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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.11.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.(MD) No.1560 of 2018

&

C.M.P.(MD)No.11096 of 2018

Mercy Thaines Mary,
W/o.Savarimuthu

.. Appellant/3rd respondent

Vs.

1.S.Ganesan

..1st Respondent/Writ Petitioner

2.The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation,
Madhavaram,
Chennai - 600 051.

3.The General Manager,
D.D.160, Dindigul District Co-operative
Milk Producers Union Ltd.,
No.9, East Govindapuram,
Dindigul - 624 001.

.. Respondents 2 & 3/
Respondents 1 & 2

Prayer : Writ Appeal is filed under Clause 15 of Letters Patent,
against the order dated 03.09.2018, made in W.P.(MD)No.18049 of
2018.

Prayer in WP(MD). 18049/ 2018 :

Writ petition is 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
impugned proceedings of the 2nd respondent in Na.Ka.No.
559/Pa.Vi/2018 dated 10.08.18 and his consequential impugned
proceedings Na.Ka.No. 559/Pa.Vi/2018 dated 10.08.18 and consequently
direct the respondents to declare the petitioners as the successful
bidder in pursuance the Notification published in Dinathanthi Daily
dated 29.05.18 for the Wholesale Milk Supply Agent for Dindigul Part
1 (Local Supply Route II) for the period from 1.7.2018 to 30.06.2020
and issue contract order in petitioner's favour.

For Appellant : Mr.Veera Kathiravan

<https://hcservices.ecourts.gov.in/hcservices/>

Senior Counsel

for M/s.Veera Associates



For R1

: Mr.M.E.Ilango

For R2 & 3

: Mr.D.Muruganantham
Additional Government Pleader

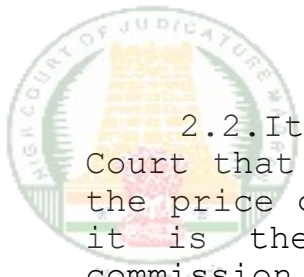
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JUDGMENT(Judgment of the Court was made by S.S.SUNDAR, J.)

This writ appeal is filed against the order of the learned Judge dated 03.09.2018, made in W.P.(MD)No.18049 of 2018. The first respondent in this writ appeal filed the said Writ Petition seeking issuance of a Writ of Mandamus, forbearing the respondents 2 and 3 from awarding tender to the appellant and consequently, to direct the respondents 2 and 3 to declare the first respondent as the successful bidder in pursuance of the Notification published in Dinathanthi Daily dated 29.05.2018, for the Wholesale Milk Supply Agent for Dindigul Part I (Local Supply Route II) for the period from 01.07.2018 to 30.06.2020 and direct the respondents 2 and 3 to issue Contract Appointment Order in favour of the first respondent.

2.The brief facts that are necessary for the disposal of this writ appeal are as follows:-

2.1.The appellant and the first respondent have participated in the tender floated on 18.06.2018, by tender notification dated 29.05.2018 for appointment of Wholesale Milk Supply Agent for Dindigul Part - I. The first respondent states that he was selected as a Wholesale Milk Supply Agent for the earlier period commencing from 2013 and concluding on 30.06.2018. It is also stated that the system of appointing Wholesale Agent for a particular route had been introduced in the year 2013. The first respondent was appointed as a Wholesale Milk Supply Agent for the previous period, which came to be expired on 30.06.2018. For the subsequent period of two years, by tender notification dated 29.05.2018, eligible candidates were invited for appointment of Wholesale Milk Supply Agent for Dindigul Part - I [Local Supply Route - II] for the period from 01.07.2018 to 30.06.2020. Both the appellant as well as the first respondent participated in the tender. Though the tender conditions specifically require the tenderer to submit a bank guarantee for Rs.5,00,000/- and also a solvency certificate and the appellant participated in the tender without bank guarantee and solvency certificate, it is stated that the appellant was appointed as a wholesale dealer, by agreement dated 12.08.2018. The contract was concluded by the said agreement dated 12.08.2018, by accepting the offer of the appellant at Rs.1.44 per litre to be paid by the third respondent towards transport charges and collection charges. As per the agreement, the appellant has to collect the price for the milk products from the Sub-Agents after deducting the commission for Sub-Agents at the rate of Rs.1.60 per litre.



