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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :28.04.2017  
PRONOUNCED ON:11.08.2017

CORAM

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.P(MD)No.6700 of 2017  
and  
W.M.P. (MD) .No.5267 of 2017

I.Kezhson

.. Petitioner

Vs.

- 1.The Director,  
Rural Development and Panchayat Raj,  
Government of Tamil Nadu,  
Chennai.
- 2.The Chairman & District Collector,  
DRDA (District Rural Development Authority),  
Kanyakumari District,  
Nagercoil-629 001.
- 3.The Executive Engineer,  
DRDA (District Rural Development Authority),  
Collectorate, Nagercoil.
- 4.The Additional Executive Engineer,  
Road and Bridge,  
DRDA (District Rural Development Authority),  
Nagercoil.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus to direct the respondents to locate the licensed sand quarry in Mangalakurichy as mentioned in the price bid/agreement dated 31.08.2016-ROC A4/3375/2016 & the Form of Contract/Agreement dated 19.12.2016 and supply sand at the rate specified therein in the said form of contract/agreement dated 19.12.2016 being Rs.176.40 per cum plus at a conveyance cost of Rs.766.18 per 127 KM (lead distance from Mangalakurichi to work site near Nagercoil).

For Petitioner : Mr.Puhazh Gandhi

For Respondents : Mr.Anandaraj

Government Advocate

**ORDER**

This Writ petition is filed to seek an interim injunction restraining the respondents from enforcing the Form of Contract/Agreement dated 19.12.2016 between the petitioner and District Rural Development Authority (DRDA), besides issue of a Writ of Mandamus directing the respondents to locate the licensed sand quarry at Mangalakurichy and cause supply of sand at the rates mentioned in the price bid documents.

2. The petitioner claims that the Mangalakurichy quarry mentioned in the price bid documents is not operational for many years and therefore sand for the contract could not be procured by them to fulfill the contract. They allege that the respondents had lured them into signing the contract through the above misleading information of cost of sand procured from Mangalakurichy quarry in the price bid. They also allege that these are deliberate scheme of things adopted by the respondent authorities to encourage illegal mining mafia.

3. The respondents on the other hand submit that the claim of the petitioner is not clean and bona-fide. They advance the following points in support of their defence. The bill of quantity for sand constitutes an insignificant 1.5% of the contract value. The cost break up mentioned in the price bid documents is notional and has no connection to the agreed contract price. The contract reserved the right of the principal/employer to supply material at the notional rates mentioned in the price bid documents. The contract price is voluntarily bid and agreed by the petitioner. A substantial portion of the contract is already performed by the petitioner. The agreement obligates the petitioner to procure sand for executing the contract. They also explained the processes adopted for preparing the tenders and demonstrated the transparency and equity principles adopted in the bidding process. They assail the petition as a mischievous attempt to take advantage of the fiction in the price bid document to escape penalties for failure to perform the contract.

4. Shri. Anandaraj, Govt. Advocate had made his oral submission that an efficacious alternate remedy in the form of arbitration clause is available in the contract. While perusing the counter affidavit filed on behalf of the second respondent, I was curiously drawn to the omission of the mentioning of the arbitration clause. The typeset filed by the petitioner also did not disclose the agreement in entirety and therefore the presence of the arbitration clause in the contract could not be confirmed. Therefore the matter was posted for hearing under the caption "For Clarification". The learned counsel for the petitioner would draw the attention of this court to page 26 and 27 of the type set of papers and tried to make his submission that sand was directed to be procured from Mangalakurichy sand quarry. This Court posed a



specific question to the petitioner's counsel regarding the arbitration clause. The learned counsel for the petitioner requested time to answer the particular query regarding arbitration clause. The learned counsel for the respondent was not present and the case was posted for hearing on 14.07.2017. The learned counsel for the petitioner appeared on 14.07.2017 and submitted before the court that there is no arbitration clause in the agreement and he produced a copy of the agreement. The respondents were not present on that date and the orders were reserved.

5. On a careful perusal of the agreement filed by the petitioner on 14.07.2017, it was seen that the agreement did not have an arbitration clause but however, the agreement filed was not entire and was incomplete. Therefore the original files were directed to be circulated by the respondents. From the files of the respondents, it was found that the arbitration clause is contained in the contract in contrast to the submissions of the counsel for the petitioner.

6. I have gone through the records of the case and rival submissions.

7. The contract entered into between the parties is purely commercial and voluntarily undertaken by the petitioner. The contract price is agreed at by the petitioner on the sole basis of his own competitive bidding. The respondents admit the nonfunctioning of the quarry mentioned in the price bid documents and have presented a list of operational quarries in the vicinity. Therefore, the question of locating the Mangalakurichy quarry does not merit consideration. The petitioner failed to establish from the contract, the respondents' obligation to supply sand at the rates mentioned in the price bid documents from the Mangalakurichy sand quarry. Therefore, the allegation of luring the petitioner into the contract on the basis of misleading information is unsubstantiated. Also an alternative remedy in the form of arbitration clause is available in the contract.

8. In view of the developments as discussed in para 4 of this Order, a deeper scrutiny of the counter affidavit of the respondents was taken up. It was noticed that the counter on behalf of the second respondent was filed by one Shri Suresh, Project Director and not the second respondent, which is improper. On perusal of the original file circulated by the respondents, it is seen that there is a clear mismatch of the signature of the said Shri Suresh available in the file noting circulated by the respondents and the one affixed in the counter affidavit filed before this Court in his name.

9. Under the contract, the respondents are principals and not state executive in discharge of public



authority. Therefore, no public law seems to operate. And also in view of the arbitration clause available in the contract, the guidelines laid down by the Hon'ble Supreme Court in the case of **M/s Joshi Technologies International Inc v/s UOI (TS-270-SC-2015)** is attracted to this case, and writ of mandamus will not lie in the instant case. No case is made out by the petitioner to exercise the discretion of this Court to issue any writ.

10. Accordingly, the Writ Petition is dismissed. This Court takes a very serious note of the impropriety noticed in filing the counter affidavit on behalf of the respondents as discussed in para 6 of this Order and directs the second respondent District Collector to initiate suitable disciplinary action against the erring officials concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

- 1.The Director,  
Rural Development and Panchayat Raj,  
Government of Tamil Nadu, Chennai.
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- 4.The Additional Executive Engineer,  
Road and Bridge,  
DRDA (District Rural Development Authority),  
Nagercoil.

+1 cc to Mr.Puhazh Gandhi , Advocate in SR.No. 72255

ssm  
AE/SV MMS/SAR3/19.09.2017/4P/6C