



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 14.07.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P (MD) No.11889 of 2016

and

WMP (MD) No.9114 of 2016

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

... Petitioner

Vs

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

... Respondent

Prayer: 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 respondent's 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 Kanyakumari District from its Depot at Konam, Nagercoil for the notified period of one year from 01.07.2016 to 30.06.2017 and pass orders

For Petitioner : Mr.Issac Mohanlal, Sr.Counsel

For Mr.T.Cibi Chakraborty

For Respondent : Mr.Muniasamy

**ORDER**

The Petitioner / Company has preferred the instant Writ Petition praying for passing of an order by this Court in directing the Respondent / District Manager, Tamil Nadu State Marketing Corporation Limited, Kanyakumari, to accept the tender submitted by it, dated 21.06.2016, pursuant to the Respondent's Newspaper Notification, dated 28.05.2016, in a 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 Kanyakumari District, from its Depot at Konam, Nagercoil, for the notified period of one year from 01.07.2016 to 30.06.2017.

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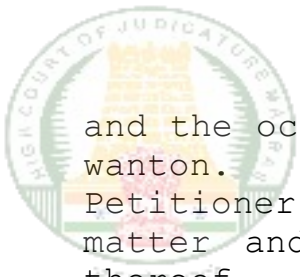
2. According to the Petitioner, in the year 2013, it turned out to be a successful bidder and the contract was allotted. Again, in the year 2014, the Petitioner was a successful bidder and got the contract in its favour. Likewise, during the year 2015 also, the Petitioner got the contract in its favour. The Tender period for the last tenure expired on 30.06.2016.

3. The plea of the Petitioner is that for the Current year 2016 - 2017, the Respondent / District Manager, Tamil Nadu State Marketing Corporation Limited, Kanyakumari, invited fresh Tenders, for a period of one year from 01.07.2016 to 30.06.2017 (vide Tamil Newspaper Notification, dated 28.05.2016 in "Dina Murasu") and the said Notification had contained certain mode and conditions prescribed for submitting the Tenders. The Petitioner has satisfied the conditions and submitted its Tender on 21.06.2016, along with the Tender document. The Petitioner submitted all the other required documents / details viz., Earnest Money Deposit of Rs.50,000/-, by way of Demand Draft No.517515 drawn at State Bank of India, Thadikkarakonam Branch, dated 21.06.2016, drawn in favour of TASMAL, payable at Nagercoil, Experience Certificate for a period of three years, Income Tax Returns, EPF Accounts of the Staffs, Solvency Certificate for annual turnover of Rs.10 Lakhs (whereas the requirement is only Rs.5 Lakhs, details about eight lorries with RC Books and Insurance etc.,)

4. At this stage, the Learned Senior Counsel for the Petitioner submits that two other contractors also submitted the Tenders and on the date of Tender viz., 22.06.2016, the Respondent / Corporation surprisingly announced that all the three tenders were rejected and further informed that Re-Tender would be invited shortly. However, the reasons for not conducting the Tender was not expressed and in fact, the Petitioner submitted a representation to the Respondent on 24.06.2016, requesting to know the reason. But, there is no reply.

5. The Learned Senior Counsel for the Petitioner proceeds to state that the Tenders of the two other contractors were rejected, due to major deficiencies and in reality, the Petitioner's Tender was rejected, on account of the fact that signature was missing in one of 12 pages of the tender documents (of the 12 pages, all the pages had the seal and 11 pages had the signatures).

<https://hcservices.courts.gov.in/hcservices> 6. The stand of the Petitioner / Company before this Court is that it fulfilled all other major requirements, as per the Tender Notification, except the minor defects, as afore-stated



and the occurrence of the said minor defect is neither willful nor wanton. In any event, it is represented on behalf of the Petitioner that the said defect does not go to the root of the matter and affect the tender in any manner nor the conditions thereof.

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7. The Learned Senior Counsel for the Petitioner brings it to the notice of this Court that the Petitioner's earlier Tender expired on 30.06.2016 and no new Tenders were finalized, till date and that the Respondent extended the Petitioner's previous period of Tender for another one month from 01.07.2016 to 31.07.2016, as per the proceedings in Na.Ka.No.A/700/2016, dated 30.06.2016. Therefore, the Petitioner still continues to perform the work till date. Since the Petitioner's representation, dated 24.06.2016, addressed to the Respondent has not met with any positive response from the Respondent's side, it has filed the present Writ Petition.

