



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO**and****THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

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Writ Appeal (MD) No.1153 of 2016 & C.M.P(MD)No.7359 of 2016

M/s.Jharsanya Logistics Pvt. Ltd.,
Rep.by its Director,
2/13A, Pothanpilavilai,
Azhagiyamandapam,
Mulagumoodu Post-629 167,
Kanyakumari District.

...Appellant/Petitioner

-Vs-.

The District Manager,
TN State Marketing Corporation Limited,
Kanyakumari District at Konam,
Nagercoil-629 004,
Kanyakumari District.

... Respondent/Respondent

Appeal filed under Clause 15 of Letters Patent praying to set aside the order of this Court dated 14.07.2016 made in W.P(MD) No.11889 of 2016 on the file of this Court insofar as it directs the respondent to consider the appellant's tender document dated 21.06.2016 for the re-tender that was scheduled to be held on 26.07.2106 and allow the writ appeal.

Prayer in WP(MD)No.11889 of 2016:-

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent herein to accept the tender submitted by the petitioner dated 21.06.2016 pursuant to the respondents newspaper notification dated 28.05.2016 in the Tamil Daily Dina Murasu and to consider the grant of contract for transportation of Indian made Foreign spirit (IMFS) to the various retail units situated within Kanyakumar District from its Depot at Konam, Nagercoil for the notified period of one year from 01.07.2016 to 30.06.2017.

For Appellant

: Mr.Isaac Mohanlal Senior Counsel
for Mr. T.Cibichkraborthy

For Respondent

: Mr.M.Muniasamy
Standing Counsel.

JUDGMENT

(Judgment of the Court was delivered
by NOOTY.RAMAMOohana RAO,J)

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This writ appeal is preferred by the writ petitioner. The short question that has fallen for consideration is as to the legality of the action of the respondent in rejecting to consider the price bid offered by the petitioner pursuant to a tender notice invited by the Tamil Nadu State Marketing Corporation Limited (TASMAC) on 17.06.2016. It is rather unfortunate that the petitioner has not chosen to implead the said Corporation as a party respondent, but preferred only to implead it's District Manager. Nonetheless, we proceed to consider the entire matter on merits.

2. On 28.05.2016, notice inviting tenders was got published in all leading newspapers, inviting bids from Transport Contractors for the purpose of transporting of Indian Made Foreign Spirit (IMFS) in cases, from its Depot of the Corporation situated at Nagercoil, to various retail units and the number of such cases to be transported will be approximately 8,000 to 10,000/- per day. The tender notice made it clear that the tender form will be issued till 21.06.2016 at 5.00 p.m and the last date for receipt of tender is upto 03.00 p.m on 22.06.2016. The tender will be opened at 04.00 p.m on 22.06.2016 in the presence of tenders who wish to be present. It is pursuant to this notice inviting tenders, the writ petitioner/appellant participated. The tender documents are made available at a price of Rs.525/-. The eligibility for participation is spelt out in the terms and conditions stipulated in the said tender document at paragraph '2' thereof. It is a requirement that the transport contractors should own a minimum 8 number of Eicher Lorries/Mini lorries and have minimum two years of experience in transport line only need to apply, by enclosing documentary evidence for the ownership of the Lorries/Mini lorries to the commercial bid. The transport contractor should also have the EPF number for participating in the Transport Tender. The Tenders are to be submitted in two separate sealed covers. Cover 'A' should contain Commercial Bid and the cover 'B' the Price Bid.

3. The Commercial Bid should be submitted in Appendix-1 together with Demand Draft towards Earnest Money Deposit. While the priced Bid should be in the format prescribed in Appendix-2. Thus, to the tender document, two separate Appendices 1 and 2 are enclosed, which are required to be used by the respective bidders to be filled in and submitted in two separate sealed covers clearly inscribing as "Tender for the Transport of IMFS from TASMAC depots to various retail units".



4. In the instant case, the commercial bids are opened on 22.06.2016. There is no difficulty with regard to the eligibility criteria of the writ petitioner/appellant to participate in such bidding process, inasmuch as he has produced proof of ownership of eight vehicles and also proof of experience of more than two years in undertaking transportation work and he has also produced EPF number. Therefore, in normal circumstances, the respondent should have proceeded to the next step by declaring his commercial bid as responsive, instead, the respondent rejected the commercial bid of the writ petitioner/appellant on the ground that the tender document has not been signed properly by the writ petitioner/appellant. It is the specific case of the respondent that page No.16 of the tender document did not contain the signature of the bidder, but instead, contained only the seal of the tenderer. Whereas the last page of the tender document is signed but did not contain the seal. For those reasons, the commercial bid of the writ petitioner was rejected.

5. Therefore, the entire scrutiny is revolved around the legality and sustainability of the respondent in rejecting the commercial bid for the failure of the writ petitioner/appellant to sign the tender document and also to affix the seal of the writ petitioner on the tender document.

6. The tender document is made available for a price of Rs.525/-. Anyone who is interested in responding to the notice inviting tender can purchase the same across the counter, provided it intends to buy it before 05.00 p.m on 21.06.2016. An individual contractor or a firm or a company can also participate in the bidding process.

7. The learned Counsel for the respondent Corporation relies upon the note appended at the end of tender document, in support of his plea that the signed tender document should also be tendered along with the commercial bid. The note reads as under:

"The above tender document duly signed along with Demand Draft for Earnest Money Deposit and APPENDIX-1 should be put in a sealed cover and marked as "COVER-A".

