was in existence at the earliest point of time and whether the same continued to be in existence from the year 2007 and that as per Section 90 to 92 of the Indian Evidence Act, an unregistered document cannot be allowed to assail the contents of the registered document and that as there was non-compliance of the terms of the tender by the appellant, dismissed the writ petition. Aggrieved by the same, the present Writ Appeal has been preferred.

6. Assailing the order of the learned single Judge, learned senior counsel appearing for the appellant would contend that the appellant has produced the partnership deed dated 22.6.2007 as well as the latest partnership deed dated 6.7.2015 to

establish that the partnership registered in the year 2007 was continuing till date on its reconstitution in the year 2015 and that though there is change in partners, it would not affect the partnership firm since a partner may retire at his will and a new partner or partners may be inducted into the said partnership firm and as such, the reconstituted firm can carry on its business in the same firm's name till its dissolution. In support of this, the learned senior counsel relied upon a decision reported in AIR 1953 SC 455 (The Commissioner of Income Tax versus M/s.A.W.Figgis & Co., and others). The learned counsel would contend that there is no justification in rejecting the tender of the appellant firm on the ground that there is no existence of the partnership firm without considering the documents produced by the appellant, viz., partnership deeds dated 22.6.2007 and 6.7.2015 and the PAN card which stood only in the name of the partnership firm. He pointed out that as per Section 69A of the Indian Partnership Act, 1932, it is not required that every time a new partner is inducted, fresh registration has to be applied and obtained, but suffice to send the intimation about the changes to the Registrar of Firms, within a period of 90 days, failing which, penalty only attracts and therefore, in any event, it does not mean that the registration given to the appellant firm in the year 2007 would cease even if it is not renewed. He pointed out that subsequent changes in the constitution of the partnership firm will not any affect its registration in view of Sections 58 and 59 of the Act which clearly provide that a partnership firm once registered, it stands registered permanently and if there is any change in the partners, the same does not affect the registration. In support of this, the learned senior counsel relied upon a decision reported in "AIR 1998 SC 877 (Sharad Vasant Kotak and others versus Ramniklal Mohanlal Chawda and another)".

7. The learned senior counsel would also contend that while the appellant was in process of challenging the rejection of its bid by writ petition, the respondents awarded the contract to the other concern, which is not sustainable. In this regard, he relied upon a decision reported in "(2016) 3 SCC 569 (Roots Industries India Limited versus Airports Authority of India and others)", wherein, the Hon'ble Supreme Court, having noted that the tender/bid was finalized and contract was awarded to another while the writ petitioner therein, was in process of challenging the rejection of its bid, remitted the matter to the High Court to take decision afresh on merits. He would also contend that as per Section 63 of the Act, if any change occurs in the constitution of a registered firm or dissolution, the authorized person of the firm, may give notice to the Registrar of such change or dissolution, and on such notice, the Registrar of

Firms shall make a record of the notice in the entry relating to the firm in the Registrar of Firms. Therefore, learned senior counsel pointed out that the word 'may' instead of 'shall' occurs in Section 63 of the Act itself denotes that it is not mandatory to give notice in regard to change or dissolution that had taken place in the constitution of the registered firm. Therefore, non-registration of the reconstitution of the firm, it cannot be construed that the appellant partnership firm was not in existence on the date of finalizing the process of the tenders. As regards the experience certificate produced by the appellant, learned senior counsel would contend that the appellant has produced necessary experience certificates showing requisite experience in the field, however, the same was rejected on the ground that the experience of a partner cannot be considered as that of the experience of the partnership firm. He would contend that the appellant firm being a partnership firm, the experience of the members alone is the criteria and hence, such denial is irregular. In this regard, he relied upon a decision reported in "(1995) 1 SCC 478 (New Horizons Limited and another versus Union of India and others)". With these contentions, the learned senior counsel sought for setting aside the order passed in the writ petition.

