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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.09.2017
CORAM:
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD) Nos.1023 and 1144 of 2017
and
C.M.P.(MD)Nos.7082, 7083 & 7824 of 2017

W.A.(MD) No.1023 of 2017:-

M/s.S.P.Agencies,
Rep. by its Managing Partner,
Tmt.S.Poovammal,
W/o G.Subbiah,
51A/10, Masilamani Nagar,
Tirunelveli-5 .. Appellant

Vs.

1.The Tamil Nadu Ware Housing Corporation,
Rep by its Managing Director,
82, Anna Salai,
Chennai- 600 032.

2.The Regional Manager,
Tamil Nadu Ware Housing Corporation,
Tirunelveli Region,
Tirunelveli. .. Respondents

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent, as against the order dated 28.03.2017 made in W.P.(MD)No.17336 of 2016 on the file of this Court.

Prayer in WP(MD). 17336/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the entire records pertaining to the impugned order passed by the 1st respondent vide his proceedings Ref.No.Proc Rc.No.4019/2015/G, dated 31.08.2016, and quash the same.

For Appellant : Niranjan S.Kumar

For Respondents : Mr.B.Pugalendhi
Additional Advocate General
Assisted by
Mr.M.Rajarajan
Government Advocate

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W.A.(MD) No.1144 of 2017:-

1.The Tamil Nadu Ware Housing Corporation,
Rep by its Managing Director,
82, Anna Salai,
Chennai- 600 032.

2.The Regional Manager,
Tamil Nadu Ware Housing Corporation,
Tirunelveli Region,
Tirunelveli.

Vs.

M/s.S.P.Agencies,
Rep. by its Managing Partner,
Tmt.S.Poovammal,
W/o G.Subbiah,
51A/10, Masilamani Nagar,
Tirunelveli-5

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent, as against the order dated 28.03.2017 made in W.P.(MD)No.17336 of 2016 insofar it relates to black-listing on the file of this Court.

Prayer in WP(MD). 17336/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the entire records pertaining to the impugned order passed by the 1st respondent vide his proceedings Ref.No.Proc Rc.No.4019/2015/G, dated 31.08.2016, and quash the same.

For Appellant : Mr.B.Pugalendhi
Additional Advocate General
Assisted by
Mr.M.Rajarajan
Government Advocate

For Respondent : Niranjan S.Kumar

COMMON JUDGMENT

[Common Judgment of the Court was delivered by **M.M.SUNDRESH, J.**]

As both the appeals emerged from the common order passed by the learned Single Judge, they have been taken up for disposal together by a single judgment.

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2.The appellant in W.A.(MD)No.1023 of 2017, is the writ petitioner. It was awarded contract for Handling and Transport Contract at Tirunelveli Ware House for the year 2013-15. According to clause 5 of the tender information and terms and conditions with the specific reference to clause 4 mandates the contractor should not make any change with respect to the partnership of the firm without prior approval of the corporation.

3.The appellant/ Writ petitioner, did it's part through the currency of the contract. The contract was extended as per the order of the respondent dated 16.10.2015 for a further period of three months with effect from 18.10.2015. The appellant reconstituted the firm on 13.11.2015 by removing one of the partners and admitting 4 new other persons.

4.Thereafter, both the appellant and a third party, pursuant to the fresh tender called for by the respondents, applied for the same. The third party was declared as the successful bidder. It was put into challenge by the appellant. An interim order was passed. In the application made for the fresh tender, which is the subject matter of the W.P.(MD)No.2344 of 2016, the appellant has admittedly applied as the partnership firm duly reconstituted. By taking into consideration of the interim order, the respondent extended the contract which was already expired in favour of the appellant. Thus the said exercise was done not withstanding the reconstituted application made in the name of reconstituted firm by the appellant.

5.Incidentally, the appellant had made another application for the tender called for at Vellore region. This application was also made in the name of the reconstituted firm. The appellant was declared as the successful tenderer. Accordingly, the contract was issued in it's favour on 05.02.2016.

6.It appears that the successful tenderer, who was awarded the contract, which was challenged by the petitioner in W.P.(MD) No.2344 of 2016 with respect to Tirunelveli Region, stated to have made a complaint against the appellant. Based upon the same, the impugned order has been passed, though after affording opportunity to the appellant. In the said order, by taking into consideration of the fact that the appellant has not informed about the reconstitution and getting prior permission, the contract awarded subsequently in the name of the reconstituted firm for Vellore region was cancelled/terminated, while blacklisting the appellant. Challenging the same the Writ Petition was filed.