2.2. It is contended by the first respondent before the Writ Court that the price offered by the appellant was in fact more than the price quoted by him. It is stated by the first respondent that it is the responsibility of the wholesale dealer to pay the commission of Rs.1.60 per litre payable to the Sub-Agents as per the tender conditions. Hence, the price quoted by the first respondent at Rs.2.50 per litre of milk includes the commission payable to the Sub-Agents. In this context, it is the specific case of the first respondent that the price quoted by him was only Rs.0.90 per litre towards transport and collection charges. The learned Judge accepted the first respondent's case that he is the lowest bidder, having quoted Rs.2.50 per litre of milk inclusive of commission payable to Sub-Agents. The learned Judge has also found that the appellant's bid ought not to have been considered by the respondents 2 and 3 for the reason that she has not submitted bank guarantee as well as solvency certificate along with the tender documents. The writ petition was allowed by granting relief as prayed for. The third respondent in the writ petition has filed the above appeal.

3. The learned Senior Counsel appearing for the appellant submitted that the contract was for supply of wholesale milk and therefore, the conclusion of the learned Judge that the price quoted by the first respondent is inclusive of commission for Sub-Agents, is erroneous. The learned Senior Counsel reiterated that the tender was in fact for appointment of transport contractor and not for appointment of Wholesale Supply Agent. The learned Senior Counsel further submitted that the condition to enclose bank guarantee as well as solvency certificate along with tender documents are not mandatory. It is the case of the appellant that at the time of opening the tender on 18.06.2018, the appellant was found to have enclosed a Xerox copy of the bank guarantee. It is stated that at the time of finalisation of the tender, the appellant was directed to produce the bank guarantee as well as the solvency certificate by subsequent communication and that the appellant has produced the same to the satisfaction of the respondents 2 and 3. Since the tender of the appellant was considered by the respondents 2 and 3 and they found that the appellant was eligible to participate in the tender, it is contended by the learned Senior Counsel that the learned Judge ought not to have held that the appellant is not eligible to participate in the tender.

4. The learned Senior Counsel further relied upon the counter affidavit filed by the third respondent herein, who is the second respondent in the writ petition, wherein, it is stated as follows:

'10 (d). The commission of Rs.1.60 so assiduously mentioned by the petitioner herein is only the payment of commission towards milk supplied by the retailer which is payable by the Aavin Company and that the wholesaler is only used as a mediator to ensure payment to the retailer. It does not form part of the bid amount per litre. Usually is commission deducted by the retailer. Hence the contention of the petitioner herein that he had included the same in his



bidding is not sustainable since the wholesale agent, he is not expressed to make any payment towards commission to the retailers.''