8. In reply, the learned Additional Advocate General would contend that initially, the appellant partnership firm was registered on 22.6.2007 with three partners, viz., V.K.Ravikumar, G.Baskaran and C.Visalam, which in toto, had been reconstituted on 28.7.2014 with three new partners, i.e. S.Dinesh Babu, K.Ashok Kumar and M.Muthusamy and on 10.12.2014, one of the partners, i.e., S.Dinesh Babu had retired from the partnership and as such, there were two partners continuing as partners. However, again on 6.7.2015, the partnership firm has been reconstituted by inducting four new partners, viz., M.Velayudam, A.Pichaimuthu, N.Sivaraj and P.Mani. He pointed out that after initial registration, there has not been any registration or renewal of the firm. In this context, the learned Addl.Advocate General submitted that the registration of a partnership firm with the Registrar of firms, is a prerequisite for it to have legal sanctity and any firm that was not registered, cannot be construed to be a registered firm, but the same can only be construed as 'contract for business'. He also pointed out that Rule 3(A) of the Tamil Nadu Partnership (Registration of Firms) Rules 1932, it is mandatory for a registered firm to file a declaration in form II with the Registrar of Firms to the effect that the registered firm has been carrying on its business or has been in operation during the financial year, which admittedly, the appellant has not filed. In this regard, the learned Addl.Advocate General relied upon a decision reported in "1999(I) CTC 373 (Salem Chit Funds

and Financiers Association, rep. By its Secretary versus State of Tamil Nadu and others)". He would further contend that the PAN card produced by the appellant was obtained even prior to the existence of the appellant firm since the PAN card was obtained in the year 2002, whereas admittedly, the appellant firm was registered in the year 2007 and there is no proof that whether the said PAN card obtained in 2002 is in consonance with the constitution of the appellant partnership firm and thereby, tender condition which insists that there should not be deviation regarding PAN card, has not been complied with. As regards experience, the appellant produced certificates from Food Corporation of India for a period of six months from 7.10.2014 to 6.4.2015 which falls under the financial year 2015-16 and not within the period stipulated in tender condition, i.e. for a period of three years. Further, experience of Ashok Kumar, obtained individually, pressed as that of experience of the appellant firm that too when the reconstituted firm with change of partner Ashok Kumar was not registered with the Registrar of Firm. The learned Addl. Advocate General also contended that appellant partnership firm was reconstituted with three new partners, i.e. S.Dinesh Babu, K.Ashok Kumar and K.Muthusamy and in the partnership deed, the name of the father of Dinesh Babu was deliberately mentioned as S.Girija, since another firm M/s.Dinesh Babu Transport, in which, his father S.K.Sukumaran was the Managing Partner and he was blacklisted on 25.9.2014 on serious allegations that they submitted fake numbers for the lorries and the registration numbers since the same were found to be the numbers of two wheelers. Hence, taking note of fact that the appellant firm is closely associated with Dinesh Babu and V.K.Sukumaran, who were integral part of the tainted firm, the tender of the appellant firm was not taken for consideration by the respondents. He would also submit that Clause 21 of the tender notification refers to arbitration, however, without exhausting the same, the writ petition filed by a partner in individual capacity, is not maintainable. With these contentions, the learned Additional Advocate General sought for dismissal of the writ appeal.

9. Having heard the learned senior counsel for the appellant and the learned Additional Advocate General for the respondents and on going through the entire materials placed before this Court, we find considerable force in the contentions made by the learned Additional Advocate General, which rightly support the rejection of the tender by the respondents and as such, we do not find any infirmity in the order of the learned single Judge in order to interfere with the same.

10. The relevant facts mentioned in brief above unfold the nature of controversy. It is the case of the appellant that tender bid was submitted in conformity with the tender

conditions without any material deviation, however, the respondents have not accepted the same for consideration. Part-I of the tender notification prescribes 'qualification bid', which provides conditions of eligibility for intending tenderers by prescribing norms. Of which, Clause IV to VI and IX are relevant, which insist production of valid PAN number of the tenderer; Certification of Firm Registration in the name of tenderer; Registered partnership deed and Bylaws; and tenderer must have experience in transportation of any one of the commodity, such, rice, sugar, wheat, paddy and dhall, etc., and quantity transported should be produced as turnover for preceding three years.