8. The Learned Senior Counsel for the Petitioner cites a decision of the Hon'ble Supreme Court in M/s.B.D.Yadav and M.R.Meshram, Engineers and Contractors Vs. Administrator reported in (AIR 1984 Bombay 351) at special page 356, wherein at paragraph 18, it is observed as under:-

"18. A number of contentions were raised in connection with the non-fulfilment of the other terms of the tender. It was submitted that the respondent not having signed page 3, which is really the tender or the offer, there was no offer at all. We think that that is taking too technical a view of self. But there are several other indications and there are several other pages of the tender form which do bear the signatures of the respondent. Even the details of that offer or tender have been filled. What has remained is the signature below that offer or tender. In the circumstances that the respondent had signed at other places, had filled the tender completely and fully, had even gone to the extent of pledging a deposit receipt for Rs.42,500/- taking away the tender form and submitting it and remaining present on 30-9-1981 when the tenders were opened, leads to the conclusion that the respondent did intend to tender and had in fact tendered. It could not have been said in the circumstances merely because page 3 was not signed that respondent 2 had no intention to tender. If the intention to tender is clear in the circumstances which are attendant, then the fact of such an offer can be readily spelt out notwithstanding want of signature on the



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document. The accompanying circumstances can always be looked into. We have no hesitation in coming to the conclusion that respondent J.B. Constructions must be deemed to have and did intend to tender and did in fact tender pursuant to the invitation dated 1-9-1981. Similar is the situation in regard to the non-payment of the earnest money in the manner in which it was required. The deficiency is undoubtedly there. The question is whether that deficiency relates to a non-essential part. If it related to an unessential part of the tender. We think, therefore, that in the present case, non-compliance related to only ancillary and subsidiary matters of the tender, and did not refer and relate to the essential character of the contract or work to be undertaken. Consequently, they should be ignored and would not interfere with the consideration of such a tender. The tender, therefore of respondent 2 was entitled to be taken into consideration and was rightly taken into consideration. "

9. The Learned Senior Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in Poddar Steel Corporation Vs. Ganesh Engineering Works and Others reported in (1991 (3) SCC 273) at special page 274, wherein, it is observed and held as under:-

"As a matter of general proposition it cannot be laid down that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirement in a tender notice can be classified into two categories- those which lay down the essential conditions of eligibility, and the other which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other case it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate case.

In the instant case, in submitting the cheque to the Union Bank of India and not on the State Bank of India, the relevant condition of the tender notice was not obeyed literally;



but the said cheque must be treated as sufficient for the purpose of achieving the object of the condition and the Tender Committee took the abundant caution by a further verification from the bank. In the situation it could not be said that the Diesel Locomotive Works had no authority to waive the technical literal compliance of the clause, regarding manner of payment of earnest money especially when it was in its interest not to reject the said bid which was the highest."

10. That apart, the Learned Senior Counsel for the Petitioner seeks in aid of the decision of the Hon'ble Supreme Court in B.S.N.Joshi & Sons Ltd., Vs. Nair Coal Services Ltd., and Others reported in (2006 (11) SCC 548) at special pages 570 to 572, wherein, at paragraphs 61 to 66, it is observed as follows:-

67. Law on the similar term has been laid down in Poddar Steel Corporation v. Ganesh Engineering Works and Others [(1991) 3 SCC 273] in the following terms :

"6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases."

62. In Indian Railway Construction Co. Ltd. v. Ajay Kumar, this Court explained as to what would amount to bad faith and non-application of mind in regard to exercise of power on the part of the employer. It further opined that the



burden would be on the person who seeks to invalidate or nullify the act or order to prove charge of bad faith and abuse or mistake by the authority of its power. It opined that an attempt should be made to balance the conflicting interest.

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63. In Delhi Development Authority and Another v. UEE Electricals Engg. (P) Ltd, the Court was considering a case where conduct of the Director of the company was found to be relevant. However, the Court opined that if the Authority felt that in view of the background facts, it would be undesirable to accept the tender, the power of judicial review should not be exercised in absence of any mala fides or irrationality.

64. In State of NCT of Delhi and Another v. Sanjeev, the Court reiterated the principles of judicial review.

65. We are not oblivious of the expansive role of the superior courts on judicial review.

66. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under :

i) If there are essential conditions, the same must be adhered to;

ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing

iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction..





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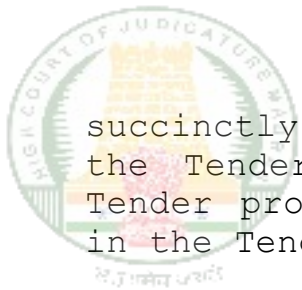
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succinctly, the omission to sign in one page out of 12 pages of the Tender Document in question, would not vitiate the entire Tender process / Notification or any of the conditions mentioned in the Tender Notification, dated 21.06.2016.

14. Viewed in that perspective, the rejection of the Petitioner's Tender document, dated 21.06.2016, (together with Demand Draft for EMD) is per se is ex-facie not legal. As such, this Court, to advance the cause of justice, directs the Respondent to consider the Petitioner's Tender document, dated 21.06.2016, for the Re-Tender to be held on 26.07.2016 and to consider the same with all seriousness and earnestness and to proceed further in the manner known to Law and in accordance with Law.

15. With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS)

To

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

+1cc to Mr.Cibi Chakraborty, Advocate, Sr.No.36951

MPK

JM/NGM-MP/SAR-III/15.07.2016/8P-3C

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