



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.14965 of 2018

and

W.M.P. (MD) No.13519 of 2018

M/s.Velan Builders Pvt Ltd.
Rep 'thro' its Managing Director
V.Kannayan
No.3, Periyar Thottam
Ponneripuram Main Road
Ponmalaipatti, Trichy

... Petitioner

vs.

Assistant General Manager
(Engineering Civil-I)
AAI-Trichy Airport, Trichy

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the entire records relating to tender notification dated 03.04.2017 in No.AAI/TRY/ENGG(C)/P.M.ROAD (PT & MT)/16-17, E-TENDER NOTICE (BID NO.1000021075) and also the order passed by the respondent dated 29.06.2018 through his letter No.AAI/TRY/ENGG/C/PM ROAD, (PT & MT) 18-19/132 dated 29.06.2018 and quash the order dated 29.06.2018 as illegal and consequentially directing the respondent to continue the tender process infavour of the petitioner in accordance with law after giving opportunity to the petitioner.

For Petitioner : Mr.M.Govindan
For Respondent : Mr.C.Godwin

O R D E R

According to the petitioner, he is a reputed contractor having wide experience in executing the works from Public Works Department, National Highways and Local Authority etc. During 2017, a tender was floated by the respondent for construction of perimeter road, including LED lighting system along Pachaiyamm Temple and south side of M.T. work shop at Trichy Airport. In the tender notification, certain pre-qualifications were prescribed. As per the tender notification, the pre-qualification bid would be opened on 21.04.2017, followed by the



technical bid on 26.04.2017 and financial bid on 28.04.2017. The estimated cost of the work was fixed at Rs.4,23,48,900/-. The petitioner applied for the award of contract. While the petitioner being considered along with others, it appears that on 26.03.2018, a show-cause notice was issued by the respondent stating that the petitioner has violated Clause-5 of NIT conditions, as according to the respondent, the document, namely, invoice filed in support of the purchase of Paver Finisher Machine was a fabricated document as two different dates appear on the invoice.

2. At this juncture, the learned counsel appearing for the petitioner would submit that the original invoice had contained two dates issued by the Company, who sold the machine to the petitioner and the Company had mistakenly mentioned two dates. However, ultimately, the respondent vide communication, dated 29.06.2018, has cancelled the petitioner's further participation in the tender and forfeited the E.M.D. amount of Rs.8,47,000/- deposited by the petitioner towards participation in the tender. The said communication, dated 29.06.2018, is put to challenge in this writ petition.

3. The learned counsel appearing for the petitioner would submit that though in the invoice submitted by the petitioner there were two dates mentioned, but, it cannot be construed one as fabrication of document, but it was an inadvertent mistake committed by the Company, who sold the machine to the petitioner. According to the learned counsel for the petitioner, in order to substantiate the claim of the petitioner, the original invoice was produced for perusal of the respondent, but despite perusing the same, they had initiated the impugned action.

4. The learned counsel for the petitioner made available original of the invoice, which was the bone of the contention as between the petitioner and the respondent, before this Court and from the original, it could be seen that the Company, who sold the machine to the petitioner, had probably typed the dates with different years. However, the said discrepancy in the document cannot be construed one as fabrication of document, as rightly contended by the learned counsel for the petitioner. In any event, the learned counsel for the petitioner would submit that the same document was produced earlier, when the petitioner had applied for award of similar contracts from the State Authorities and the said document was accepted by them without any question.

5. The learned counsel appearing for the petitioner would further submit that as far as the year of purchase of the machine, the same was not material at all and therefore, there was no scope or occasion for the petitioner to fabricate the invoice. The learned counsel for the petitioner, on a flimsy ground of very minor discrepancy in the date of invoice, the petitioner was not allowed to participate in the tender and



further his earnest money deposit was also forfeited.