11. According to the appellant initially, the appellant partnership firm was registered on 22.6.2007 with three partners, viz., V.K.Ravikumar, G.Baskaran and C.Visalam and later on 6.7.2015, it was reconstituted by inducting four new partners. However, it is to be noted that the appellant firm was reconstituted on 28.7.2014 with three new partners, i.e. S.Dinesh Babu, K.Ashok Kumar and M.Muthusamy and on 10.12.2014, one of the partners, i.e., S.Dinesh Babu had retired from the partnership and as such, there were two partners. But no registration or renewal of the said partnership firm had taken place. Under Section 63 of the Indian Partnership Act, 1932, it is provided that, when a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, may give notice to the Registrar of such change or dissolution specifying the date thereof and the Registrar of Firms shall make a record of the notice in the entry relating to the firm in the Register of firms. In this regard, the learned senior counsel would rise a technical ground that the compliance of Section 63 of the Act, is not mandatory since the word 'may' occurs in the provision. To counter this, it is worthwhile to refer Rule 3(A) of the Tamil Nadu Partnership (Registration of Firms) Rules 1932, which mandates every registered firm, after its registration under Section 59 of the Act, to file a declaration in form II with the Registrar of Firms to the effect that the registered firm has been carrying on its business or has been in operation during the financial year and such declaration together with a fee of rupees fifty, shall be filed with the Registrar within thirty days from the date of closing such financial year. Admittedly, the appellant firm has not filed any such declaration for its continuance right from its registration, with the Registrar of Firms. The purpose of insisting such declaration is to know exactly how many firms registered or functioning during each financial year and that whether the registered firm is carrying on business or has been in operation during the financial year. Therefore, in the absence of any such declaration which is mandatory under Rule 3

(A) of the Tamil Nadu Partnership (Registration of Firms) Rules, 1932, the very existence of the appellant firm itself is doubtful and it cannot be said that the appellant firm which was registered in the year 2015 was in existence at the earliest point of time and continued from the year 2007. In such view of the matter, the respondents have rightly rejected the tender offered by the appellant, which was also rightly confirmed by the learned single Judge. Further, the appellant produced the PAN card which appeared to have been obtained in the year 2002, whereas, admittedly, the appellant firm was registered in the year 2007 and no document was produced to show that the said PAN Card of 2002 was obtained in consonance with the constitution of the appellant partnership firm. It is to be noted that the tender condition insists upon production of PAN Card without any deviation. As regards experience, the tender condition insists upon production of certificate duly certified by the Chartered Accountant for a period of three years with average annual turnover of Rs.20 lakhs for the preceding three assessment years, viz., 2012-13, 2013-14 and 2014-15, but the appellant produced certificate obtained from Food Corporation of India for a period of six months from 7.10.2014 to 6.4.2015, which does not fall under the financial year 2015-16 and also not within the period of three years stipulated in the tender condition. Further, Mr.Dinesh Babu, who is one of the members of the appellant partnership firm was shown as son S.Girija since another firm M/s.Dinesh Babu Transport, whose Managing Director was none other than the father of Dinesh Babu, was blacklisted on serious allegations and therefore, the said firm is tainted with irregularities to which, Dinesh Babu was closely associated, the respondents thought it fit not to consider the tender offered by the appellant partnership firm. Further, the appellant has not impleaded the party to whom, the contract was awarded in order to know whether the respondents have rightly awarded the contract. If the appellant is so interested, it can participate in the next tenders on compliance of the tender conditions. Therefore, we are of the view that the appellant firm has not complied with the tender conditions in order to accept the same by the respondents and that the respondents have rightly rejected the same.

For the foregoing reasons, we do not find any irregularity in rejecting the tender offered by the appellant partnership firm and no infirmity in the order of the learned single Judge, confirming the action of the respondents, in order to interfere with the same.

Accordingly, the Writ Appeal fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

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To Sub Assistant Registrar

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.

+1cc to Mr.L.P. Shanmugasundaram, Advocate, S.R.No.58913

mv(CO)
md(28/11/2016)

W.A. No. 1761 of 2015

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