

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.680 of 2019
and C.M.P.Nos.5537 and 12838 of 2019

M/s.Omega Enterprises
Rep.by its Sole Proprietor Mr.P.Ramiah
Having Office at Room No.106, Building-5
Ganesh Wadi CHS, Bhim Nagar MIDC
Andheri (E), Mumbai - 400 093. ... Appellant

-Vs-

1. Ministry of Civil Aviation
Rep.by its Secretary
Rajiv Gandhi Bhavan
New Delhi - 110 003.
2. Chief Executive Officer
M/s.AAI Cargo Logistics & Allied Services Company
Limited, Integrated Air Cargo Complex,
Chennai Airport, Chennai 600 027.
3. Regional Manager
M/s.AAI Cargo Logistics & Allied Services Company
Limited, Integrated Air Cargo Complex,
Chennai Airport, Chennai 600 027. ... Respondents

For Appellant : Mr.C.Kasirajan

For Respondents : Fr.Xavier Arulraj, Senior Counsel
for M/s.Thiruvengkatam

Prayer : Writ Appeal under Clause 15 of the Letters
Patent, against the order passed by this Honourable Court in
W.P.No.17825 of 2018 dated 26.02.2019. .

Prayer in W.P.No.17825 of 2018: Writ Petition filed under
Article 226 of the Constitution of India for issuance of a Writ
of certiorarified mandamus to call for the entire records
relating to the cancellation of e-tender reference
No.AAICLAS/MAA/3309/2018 dated 25.06.2018 on the file of the

third respondent and quash the same and directing the respondent to award the tender in favour of the petitioner since he is the highest bidder.

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The present writ appeal is filed by M/s.Omega Enterprises, aggrieved by the order of the learned Single Judge dated 26.02.2019, whereby the learned Single Judge dismissed the writ petition No. 17825 of 2018, giving the following reasons.

" 18. I failed to understand as to how the above decision would help the petitioner in any manner, when it is not the proven case of the petitioner that cancellation of the tender would result in far greater loss of exchequer. In other words, this Court cannot presume that the amount quoted by the petitioner alone will be the highest at any point of time, even when fresh tender is called for. In this case, admittedly, the tender process has resulted in considering a single tender of the petitioner alone. Therefore, it cannot be said that by not considering the petitioner's tender and awarding the contract based on the price quoting by them, the respondents have faced far greater loss of exchequer, in the absence of any competency in the price bidding.

19. The next decision relied on in support of the petitioner's case is reported in 2016(1) SCC 724, State of Punjab vs. Bandeep Singh, to contend that the Authority cannot take any decision it chooses to and that it cannot take a capricious or arbitrary or prejudicial decision. At paragraph No.7, it is observed as follows:

"7. The same principle was upheld more recently in Ram Kishun v. State of U.P. However, we must hasten to clarify that the Government does not have a carte blanche to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons. This has already been discussed threadbare in several decisions of this Court, including in Sterling Computers Ltd. v. M & N Publications

Ltd., Tata Cellular v. Union of India, Air India Ltd., v. Cochin International Airport Ltd., B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. and Jagdish Mandal v. State of Orissa."

20. I have already pointed out that the reasons stated by the tender inviting authority to cancel the tender is justifiable, as admittedly there was no price competition. Therefore, such cancellation based on such reason cannot be construed as capricious, arbitrary or prejudiced decision. In fact, in the very same decision, the Apex Court extracted the finding rendered in Anil Kumar Srivastava case reported in 2004 (8) SCC 671 to the effect that notwithstanding the fixation of upset price and notwithstanding the fact that a bidder has offered an amount higher than the reserve/upset price, the sale is still open to challenge on the ground that the property has not fetched the proper price and that the sale be set aside. Therefore, I find that the above decision is also not helping the petitioner in any manner.

21. The unreported decision of the Orissa High Court in W.P.(C) No.2656 of 2016 dated 18.05.2016 is also relied on by the petitioner side to contend that the cryptic order of cancellation without assigning any reason cannot be sustained. I do not think that the petitioner is entitled to canvas such point in view of the admitted position that tender condition No.22, as extracted supra, empowers the tender inviting authority to reject the tender without assigning any reason, especially, when the petitioner has participated in the tender process, after accepting the terms and conditions of the tender, which includes the above condition as well.

22. Considering all these aspects, this Court is of the view that the petitioner has not made out a case for interference with the impugned proceedings of the respondents in canceling the tender. Accordingly, the writ petition fails and the same is dismissed. The interim order already granted is vacated. It is made clear that if fresh tender is called for, it is open to the petitioner to participate in the tender process, if they satisfy the qualification criteria stipulated therein. No costs. The connected miscellaneous petitions are closed."

2. A Coordinate Bench of this Court had initially granted an interim order in favour of the appellant on 01.03.2019, but the same was modified and vacated, permitting the respondents / Airports Cargo Logistics & Allied Services Company to go ahead with the fresh tender process, vide order dated 27.06.2019.

3. Learned counsel for the appellant Mr.C.Kasirajan has urged before us that the cancellation of tender was done on the recommendation of the Commercial Advisory Committee dated 08.06.2018, solely on the basis of a complaint given by the competitor M/s.Sushila Trading Corporation, who also participated in the same tender process. Learned Counsel for the appellant submitted that the tender was cancelled without assigning any reason vide communication dated 25.06.2018, and therefore the appellant approached this Court by way of a writ petition, which unfortunately came to be dismissed by the learned Single Judge and hence the present writ appeal has been filed by the appellant.

4. Learned counsel for the respondents, Airports Cargo Logistics & Allied Services Company, Fr.Xavier Arulraj submitted that the online process for tender was again initiated, in pursuance of the order passed by this Court on 27.06.2019.

5. Having heard the learned counsel for both sides, we are of the clear opinion that no useful purpose will be served by interfering in the tender process initiated in the year 2018 at this stage. The parties, including the present appellant, are free to participate in the tender process afresh and the same shall be considered in accordance with law and in terms of the tender documents already submitted. It is settled that the interference of the Courts in the tender processes has to be minimal. We cannot go into the reasons for the cancellation of tender at this stage. Since the tender is floated for the management of car / truck parking services at the Airport, which is for public purpose, any interference by the Courts of Law to determine the individual rights in mathematical precision would be futile. Therefore, we leave the parties free to participate in the ongoing tender process.

6. With the above observations, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Secretary
Ministry of Civil Aviation
Rajiv Gandhi Bhavan
New Delhi - 110 003.
2. The Chief Executive Officer
M/s.AAI Cargo Logistics & Allied Services Company
Limited, Integrated Air Cargo Complex,
Chennai Airport, Chennai 600 027.
3. The Regional Manager
M/s.AAI Cargo Logistics & Allied Services Company
Limited, Integrated Air Cargo Complex,
Chennai Airport, Chennai 600 027.

+2 ccs to M/s.Father Xavier Associates, Advocate, S.R.No.58454

W.A.No.680 of 2019

NRL(CO)
SSM(14/08/2019)