6. Upon notice, Mr.C.Godwin, learned counsel, entered appearance on behalf of the respondent. He would submit that eventually on 08.06.2018, the tender, which was originally floated in the year 2017 had itself been cancelled and the order of cancellation was produced before this Court. However, insofar as the action taken against the petitioner is concerned, the learned counsel for the respondent would rely on the tender condition as provided under Clause-5 of the tender notification, which is reproduced hereunder:

"5. AAI reserve the right to disallow issue of tender document to working agencies whose performance at ongoing projects (s) is below par and usually poor and has been issued letter of restrain / Temporary / Permanent debar of any department of AAI. AAI reserve the right to verify the credential submitted by the agency at any stage (before or after the award the work). If at any stage, any information / documents submitted by the applicant is found to be incorrect / false or have some discrepancy which disqualifies the firm then AAI shall take the following action."

Since the above clause is very clear and the petitioner having given incorrect and false information, the petitioner was found disqualified. Since furnishing of false information will entail the forfeiture of earnest money deposit, the Authority has rightly forfeited the E.M.D.amount. As regards the debarment from the tender is concerned, the learned counsel for the respondent would submit that the impugned order does not impose any such debarment on the petitioner and in fact, it is mentioned that the petitioner will be allowed to participate in the future tenders of the Airports Authority of India. Therefore, the apprehension expressed by the petitioner regarding future debarment does not arise in view of the specific statement contained in the order, dated 29.06.2018, that the petitioner will be allowed to participate in the future tenders.

7. In view of the specific clarification, as submitted by the learned counsel for the respondent, the only issue that arises for consideration before this Court is as to whether the forfeiture of the petitioner's earnest money deposit is sustainable in law or not in the facts and circumstances of the case.

8. In any case, the tender itself has been cancelled by the subsequent action taken by the respondent on 08.06.2018 and therefore, the respondent could not have suffered any loss on account of the petitioner's conduct, even assuming that there was a wilful discrepancy as found in the invoice submitted by the petitioner. However, considering the submissions made by the



learned counsel for the petitioner and also after perusing the original of the invoice, this Court comes to a conclusion that the document in question could not be construed one as a fabricated document, when *prima facie* it appears to be an inadvertent mistake in mentioning the year of the purchase of machine. In any case, the petitioner cannot be held responsible for the inadvertent mistake that had crept in while mentioning the date of the invoice by the Company, who sold the machine to the petitioner.

9. Even otherwise, it appears to be a fact that the same document has been accepted by the other State Authorities in regard to the award of contract to the petitioner in the past and only for the present tender, the respondent has pointed out the minor discrepancy in the document in order to disqualify the petitioner from participating in the tender any further. In any event, since the tender itself has been cancelled, this Court does not wish to go any further into the controversy as to whether on the basis of the aforesaid minor discrepancy, the petitioner could be disqualified or not.

10. In view of the cancellation of tender and also in view of the fact that the invoice appears to be a genuine document, of course having discrepancy in the year of purchase of the machine, it is unfair and improper on the part of the respondent to forfeit the petitioner's earnest money deposit. Though the petitioner originally expressed apprehension about the future debarment, the same having been clarified by both the impugned communication as well as the submissions made by the learned counsel for the respondent, this Court is not inclined to go into the said issue as the petitioner is permitted to participate in the future tenders of the Airports Authority of India.

11. For the above said reasons, this Court is of the considered view that the petitioner has made out a case for grant of relief.

12. In the result, the writ petition is allowed and the impugned order No.AAI/TRY/ENGG(C)/PM ROAD, (PT & MT) 18-19/131, dated 29.06.2018, passed by the respondent, is hereby set aside insofar as it forfeits the petitioner's earnest money deposit and consequently, the respondent is directed to refund the E.M.D. amount to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //



TO

Assistant General Manager
(Engineering Civil-I)
AAI-Trichy Airport, Trichy

COPY TO

The Section Officer, E.R. Section,
Madurai Bench of Madras High Court,
Madurai.

(Return the original invoice No.SEPL/948/2000-2001,
dated 30.12.2000 to the petitioner, after keeping a
photocopy of the same on file and getting proper
acknowledgment)

+1 CC To MR.C.GODWIN, Advocate SR. NO. 84001

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