



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 24.03.2017

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No. 4364 of 2017

and W.M.P. (MD) Nos. 3506 and 3507 of 2017

M/s.Sri Sai Travels,
Rep. by M.Prabhu,
S/o.Murugesan,
No.1/212, Middle Street,
Pudhu Thamaraipatti,
Madurai - 625 107.

: Petitioner

Vs.

1. The General Manager,
BSNL,
B.B.Kulam ,
Madurai - 625 002.

2. The Assistant General Manager(MIS &IT),
O/o.The General Manager,
BSNL, B.B.Kulam,
Madurai - 625 002.

3. M/s.Bharath Service New Term Contract,
No.29, Rathinasamy Nadar Road
Madurai - 625 002.

: Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the e-mail order dated 04.03.2017 passed by the 1st and 2nd respondents and quash the same and consequently direct the 1st and 2nd respondents to open and consider the "Financial Bid" submitted by the petitioner in accordance with law.

For Petitioner : Mr.B.Vijay Karthikeyan

For Respondents : Mr.K.Govindarajan



O R D E R

The Petitioner has approached this Court seeking quashment of the e-mail order dated 04.03.2017, passed by the first respondent and consequently to direct the first respondent to open and consider the "Financial Bid" submitted by the petitioner in accordance with law.

2.The case of the petitioner is that, the first respondent has invited e-tender for hiring of light commercial vehicles in Madurai - SSA in respect of three schedules Schedule 'A', 'B' and 'C'. The petitioner, who is a registered firm involved in the business of running a travel agency applied for consideration in response to the tender called for by the first respondent. According to the petitioner, he had submitted all the documents required for being considered for grant of the contract. The process of tender consisting of two stages. One is technical/qualification bid and the other is financial bid. According to the tender notification, there are certain mandatory requirements to be complied with. The said mandatory requirements as found in the tender document has been extracted in paragraph 5 of the affidavit filed in support of the writ petition.

3.While the petitioner firm is awaiting for favourable consideration claimed in the tender process, they were informed vide e-mail dated 04.03.2017 by the first respondent that their bid has been disqualified and rejected. According to the rejection order dated 04.03.2017, the production of registered partnership deed, which is one of the mandatory condition was not made available. Consequently, copies of PAN are not available for the registered partnership firm, instead the PAN standing in the name of the individual has been produced and the Service Tax registered certificate not bears PAN of registered partnership firm. Assailing the rejection order passed by the first respondent dated 04.03.2017, the petitioner is before this Court. According to the petitioner, the rejection of their bid cannot said to be valid in view of the fact that the petitioner firm has submitted a certificate of firm's registration dated 21.02.2017 along with the tender documents. As regards the issue of PAN not being available in the name of the firm, the petitioner's stand was that the entire partnership activities were run in the name of M.Prabu, one of the main partners of the petitioner's firm and partnership dated 21.02.2017 itself it has been clearly stated that all the transactions would be carried on in the name of the said Prabhu.

4.A counter affidavit has been filed on behalf of the second respondent. According to the counter affidavit, the petitioner firm did not satisfy the mandatory requirements of ~~several documents~~ partnership deed and not production of PAN in the name of the petitioner's firm and the Service Tax registration certificate not bearing PAN of registered Partnership firm and



hence the petitioner cannot claim any right for participation in the tender as they suffered disqualification by not fulfilling the mandatory conditions as found in the tender document.

5. Heard Mr.B.Vijay Karthikeyan, the learned counsel appearing for the petitioner and Mr.K.Govindarajan, the learned Standing Counsel for respondents 1 and 2.

6.Mr.B.Vijay Karthikeyan, the learned counsel appearing for the petitioner would strenuously contend that the partnership firm is a registered firm and that would suffice since as per the provisions of the Registration Act registration of partnership is not compulsory and it is only optional and in that view of the matter rejection of the petitioner's bid for participation in tender cannot be valid.