7.The learned Single Judge while holding that no personal hearing was granted, was pleased to set aside the order of blacklisting. However, the order of termination was upheld. Challenging the same, both the appellant and the respondents herein have filed their respective appeals.

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8.We have heard the learned counsel for the parties and perused the materials available on record.

9.There is no dispute on the narration of the facts. The reconstitution was admittedly done by the appellant during the extended period of three months. Admittedly, no action was taken in the said period. The notice was issued, after the appellant filed an application seeking the contract in his favour for the subsequent years. It was accordingly, given in favour of the third party, which was put into the challenge by the appellant. In pursuant to the interim order passed in W.P.(MD)No.2344 of 2016 alone, the subsequent extension was granted. Admittedly, at that point of time the appellant has already made an application in the name of the reconstituted firm. Therefore, one thing is clear that the respondents were quite aware of the reconstitution, even prior to the order passed by this Court by an interim order. Further more, the Writ Petition itself has been filed in the name of reconstituted firm.

10.Therefore, the following facts would emerge:

The appellant did complete the contract for the Tirunelveli Region. Thereafter, he applied for the next year, 2015-17 in the name of the reconstituted firm. It was given in favour of the third party being L1 tenderer. The appellant has also applied in the name of the reconstituted firm in the Vellore Region. He was declared as a successful tenderer. The appellant has challenged the contract awarded in favour of the third party insofar as Tirunelveli Region is concerned. An interim order was passed in W.P.(MD)No.2344 of 2016. In pursuant to the interim order the appellant was given second extension. From the above it is clear that the respondents were aware of the reconstitution made by the appellant, atleast at the time of applying for the fresh tender both for Tirunelveli and for Vellore region. Therefore, it is quite apparent that the action was initiated only when the successful tenderer for the Tirunelvei region brought out to the knowledge of the respondents. This position is very clear.

11.From the above, we are constrained to hold that there is no suppression of the fact on the part of the appellant on the application made in pursuant to the tender called for in Vellore region. So is the case for Tirunelveli region, if one considers the terms and conditions and the clause governing the requirement of reconstitution, it is required to be done during the currency of the contract. The learned Additional Advocate General is right to the extent that extension would also meant Currency. However, no action was taken during the currency. Further more the extension was also given in favour of the appellant after reconstitution, as the application for the year 2015-17 itself was made in the name of the reconstituted firm.

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12.In such a view of the matter, we are of the view that it is not open to the respondents to take action against the appellant. Further, in as much as the appellant made the application for Vellore region in the name of the reconstituted firm, it is also not open to the respondents to terminate the lease on that ground, based upon the action which has arisen much earlier. After all, an action to any violation has to be taken against that firm. Though the firm continues with new partners of reconstitution firm cannot be made liable. This is for the reason that the fresh application has been made in the name of the reconstituted firm. Hence, looking from any perspective, we are of the view that the belated action taken against the appellant cannot be sustained in the eye of law. We believe that but for the action taken by the appellant against the awarding of the contract in favour of the third party insofar as Tirunleveli region is concerned, the respondent would not have taken any action. We are also of the view that the action initiated borders upon a technical issue. The appellant did complete the work in the Tirunelveli region to the satisfaction of the respondents. Therefore that part is over. Having satisfied with the work of the appellant and with the credits of the appellant alone, the contract was awarded for Vellore region. Therefore, even on that ground, we are of the view that the appellant cannot be denied of the relief. Accordingly, we are constrained to set aside the order impugned of the first respondent dated 31.08.2016 and the Writ Appeal stands allowed.

13.Considering the fact that the appellant has not claimed any damages and it is also informed by the learned Additional Advocate General that the entire ware house itself has been shifted from Vellore, there is no question of allowing the appellant to perform his part of the contract at Vellore. However, the respondents shall clear the pending bills for the work done by the appellant.

14.In view of the order passed in W.A(MD)No.1023 of 201, Writ Appeal (MD) No.1144 of 2017 is dismissed, though, we find that the reasoning of the learned Single Judge that before blacklisting personally hearing is required, may not be sustained in the eye of law. No costs. Consequently, the connectede miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

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Chennai- 600 032.

2.The Regional Manager,
Tamil Nadu Ware Housing Corporation,
Tirunelveli Region,
Tirunelveli.

+2cc to M/S.M.RAJARAMAN, Advocate SR.Nos.75922&75923
+2cc to M/S.NIRANJAN S.KUMAR, Advocate SR.Nos.29725&29726

TA/GK
MAS/SV-MMS/SAR1:14.09.2017:6P-7C

ORDER MADE IN
W.A.(MD) No.1023 and 1144 of 2017
01.09.2017

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