



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.05.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.A.[MD].No. 762 of 2018
and
C.M.P. (MD)No. 4523 of 2018**

The Regional Manager
Central Warehousing Corporation,
No.4, North Avenue,
Srinagar Colony,
Saidapet, Chennai - 600 015.

: Appellant/Respondent

Vs.

Arockiamatha Transport
represented by its Proprietor
I.Arockiaraj.

: Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, Amended, 1865 to reverse and set aside the order of the Hon'ble Court made in W.P. No.4064 of 2018 dated 09.03.2018.

Prayer in WP(MD). 4064/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue 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. Raghavachari

For Caveator : Mr.V. Panner Selvam

O R D E R

[Order of the Court was made by G.R.SWAMINATHAN, J.]

This intra Court Appeal is directed against the order dated 09.03.2018 made in W.P.(MD) No.4064 of 2018 filed by the respondent herein.

2. The appellant Corporation issued Tender Notification dated 25.01.2018, calling for applications from interested parties for



appointment of Contractor on regular basis for handling and transportation of food grains and allied services at Central Warehouse, Trichy.

3. The writ petitioner/respondent herein was one of the applicants, who applied in response to the Tender Notification. The writ petitioner's E-tender was rejected as not qualified. The impugned order dated 24.02.2018 was passed by the appellant to that effect. This was challenged in the aforesaid writ petition.

4. The learned single Judge, by order dated 09.03.2018, set aside the order impugned in the writ petition and directed the appellant Corporation to consider the writ petitioner's E-tender and proceed further. Aggrieved by the allowing of the writ petition, this writ appeal has been filed at the instance of the Central Warehousing Corporation.

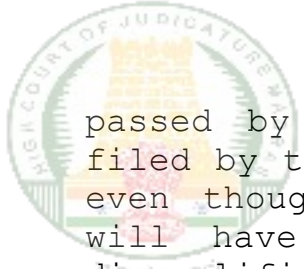
5. The learned counsel appearing for the appellant drew the attention of this Court to the condition set out in Clause 4 of the Tender Notification. The said condition reads that if the writ petitioner's EMD has been forfeited by CWC/FCI during the last three years, as on the last date of submission of the bid, the tenderer would stand disqualified. According to the appellant, the writ petitioner had taken part in the tender floated by the Food Corporation of India, during the year 2017 and that his EMD was forfeited. The appellant, therefore, contended that the writ petitioner stood disqualified in terms of Clause 4(b) of the Tender Notification and that the learned Single Judge erred in not giving effect to the same.

6. We are unable to agree with the aforesaid submission of the learned counsel for the appellant. It is true that the writ petitioner/respondent herein had taken part in the tender process floated by the Food Corporation of India, during the year 2017. Dispute arose between the writ petitioner and the Food Corporation of India and the writ petitioner sought refund of EMD amount of Rs.6,30,000/- (Rupees Six Lakhs and Thirty Thousand Only). His request was rejected. He, therefore, filed W.P.(MD).No.3483 of 2017 and the writ petition was dismissed by an order dated 04.04.2017.

8. Aggrieved by the same, he filed W.A.(MD).No.443 of 2017. The Division Bench, while holding that the writ petitioner was not entitled to refund of the EMD amount, observed that the Food Corporation of India shall not take coercive steps to blacklist or debar the writ petitioner or proceed to recover the money by way of damages. It was, in view of such specific observation made by order dated 08.08.2017, the learned single Judge, has chosen to allow the writ petition.

<https://hccw.court.gov.in/cse/csp>

9. We carefully went to the earlier order dated 08.08.2017



passed by the Division Bench allowing W.A.(MD) No.443 of 2017 filed by the Food Corporation of India. We are of the view that, even though the Division Bench held that the respondent herein will have to forgo his EMD, the same would not act as a disqualification in future. It is true that the appellant Ware Housing Corporation is not a party to W.A.(MD) No.443 of 2017, but, then, we are bound to give effect to the specific direction issued by the Division Bench. When the Division Bench had specifically held that forgoing of EMD by the respondent herein will not be a disqualification, we will not be justified in ignoring the same. The learned single Judge was, therefore, right in holding that when the Central Warehousing Corporation was relying only on the forfeiture made by the Food Corporation of India debarring the writ petitioner, the earlier order dated 08.08.2017 in W.A.(MD) No.443 of 2017 would be binding on the Warehousing Corporation also, we see no reason to take a different view. The foregoing of EMD by the respondent herein would not have any penal consequence. In this view of the matter, we see no substances in the contentions raised by the appellant herein.

9. The Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

+ 2 ccs TO Mr.V.Raghavacharai , Advocate in SR No. 65219
+ 1 cc TO Mr.V.Panneer Selvam , Advocate in SR No. 65203

KSA/RR
AE/JC/SAR3/08.06.2018/3P/4C

ORDER MADE IN
W.A.[MD].No. 762 of 2018
and
C.M.P.(MD)No. 4523 of 2018
09.05.2018