7.The learned counsel for the petitioner would further contend that nowhere it is mentioned in the tender document that the PAN should be available in the name of the firm and in the absence of such specification, it is not open to the first respondent to reject it on that ground. It is further submitted that the PAN of registered partnership firm name in the Service Tax registration certificate also not insisted upon as per the tender conditions and therefore, the learned counsel appearing for the petitioner would strongly urge this Court to set aside the rejection order passed by the first respondent on 04.03.2017.

8.Per contra, the learned counsel appearing for the respondents 1 and 2 would submit that one of the mandatory conditions of the tender is production of registered partnership deed, apart from the registration certificate of the partnership firm. According to him, there is difference between registration of the firm and the registration of the partnership. In the absence of registration of partnership, the petitioner cannot claim to be successful bidder to be allowed to participate in the tender. Moreover, the learned counsel appearing for the respondents 1 and 2 would also contend that the petitioner while submitting his bid for consideration for two schedules, namely, Schedule 'A' and 'B' had paid tender fee only for one schedule and therefore, he cannot claim to have any right for consideration in the subject tender. He would further contend that admittedly PAN and Service Tax Registration did not stand in the name of the firm. It goes without saying that once a firm applies for participating in the tender whatever materials and documents submitted by the firm must be in the name of the firm and cannot be in the name of the individuals.

9.I have given my anxious consideration to the rival submissions of the parties.



10. The contention of the learned counsel for the petitioner is that once the registration of the partnership is not compulsory, registering the same cannot be insisted upon by the respondents 1 & 2. In support of his submission, he relied on the decision of a Division Bench of the Jammu & Kashmir High Court in **L.P.A.O.W.Nos.7 and 10 of 2017 dated 22.02.2017** in the matter of **State of Jammu & Kashmir, Through Commissioner/Secretary to Government, PWD (R&B) Department and two others v. M/s.National India Construction Company, Engineers and Contractors, Through its Partner Sanjeev Singh**, in which the learned Judges have stated that the partnership deed is not compulsorily registerable document.

11. In any event, the decision relied on by the learned counsel for the petitioner would not help him to advance the case before this Court.

12. The learned counsel appearing for the petitioner would also rely upon the decision of a Division Bench of Punjab-Haryana High Court in **Civil Writ Petition No.7073 of 2016 (O&M) dated 17.05.2016** in the matter of **M/s. Danial Masih Satprit Singh Bedi v. State of Punjab and others** and drawn my attention to paragraphs 10 and 13 of the order. According to the learned counsel appearing for the petitioner, in the said order it has been held that a partnership firm does not have a separate independent legal existence and the firm name is only a compendious method of describing the partners and the experience and expertise of a partner is, in a broad sense, an asset, albeit an intangible one.

13. The said decision may not be applicable to the factual matrix of the present case since the requirements in the tender document are mandatory requirements and in the absence of compliance of the mandatory requirement it is not open to the petitioner to assail the rejection order passed by the 1st respondent.

14. Therefore, I find that there is considerable force in the contention of the learned counsel for the respondents 1 and 2 that there has been non-fulfillment of the mandatory conditions on the part of the petitioner as found in clause 2(b) of the tender notice. In the absence of fulfillment of mandatory conditions, the petitioner cannot have any right to be considered for participation in the tender. The contention put forth by the learned counsel appearing petitioner cannot be countenanced both on law and facts, since number of mandatory conditions have not been fulfilled by the petitioner firm. In such circumstances, the challenge made to the impugned order dated 04.03.2017 issued by the first respondent has to necessarily fail. I do not find any merit or substance in the writ petition and therefore, the same is



dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. There shall be no order as to costs.

SD/-

ASSISTANT REGISTRAR (CS-III)

WEB COPY

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

+1 CC TO M/S.B.VIJAY KARTHIKEYAN, ADVOCATE, SR NO.17557

+1 CC TO M/S.K.GOVINDARAJAN, ADVOCATE, SR NO.17536

sj

MAS/SV-MMS/SAR2:11.04.2017:5P-3C

W.P. (MD) No. 4364 of 2017
and W.M.P. (MD) Nos. 3506 and 3507 of 2017

24.03.2017