

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.18577 of 2016

C.Elangovan

... Petitioner

Vs.

1.The Executive Director,
Indian Oil Corporation Ltd.,
Indian Oil Bhavan,
Nungambakkam High Road,
Chennai - 600 034.

2.The Deputy General Manager
(Contract Cell) SR,
Regional Contract Cell,
Southern Region,
Indian Oil Corporation Ltd.,
Indian Oil Bhavan,
Nungambakkam High Road,
Chennai - 600 034.

3.The Senior Terminal Manager,
Indian Oil Corporation Ltd.,
Athappa Gounden Pudur,
Irugur (PO),
Coimbatore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent by proceedings dated 27.05.2016 in tender reference No.RCC/SR/TNSO/PT/42/15-16 and quash the same and consequently direct the respondents to substitute the name of the petitioner, C.Elangovan in the tender reference No.RCC/ SR/TNSO/PT/42/15-16 in the place of the deceased E.Manimekalai.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondents: Mr.M.Ravindran,
Senior Counsel for
Mr.V.Ananda Natarajan

O R D E R

The petitioner would state that his wife viz., E.Manimekalai was a Transport Contractor for more than 10 years with the respondents corporation. The Marketing Division of the respondent corporation has floated tender for Road Transportation of Bulk Petroleum Products-MS/HSD/Branded Fuels vide Tender No.RCC/SR/TNSO/PT-42/15-16 and prior to that, the wife of the petitioner was issued with work order dated 01.03.2013 to enable her to operate as a Transport Contractor from 27.12.2012 upto 31.12.2015 and further extended for four months upto 30.04.2016.

2. The wife of the petitioner, in response to the above cited tender notification, had submitted her bid, within the stipulated time, quoting tender for 9 Trucks and vide E-mail dated 03.02.2016, the second respondent has informed that the bid made by the petitioner, bearing No.16925 has opened, admitted and placed before the duly constituted committee for further action. However, the wife of the petitioner suddenly died on 02.03.2016, due to illness. The petitioner, immediately, vide communication dated 04.03.2016, informed the third respondent about the sudden demise of his wife and also requested for amendment of the name in the existing contract and also substitute his name in respect of the application submitted for fresh tender, which was opened and admitted on 03.02.2016. The petitioner through yet another communication dated 12.03.2016, had furnished the death certificate as well as legal heir certificate along with other documents for substitution of his name. Insofar as the request made by the petitioner for amendment of the name for existing of the work order, the time limit was extended from 01.05.2016 to 31.07.2016, at the same rate, as per the terms and conditions of the contract entered between them. The petitioner in respect of the amendment of the name in the fresh tender application submitted by his late wife, also sent a reminder dated 11.05.2016 to the first respondent. However, the second respondent, vide E-mail communication dated 27.05.2016, has informed the petitioner that the tender submitted by his late wife has been rejected due to technical evaluation by the duly constituted committee and however, through yet another E-mail, he has informed that the bid submitted by the wife of the petitioner has been opened, admitted and it is placed before the duly constituted committee for further action. The petitioner aggrieved by the impugned E-communication dated 27.05.2016, came forward to file this writ petition.

3. The learned counsel appearing for the petitioner would submit that as per the notice inviting the tender, the following tender details were given:

Particulars	Date & Time
Start date & time for publishing the tender documents	16.12.2015 @ 11.00 hours
Closing Date and time for tender	15.01.2016 @ 17.00 hours
Date and Time of Pre-Bid meeting	24.12.2015 @ 15.00 hours
Bid Submission start date	After uploading Pre-bid meeting minutes, likely on 29.12.2015 @ 11.00 hours
Opening date & time for the tender documents	On or after 18.01.2016 @ 10.00 hours

and admittedly, the wife of the petitioner was alive at the time of issuance of the tender notification and submitted her tender and vide E-communication dated 03.02.2016, the second respondent has informed his wife that her bid has been opened, admitted and it is placed before the duly constituted committee for further action and the opening date and time of the tender document was fixed at 18.01.2016 as per the above cited tender notification and his wife died on 02.03.2016 due to illness. The petitioner immediately sent representations for substitution of his name in respect of the application submitted by his wife as well as in respect of the earlier contract and it was favorably considered in respect of the existing contract is concerned, however, it was unjustifiably rejected in respect of the application submitted for the present tender notification dated 27.05.2016 and therefore, prays for interference.

4. Per contra, Mr. Ravindran, learned Senior Counsel assisted by Mr. V. Anantha Natarajan, learned counsel appearing for the respondents has drawn the attention of this Court to the counter affidavit of the respondents as well as the terms and conditions of the above said tender, who would submit that as per sub-clause 8 of clause 6, the bidder shall give an undertaking that the content of the bidding document has not been altered or modified and any change in bid document or conditional bid is liable to be summarily rejected and though the wife of the petitioner, while she was alive, has submitted an application in response to the tender notification and died on 02.03.2016 and in the light of the above cited clause, the request made by the petitioner cannot be considered. Accordingly, it was rightly rejected through the impugned E-communication and would further add that any permission for substitution, may create a precedent and also to delay the tender process and prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. A perusal of the terms and conditions of the tender would disclose that the opening date and time of the tender documents is fixed on or after 18.01.2016 at 10.00 hours and admittedly, the wife of the petitioner, while she was alive, has submitted an application for tender and vide communication dated 03.02.2016, the second respondent has also informed the wife of the petitioner that the tender has been opened, admitted and placed before the duly constituted committee for further action. Unfortunately, the wife of the petitioner died on 02.03.2016 and immediately, the petitioner has submitted a representation for substitution of his name in the existing contract as well as in respect of the application submitted by the wife of the petitioner for the new tender and in respect of the latter request, it was rejected without citing any specific reason and the reasons appears to be that the name cannot be substituted at a latter point of time.

7. In the considered opinion of this Court, the stand taken by the respondent in paragraph Nos.8 and 9 of the counter affidavit appears to be untenable for the reason that the tender documents were opened on 18.01.2016 and the wife of the petitioner could have been alive and her application should have been considered in accordance with the relevant norms and regulations. Though it is stated that the tender can be opened on or before 18.01.2016, the fact remains that it was taken into consideration on 30.05.2016 and taking into account of the fact that the original applicant viz., the wife of the petitioner is no more, the tender bid was rejected. This Court, on going through the terms and conditions of the tender, is of the view that there is no express prohibition, permitting the respondents to reject the bid submitted by the petitioner on the above cited reasons. It is also pertinent to point out at this juncture that the discretion is also vested with the tender authority to act accordingly in tune with the facts and circumstances prevalent at the relevant point of time. It is also brought to the knowledge of this Court by the learned Senior Counsel appearing for the respondents as per the Technical Bid Evaluation Summary dated 30.05.2016, out of 64 Transporters, 62 Transporters have been identified. According to the petitioner, except the fact that the demise of his wife, the other terms and conditions have been fulfilled.

8. Therefore, this Court, in the light of the facts and circumstance, is of the view that the impugned E-communication forwarded by the second respondent warrants interference.

9. In the result, this Writ Petition is partly allowed and the communication of the second respondent dated

27.05.2016 is set aside and the respondents 2 and 3 are directed to substitute the petitioner's name in the place of his demise wife, process the application/bid in accordance with the relevant norms and regulations and take a decision within a period of one week from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Executive Director,
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Athappa Gounden Pudur,
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Coimbatore.

1 cc to M/s.P.Saravana Sowmiyan, Advocate, sr.43696
1 cc to Mr.V.Anantha Natarajan, Advocate, sr.43781

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kra 04.08.2016