5. Per contra, the learned counsel appearing for the first respondent submitted that in the tender notification, general condition No.8 and the terms and conditions of Contract Nos. 6 and 39 were not fulfilled by the appellant by furnishing bank guarantee for Rs.5,00,000/- and solvency certificate and by possessing mandatory requirement of buffed vehicle for preserving milk at the time of submitting tender documents. The third respondent admitted that opening of bid was on 18.06.2018. However, in the counter affidavit filed by the third respondent, it is stated that the first respondent offered his bid at Rs.2.50 per litre as against the offer of the appellant at Rs.1.44 per litre. Therefore, the stand taken by the third respondent is that the price quoted by the appellant is less than the price quoted by the first respondent. However, from the tender documents, it is seen that the Wholesale Agent appointed under the contract is responsible to pay the commission for the Sub-Agents. It is not in dispute that the Sub-Agents are entitled to a sum of Rs.1.61 per litre as their commission. Since it is found as one of the conditions that the Wholesale Agent has to pay the Sub-Agent's commission, the price quoted by the appellant should be taken inclusive of the commission payable to the Sub-Agents as per the tender condition. The learned Judge, is therefore, right in holding that the first respondent is the lowest bidder and that he is also eligible tenderer having satisfied the tender conditions regarding qualifications. It is not in dispute that the first respondent has submitted the solvency certificate from the Revenue Official as well as the Bank guarantee as required as per the tender conditions. Coming to the qualification of the appellant, the learned Judge has categorically found that the appellant has not submitted the bank guarantee along with tender documents. Surprisingly, the third respondent, in his counter, pointed out that the appellant has submitted her bid along with a Xerox Copy of the bank guarantee. From the bank guarantee furnished by the appellant, it is seen that it is issued in a non-judicial stamp paper purchased on 25.06.2018. The bank guarantee is also dated 25.06.2018. Xerox copy of the bank guarantee, which was issued on 25.06.2018, could not have been submitted along with tender documents. Hence, a false case has been pleaded by the third respondent in his counter affidavit to support the case of the appellant. The bank guarantee produced before this Court shows the conduct of the third respondent exhibiting apparent favoritism. Secondly, the solvency certificate produced by the appellant in this case has been obtained from the Bank. The solvency certificate is required to be obtained from the competent revenue official and the bank, which has issued the bank guarantee, has also issued solvency certificate even though it is not competent. Hence, a valid solvency certificate has not been produced by the appellant.



6.The learned counsel appearing for the first respondent produced the commercial bid of the respective parties. From the bid signed by the first respondent, it is seen that the first respondent has quoted Rs.2.50 per litre. Even as per the format by which the commercial bid is filled by the parties, the respondents 2 and 3 have categorically mentioned that the price quoted is for transport and collection charges and other service charges. It is specifically mentioned that no commission will be paid by the respondents 2 and 3. From this also, it is evident that the Wholesale Agent is required to quote the price for each litre inclusive of the commission that is payable to the Sub-Agents by Aavin. Thus, the findings of the learned Judge that the appellant is not the lowest bidder and that the appellant cannot be found qualified cannot be assailed. Further, it is evident that the price quoted by the first respondent is the lowest.

7.From the records, it is also seen that the authorities have earlier recommended for cancelling tender on the ground that the Committee was not satisfied with the records submitted by the tenderers. The Committee recommended to go for better hands by calling re-tender. However, an order has been passed awarding the contract in favour of the appellant subsequently, without assigning any reason, by agreement dated 12.08.2018. The documents produced before this Court also justify the observation made by the learned Judge against the official respondents showing undue favour to the appellant while awarding the contract originally in favour of the appellant. In view of the facts recorded above, we find no reason to interfere with the order passed by the learned Judge, dated 03.09.2018, in W.P.(MD)No.18049 of 2018. Hence, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(CS-II)

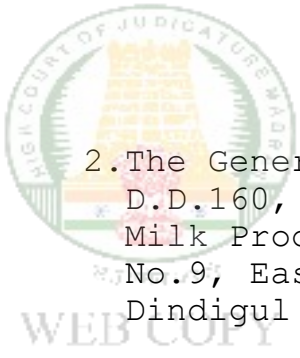
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Sub Assistant Registrar(CS-III)

To

1.The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation,
Madhavaram,

<https://hcservices.ecourts.gov.in/hcservices/>
Chennai - 600 051.



2.The General Manager,
D.D.160, Dindigul District Co-operative
Milk Producers Union Ltd.,
No.9, East Govindapuram,
Dindigul - 624 001.

+1 cc to Mr.M.E.Ilango,Advocate, SR.No.96043
+1 cc to M/s.Veera Associates, SR.No.96085
+1 cc to Spl.Govt.Pleader,SR.No.96321

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SS/PM/SAR 3/13.12.2018/6P/6C

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&
C.M.P. (MD) No.11096 of 2018
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