



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **31.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

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W.P. (MD)No.21925 of 2019

and

W.M.P. (MD)Nos.18687 and 18690 of 2019

I.Anthony Raj : Petitioner
Vs.

1.The Managing Director,
Tamil Nadu Salt Corporation Limited,
L.L.A.Building, 4th Floor,
735, Annasalai,
Chennai-2.

2.The Project Manager,
Mariyur Valinokkam Salt Complex,
Valinokkam,
Kadaladi Taluk,
Ramanathapuram District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent's tender notification vide Tender No.10/PD/2019 published in newspaper on 11.10.2019 and quash the same as illegal and devoid of merits and consequently, direct the respondents to issue work order to the petitioner as per the tender proceeding vide Tender No.09/PD/2019.

For Petitioner
For Respondents

: Mr.Raja.Karthikeyan
: Mr.J.Gunaseelan Muthiah,
Additional Government Pleader

ORDER

The petitioner applied the tender floated by the first respondent vide Tender No.09/PD/2019 for fishing at Reservoir I and Second Part of 30 Acres at MVSC Valinokkam, Ramanathapuram District. The upset price was fixed at Rs.20 Lakhs. He paid Rs.2 Lakhs towards EMD and he quoted a sum of Rs.14.50 Lakhs. The other bidders have quoted Rs.10 Lakhs and Rs.8 Lakhs respectively and, therefore, the petitioner was declared as highest bidder. However, tender was not given to him and he was called for negotiations. Date of meeting was fixed as 15.10.2019. However, without waiting for the better offer



proposed by the petitioner, the second tender notification was issued on 11.10.2019. Aggrieved over the same, the petitioner has approached this Court for cancellation of the said second tender.

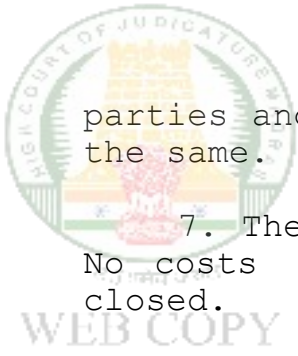
2. When the Writ Petition came up for admission, this Court observed that the petitioner is ready to participate in the tender. Accordingly, he participated in the tender and he has become a highest bidder offering Rs.15,50,000/-.

3. The learned counsel appearing for the petitioner would contend that on the previous year, even though the upset price fixed was much higher, the highest bidder was offered the contract for a lower sum. Likewise, the respondents should have considered the offer made by the petitioner, even though, it is lesser than the upset price and should have awarded the contract to him.

4. Per contra, the respondents would contend that as per the intimation given by the petitioner, they wanted to negotiate. Even before appointed day for negotiation, the petitioner approached the first respondent in advance, i.e., on 09.10.2019. But the negotiations were not successful. Since the petitioner has not even agreed to match the upset price, they were forced to go for fresh tender. They also returned the earnest money deposit of Rs.2 Lakhs to the petitioner and it was received by him on 22.10.2019. The petitioner has also participated in the subsequent tender and become a highest bidder by quoting Rs.15,50,000/-. Therefore, the petitioner, having participated in the subsequent tender, is not entitled to maintain a Writ Petition in respect of the previous tender.

5. Now, it is to be seen as to whether this Court can exercise its power under Article 226 of the Constitution of India in these matters of contractual obligations.

6. The tender floated is for providing fishing right by a Corporation. Even though the Corporation is an organ of the State Government, that does not fall within the definition of "**State**". There is no public law element attached to this tender. The terms and conditions of the tender document provides for independent rights and liabilities and protection of their respective rights. The dispute resolution method is also provided through arbitration. When their individual rights are protected and since no public law element attached to the contract, I do not find any reason to delve into this matter in exercise of power under Article 226 of the Constitution of India. Only because State Owned Corporation is floating the bid, this Court cannot exercise its judicial review under Article 226 of the Constitution of India to resolve the contractual obligations. In that view of the matter, this Court cannot entertain a Writ Petition to settle the dispute over contractual obligations. The conditions of contract will bind both



parties and they have to work out their remedies in accordance with the same.

7. The Writ Petition is disposed of with the above observation. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

SML

To

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2.The Project Manager,
Mariyur Valinokkam Salt Complex,
Valinokkam,
Kadaladi Taluk,
Ramanathapuram District.

+1CC TO MR.J.GUNASEEELANMUTHIAH, ADVOCATE, SR.NO.95578

+1CC TO MR.RAJAKARTHIKEYAN,ADVOCATE, SR.NO.95875

W.P. (MD)No.21925 of 2019

Dated: 31.10.2019

KK/SAR/13.11.2019/3P-5C/