

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.457 of 2011 and
MP No.1 of 2011

M/s.Vishwa Infrastructures and Services Pvt. Ltd.,
Represented by its Deputy General Manager,
Sri L.Ravi
Old No.3, New No.5, 4th Cross (East)
Shenoy Nagar, Chennai - 600 030.

...Appellant

Vs

1.The Chief Engineer (A/c)
Tamil Nadu Water Supply and Drainage Board,
30, Bharathi Park Road,
Coimbatore 641 043.

2.The Chairman-cum-Managing Director,
Tamilnadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chennai - 600 005.

...Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order made in W.P.No.24645 of 2010 dated 19.01.2011.

PRAYER IN WP.24646/2010

This Writ Petition is filed under Article 226 of the constitution of India praying in the issuance of a writ of certiorarified mandamus Calling for the records in Letter No.F.Vellakoil CWSIS/2010/T3/WR dt.14.7.2010 on the file of the 1st respondent, quashing the same and forbearing the 1st respondent from proceeding with the re-tendering of the same work pursuant to a second call made by the 1st respondent in Chit Tender Notice No.F.Vellakoil CWSIS/2nd Call/2010/T3/WR dt.27.9.2010

For Appellant : Mr.N.Muthukumar

For Respondents : Ms.S.Tamizharasi

J U D G M E N T

K.K. SASIDHARAN, J.

The challenge in this intra court appeal is to the order dated 19 January, 2011 in W.P.No.24645 of 2010, dismissing the writ petition filed by the appellant challenging the proceedings dated 14 July, 2010 on the file of the first respondent rejecting the bid submitted by the appellant as "Non-Responsive" and forfeiting the Bid Security.

2. The Tamil Nadu Water Supply and Drainage Board (hereinafter referred to as "TWAD Board") floated a tender calling for bids for undertaking water supply works in Vellakoil Municipality, Kangeyam Town Panchayat and 174 other Rural habitations in the districts of Erode and Tiruppur.

3. It was a two tier system comprising technical bid and price bid. The bidder was obliged to furnish a bid security of Rs.20 lakhs. The bid security shall be forfeited in the case of bidder withdrawing or modifying his bid during the period of bid validity or the bidder does not accept the bid price, pursuant to Clause 28 of "Bid Opening and Evaluation".

4. The appellant submitted its bid before the cut-off date. Thereafter, the first respondent invited the appellant for negotiation. The bid submitted by the appellant was finally rejected on the ground that the tenderer failed to score out the word either "Excess or Less". The Bid Security of Rs.20 lakhs was forfeited. The proceedings dated 14 July, 2010 rejecting the bid and forfeiting Bid Security was challenged before the writ court.

5. The learned single Judge dismissed the writ petition primarily on the ground that in matters of contract, interference of the Court is very limited. There was no attempt made by the learned single Judge to consider the question as to whether the first respondent was correct in forfeiting the Bid Security. Feeling aggrieved by the order dismissing the writ petition, the appellant has come up with this intra court appeal.

6. The learned counsel for the appellant contended that even though the appellant failed to score out the word either "Excess or Less", the fact remains that there was a clear indication that it was 9% Excess. The 9% excess amount was clearly indicated in the tender bid and as such, it was not correct to reject the bid and forfeiting the security amount paid by the appellant.

7. The learned counsel contended that during the course of deliberations, the appellant made it clear that 9% was excess over the departmental value. The learned counsel further contended that the communication sent by the appellant dated 2 June, 2010 that the rates quoted were above the estimate was not considered by the first respondent and as such, the impugned order dated 14 July, 2010 was passed without application of mind.

8. The learned Standing Counsel for the respondents submitted that the bid submitted by the appellant was treated as "Non- Responsive" as per Clause 23.3, 23.4 and 27.2 and as such, the Bid Security was rightly forfeited.

9. While submitting the bid, the appellant was expected to score out the word either Excess or Less. It was explained in the note that in case, the tenderer failed to score out the word either "Excess or Less", Less alone would be taken into consideration. It is not in dispute that the appellant failed to score out the word either "Excess or Less". However, the fact remains that there was a clear indication that the rate was 9% in excess over the departmental value. In fact, the appellant has calculated 9% excess and clearly indicated the said amount.

10. The appellant was invited by the first respondent for negotiation with respect to the rate. During the course of negotiations, the appellant has given a letter dated 2 June, 2010 intimating the first respondent that the rates quoted were above the estimate and based on which the total amount for the quoted value was mentioned and it was higher than the estimated value of the work.

11. Though the first respondent was correct in rejecting the bid submitted by the appellant, the Board was not justified in forfeiting the Bid Security for the simple reason that there was a clear indication in the bid that the rate was 9% excess over the departmental value of Rs.37,43,61,160/-. The appellant calculated 9% and indicated the amount as Rs.40,49,94,950/-. Therefore, it was clear that the appellant was agreeable to execute the work at 9% in excess of the departmental value.

12. The question of forfeiting the Bid Security would arise only in case there was no indication with respect to the rate offered by the tenderer. Even though the appellant failed to score out the word either "Excess or Less", the fact remains that there was a clear mention in the tender document that 9% was in excess and the same is also evident by the figure shown with respect to the said 9%. This fundamental aspect was not considered by the learned single Judge.

13. The appellant challenged the rejection of tender and

forfeiture of Bid Security and the other prayer was to award the tender. The documents available on record clearly show that the bid submitted by the appellant was rightly rejected by the first respondent. However, there was no valid ground made out by the first respondent in support of its order forfeiting the Bid Security. We are therefore of the view that the impugned order dated 14 July, 2010 deserves to be quashed only in respect of forfeiture of Bid Security.

14. In the result, the proceedings dated 14 July, 2010 is upheld insofar as the rejection of bid is concerned. The order is set aside in respect of the direction regarding forfeiture of Bid Security. The first respondent is directed to refund the Bid Security of Rs.20 lakhs to the appellant without interest. The payment shall be made within a period of three months from the date of receipt of a copy of this judgment.

15. The writ petition filed by the appellant is allowed to the extend indicated above.

16. The intra court appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Engineer (A/c)
Tamil Nadu Water Supply and Drainage Board,
30, Bharathi Park Road,
Coimbatore 641 043.

2.The Chairman-cum-Managing Director,
Tamilnadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chennai - 600 005.

+1cc to Mr.S.THAMIZHARASI, Advocate, S.R.No. 72021
+1cc to Mr.N.MUTHUKUMAR, Advocate, S.R.No. 72074

W.A No.457 of 2011

RR (CO)
TR(21/11/2017)