

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED:23.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.1025 of 2010 and  
M.P.No.2 of 2010

M/s. Saberwal Surgical Company  
Private Limited,  
564, C & D, M.S. Complex,  
D.B.Road,  
R.S.Puram,  
Coimbatore 641 002.

..Petitioner

Vs

The Managing Director,  
Tamil Nadu Medical  
Services Corporation Limited,  
417, Pantheon Road,  
IIInd Floor,  
Chennai 8.

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus to call for the records on the file of the respondent in proceedings EQPT-ICTC-II-09/TANSACS/TNMSC/2009 and dated 12.01.2010 and quash the same as illegal, incompetent.

For Petitioner : Mr.V.Lakshmi Narayanan  
For Respondent : No Appearance

O R D E R

Writ petition is filed challenging rejection of supply and installation of 481 units of the medical equipments (centrifuge) to the respondent Tamil Nadu Medical Services Corporation (herein TANSACS for brevity).

2. Mr.V.Lakshmi Narayanan, learned counsel is present on behalf of the petitioner. On behalf of the sole respondent (TANSACS), counter affidavit dated 14.09.2012 has been filed. Pleadings are complete and interim order is already operating. The effort and exercise required for disposal of the Miscellaneous Petition and main matter are same owing to the nature of the matter. Therefore, the main matter itself is taken up for disposal.

3. As stated supra, the subject matter of the writ petition is supply of 481 units of Medical Equipment (Centrifuge) by the writ petitioner company to the respondent TANSACS. The purchase order is dated 06.06.2009. A perusal of the purchase order shows that it is for supply of 481 units of Centrifuges at the rate of Rs.10,700/- per unit. The total value is Rs.51,46,700/-.

4. There is no dispute that all the 481 units were duly supplied, the same were deployed by TANSACS and there is no dispute that they are functioning. There is no complaint of malfunctioning or failure of any of the 481 units of centrifuges.

5. One of the conditions adumbrated in the purchase order with regard to quality test is that the said equipments should be verified by the authorities specified in Clause 12 of the purchase order. It is useful to extract clause 12 and the same reads as follows:

"One number of item of the model quoted by you shall be produced to the Institute of Microbiology, Madras Medical College, Chennai within 7 days from the date of this purchase order for approval and be effected only after the approval of the sample."

6. The said institute of Microbiology, Madras Medical College, Chennai, tested one number of centrifuge from among the said equipments and had written a letter dated 15.06.2009 certifying that the equipment is in good working and testing condition and were importantly, "as per the specifications given".

7. When things stood as above, TANSACS issued a communication dated 12.1.2010 to the writ petitioner bearing reference No.EQPT-ICTC-II-09/TANSACS/TNMSC/2009 (hereinafter referred as impugned notice for brevity).

8. In and by the impugned notice, TANSACS called upon the writ petitioner to refund the entire sum of Rs.53,52,568/- being the payment made by TANSACS towards said equipments (481 units) within a period of three days from the date of receipt of the letter. The writ petitioner failed to do so. It is important to note that the TANSACS had issued the impugned notice primarily on the basis that the said equipments were not in accordance with the specifications as they did not have an inbuilt line voltage corrector.

9. When the matter stood thus, TANSACS stated that the equipments are not as per specifications, on the basis of a test said to have been done in Anna University. It is the case

of the writ petitioner that there is nothing on record that would go to show that their equipments were sent to Anna University. In this context, it is relevant to revisit the certificate issued by the approving/certifying technical authority viz., the Additional Professor, Institute of Microbiology, Madras Medical College, wherein, it is seen that the authority not only certified that the said equipment is in working condition, but had also certified that it is as per specifications given. This certificate has been given by the authority concerned who has been specified by TANSACS themselves in the purchase order and the relevant covenant/clause has been extracted supra.

10. However, the writ petitioner, considering the long business relationship, offered to supply additional voltage stabilizers for all 481 units of centrifuge equipments without any extra cost. This has been clearly stated/admitted by TANSACS itself in paragraph 3 of the impugned notice, which reads as follows:

"But, however you choose to state that, in the interest of your long business relationship and co-operation you proposed to supply additional voltage stabilizer for all 481 nos. of centrifuges without any extra cost, in two phases in a period of 30 days from the receipt of confirmation. In this letter, you have also raised a point that, the test report of ET & DC does not indicate or clarifies on the non availability of the Line voltage corrector in the centrifuge."

