



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P. (MD)No.4064 of 2018

and

W.M.P. (MD)Nos.4223, 4224 and 4749 of 2018

WEB COPY

Arockiamatha Transport,
Represented by its Proprietor,
I.Arockiaraj,
133/3AF, TSN Avenue,
Near Alpha School,
Airport, Trichy-7.

... Petitioner

-Vs-

The Regional Manager,
Central Warehousing Corporation,
No.4, North Avenue,
Srinagar Colony,
Saidapet, Chennai-15.

... Respondent

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent in his proceedings No.CWC/RO-CNI/H&T-TRY/2017-18 dated 24.02.2018 and quash the same and direct the respondent to accept the tender submitted by the petitioner.

For Petitioner	: Mr.V.Panner Selvam
For Respondent	: Mr.S.Ramesh

ORDER

This writ petition has been filed, challenging the order passed by the respondent Central Warehousing Corporation, rejecting the petitioner's tender on the ground that the petitioner is not technically qualified as per condition in Clause 4(b) of the Terms and Conditions to the Tender.

2.According to the petitioner, he is engaged in transport contract business. Earlier, the respondent Corporation invited tender for appointment of transport contractor at Warehousing Corporation, Trichy. The petitioner had submitted his tender and he was fully qualified to participate in the said tender. After opening the technical bid, the petitioner's tender was rejected on the ground that he was not qualified as per Clause 4(b) of the tender conditions, and the petitioner's earnest money deposit had also been forfeited by the Food Corporation of India.

3.According to the petitioner, earlier, in another contract the petitioner's earnest money deposit was forfeited by Food



Corporation of India (FCI). Challenging the same he had filed a writ petition in W.P.(MD)No.3483 of 2017 before this Court seeking refund of the said earnest money deposit. The said writ petition was allowed by this Court by an order dated 04.04.2017. Challenging the said order, the Food Corporation of India preferred an appeal in W.A.(MD)No.443 of 2017 and a Division Bench of this Court, by Judgment dated 08.08.2017, allowed the writ appeal and set aside the order passed by the Learned Single Judge. However, the Division Bench has observed that the Food Corporation of India, should not take coercive steps to blacklist or debar the petitioner or proceed to recover money by way of damages. In view of the said order, now, the respondent Corporation cannot reject the petitioner's tender on the ground that on an earlier occasion his earnest money deposit was forfeited and he is not eligible to participate in the present tender.

4.The learned counsel appearing for the respondent submitted that as per clause 4(b) of the tender conditions, the earnest money deposit paid by the petitioner ought not to have been forfeited either by the respondent or by the Food Corporation of India in the last three years prior to the submission of the present tender. The order passed by the Division Bench of this Court in W.A.(MD)No.443 of 2017, will not bind the respondent Corporation as it relates to forfeiture of Earnest Money Deposit by Food Corporation of India and hence, the petitioner cannot rely upon the judgment of the Division Bench to support his case. As per the tender conditions, the petitioner is not entitled to participate in the tender as Food Corporation of India has forfeited his earnest money deposit.

5. I have considered the rival submissions and perused the materials available on record carefully

6. It is the admitted case that earlier the earnest money deposit made by the petitioner was forfeited by the Food Corporation of India in another contract awarded by the Food Corporation of India. When that order was put under challenge by the petitioner, a Division Bench of this court has held that the Food Corporation of India should not take coercive steps to blacklist or debar the writ petitioner. The relevant paragraph of the above said order reads as follows:-

"13. Accordingly, we are constrained to set aside the judgment of the learned Single Judge dated 04.04.2017. However, we do find that appellant has also contributed to the present situation. In such view of the matter, it is a fit case, where the appellant shall not take coercive steps to blacklist or debar the writ petitioner or proceed to recover money by way of damages. As it is submitted that some other person has been contracted to abduct the amount.



14. Accordingly, this Writ Appeal stands allowed. The order of the learned Single Judge dated 04.04.2017, made in W.P.(MD)No.3483 of 2017 is set aside. However, the appellant shall not take coercive steps to blacklist or debar the writ petitioner or proceed to recover money by way of damages. No costs. Consequently, connected miscellaneous petition is closed."

In view of the above said order passed by the Division Bench of this Court, the petitioner cannot be debarred on the ground that his earnest money deposit was forfeited by the Food Corporation of India.

7. It is the contention of the respondent that the order of the Division Bench is not binding them, as they were not party to the said Writ Appeal, and that the order only relates to a contract awarded by the Food Corporation of India. The said contention cannot be countenanced for a simple reason that the respondent Corporation relied upon the order of forfeiture made by the Food Corporation of India and debarred the petitioner from participating in the present tender process and now it is not open to the respondent to contend that the order is not binding them.

8. As per the judgment of the Division Bench of this Court, based on the forfeiture of the Earnest Money Deposit by the Food Corporation of India, the respondent cannot debar the petitioner from participating in the tender. Even though the respondent corporation is not a party in the above writ appeal, as the respondent only relied upon the order of forfeiture made by the Food Corporation of India debarring the petitioner, the order is binding them.

9. In the above circumstances, the impugned order dated 24.02.2018 passed by the respondent Corporation rejecting the petitioner's tender is not legally valid. Hence, it is liable to be set aside. Accordingly, the same is set aside. The respondent is directed to consider the petitioner's tender and proceed further.

10. In the result, this writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

+1cc to Mr.Raghavachari, Advocate Sr.No.54341

+1cc to Mr.V.Panner Selvam, Advocate Sr.No.54619

MYR

VB/SV/MMS/SAR1/18/04/2018/3P/3C