8. Now, even going by the contents of the note, what is to be noticed is that the tender document duly signed along with Demand Draft for Earnest Money Deposit should be submitted. What is meant by the expression "duly signed" remained un-explained anywhere, as to whether it is necessary that every page of the tender document also should be signed or it is enough if the tenderer affixes his signature at the place so specifically marked, after the condition No.28 is stipulated therein. It is not in dispute that after specifying all the terms and conditions in separate paragraphs 1 to 28, the following appears:

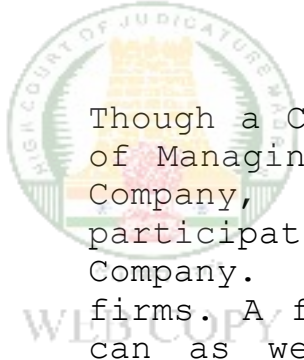
"SIGNATURE OF THE TENDERER
WITH SEAL."



9. Thus, the signature of the tenderer is required to be appended at that place. This apart, in paragraph 28, it has been noted that the tenderer must sign and affix the seal in every page of the tender document. Now, the whole question is to be examined from this perspective. While the tenderer is required to make available his bid in two different stages, in the form of Commercial Bid as well as the Price Bid and that too, in a prescribed format called Appendix-1 and Appendix-2, was it really necessary that the conditions stipulated with regard to affixing the signature on every page of the tender documents are also liable to be treated as essential or not?

10. As we have already noticed supra, the tender document contained the terms and conditions stipulating subject to which the tender process is to be undertaken. Though at the end of the tender document, a specific column is provided for affixing the signature of the tenderer, but however, by prescribing that the tenderer must sign and affix his seal on every page of the tender document, the Corporation is only extra precautions with a view to prevent any tenderer from proceeding any further either in disputing or disowning the other conditions stipulated in the tender document at any later point of time. Affixing the signature of the tenderer on the tender document implies his acceptance of the terms and conditions stipulated in the tender document. It is not really obligatory for a tenderer to expressly accept the terms and conditions stipulated by the Corporation, even if he does not accept the same expressly, one is bound by the terms and conditions stipulated by the Corporation, subject to which alone, the tender process is to be accomplished. Affixing signature at the end of the tender conditions, clearly implies the acceptance of all the conditions. What is essential of every tenderer is to comply with the requirements which render him eligible to participate. The eligibility conditions have been brought out clearly in paragraph 2 of the tender document by requiring every tenderer to own a minimum of 8 Eicher Lorries/Mini Lorries and carry on transport business for a minimum of two years and that he must be having the EPF number. Once the eligibility criteria are met with every offer/bid made has to receive a fair and proper consideration.

11. In the instant case, the Commercial Bid itself has been declared as non-responsive on the ground that the signature of the tenderer is found missing on one of the pages of tender document and the seal is found missing at another page of the tender document. Insofar as affixing of the seal on the tender document is concerned, we have noticed that even individuals are entitled to participate in the tendering process. Therefore, an individual may not have any seal of his own for him to affix it. This apart, only a Company can have a seal of its own and affixing any such seal would signify the participation of the Company itself.



Though a Company acts through it's authorised agents, in the form of Managing Director or Director or any other functionary of the Company, affixing the seal of the Company signifies the participation and acceptance of the terms and conditions by the Company. The seal perhaps can also be affixed by participating firms. A firm is not required to have a seal of its own. But it can as well have one. Therefore, the stipulation relating to affixing the seal is purely a complementary act, to that of affixing the signature. The same cannot be construed as mandatory stipulation, but is only an optional one. In our opinion, the reasons assigned for rejection of the tender of the writ petitioner/appellant is far too technical which have no bearing upon the essential requisites, subject to which, the tender document is liable to be processed.

12. That takes us to see as to what relief can be granted. When once we come to the conclusion that the rejection of the tender of the writ petitioner/appellant is wholly unsustainable, a consequential direction should follow that the price bid offered by him should be opened up. Non-opening of the price bid of the writ petitioner/appellant is, therefore, unsustainable.

13. In the meantime, a fresh round of tenders are invited and fresh offers are also made but that is not a valid reason for not opening the price bid offered by the petitioner. It, therefore, follows as a consequential relief, which is liable to be granted to the writ petitioner/appellant. Accordingly, we modify the directions issued by the learned Single Judge and direct the respondent to open the Price Bid of the writ petitioner offered pursuant to the notice inviting tenders on 28.05.2016 in newspapers and process the same.

14. We are conscious that the Corporation has reserved its right to reject any tender, but that stipulation does not necessarily mean that every tender should be rejected mechanically. Right is always available to the employer either to accept or not to accept any or all the tenders. But however, in such a position, the ultimate decision to reject must be based on a justifiable basis and the reasons cannot be fanciful notions or ideas of individuals. Therefore, while preserving the right of the Corporation to act in accordance with the conditions stipulated and specified in the tender document, we direct the respondent to process the Price Bid offered by the writ petitioner/appellant as well as others also and process them in accordance with law.



15. Accordingly, the Writ Appeal stands allowed to the extent indicated above. No costs. Consequently, the connected Miscellaneous petition is closed.

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sd/-
Assistant Registrar (CSII)
/True Copy/
Sub-Assistant Registrar

TO

The District Manager,
TN State Marketing Corporation Limited,
Kanyakumari District at Konam,
Nagercoil-629 004,
Kanyakumari District.

+One cc to Mr.Cibi Chakraborty, Advocate, SR.No.42841

gsr
RL/3C/6P/CK/SARIII/19/8/2016

Writ Appeal (MD) No.1153 of 2016

08.08.2016