11. TANSACS vide the impugned notice had threatened to invoke the bank guarantee given and also initiate recovery proceedings. Aggrieved, the writ petitioner filed the instant writ petition an interim order was granted by this Court on 21.1.2010. Subsequently, the said interim order was extended till final disposal of the writ petition vide order dated 22.02.2010 made by this Court.

12. Be that as it may, a perusal of the counter affidavit filed by TANSACS shows that there is a reference to the certificate dated 26.05.2009 issued by the Institute of Microbiology, Madras Medical College. Therefore, TANSACS does not dispute the certificate wherein such authority (which alone is specified in the purchase order) has stated that the equipments are as per specifications, besides certifying that they are in working condition.

13. Interestingly, and intriguingly, TANSACS in their counter affidavit have stated that they received a complaint

from a unidentified person in New Delhi and on that basis, commenced the proceedings which culminated in the impugned notice.

14. It is also submitted by the writ petitioner that though they offered only for supply of 481 units centrifuge equipment, they agreed to supply additional extra voltage stabilizer for all 481 units centrifuge equipment, TANSACS insisted repayment of the entire amount of Rs.53,52,568/- and they wanted the writ petitioner company to take back those centrifuge equipments after four months on the ground that they are not having inbuilt voltage corrector notwithstanding the position that the equipments had been put to use. The impugned notice was sent by TANSACS, wherein it is stated that the writ petitioner has to explain within 7 days from the date of the receipt and it threatened to take action against the writ petitioner company by black listing and declaring it as ineligible to participate in any tender including tenders for Bank financed projects for a period of three years. Hence, the writ petitioner filed the writ petition for quashing the impugned notice.

15. It is useful to extract one another paragraph from the impugned notice and the same reads as follows:

"From the above, it is very clear that the centrifuges supplied by you, are not provided with the line voltage corrector as part of the configuration as per the terms of the tender, your bid and the purchase order 1st cited. Further, you chose to take a stand that the line voltage corrector is available as "inbuilt" with the centrifuge, which is willful suppression of the fact and an attempt to divert the attention from the fact."

The above would go to show that TANSACS has come to a conclusion against the writ petitioner and issued impugned notice.

16. In the above circumstances, pending writ petition, the writ petitioner was called upon to produce certificates and documents to show that the equipments are working well. On a perusal of the typed set of papers dated 29.9.2012, it is seen that the certificate issued by the Dean, Coimbatore, Medical College and certificates from the blood banks (end users) certifies that the centrifuge equipments are working in good condition.

17. TANSACS has not chosen to file any additional counter and disputed these documents. Therefore, those documents are

necessarily to be accepted and there is no reason to reject such equipments when the equipments are working in good condition.

18. The impugned notice is based on a complaint (complaint given by an unidentified person from New Delhi as mentioned in the counter affidavit of TANSACS) and hence, it is unacceptable. However, the fact that TANSACS, for testing, sent one centrifuge equipment and the same has been accepted by the authority concerned (Additional Professor, Institute of Micro Biology, Madras Medical College) as per the terms and conditions mentioned in the tender notification, vitiates the impugned order as the certifying the authority has categorically certified that it is 'as per specifications'.

19. It is to be noted that all the equipments are working in good condition and writ petitioner also agreed to supply additional voltage stabilizers for all 481 units at no extra cost and TANSACS demanded the petitioner to refund the amount and threatened to invoke bank guarantee black list etc., and the writ petitioner challenged the impugned notice.

20. In view of all above facts, I am inclined to come to conclusion that the impugned notice dated 12.01.2010 issued by the respondent TANSACS is liable to be set aside. Accordingly, the impugned notice is set aside.

21. Though the impugned notice in one para has called upon the writ petitioner to give explanation within seven days, a perusal of the entire notice in the eight of above said discussions would show that it is no show cause notice and principles for assailing a show cause notice have no place in this matter. Therefore, the above approach by this Court.

22. The writ petition is allowed. Considering the nature of the matter, the litigants left to bear their respective costs. Miscellaneous Petition is closed as unnecessary.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Managing Director,  
Tamil Nadu Medical  
Services Corporation Limited,

417, Pantheon Road,  
IInd Floor,  
Chennai 8.

+lcc to Mr. V. Raghavachari, Advocate Sr. 11777

W.P.No.1025 of 2010 and  
M.P.No.2 of 2010

KJI (CO)  
Vr(17/03/2017)



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