



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.02.2019

Pronounced on : 10.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) No.20477 of 2018

and

WMP (MD) No.18254 of 2018

M/s.Sree Sakthi and Co.,
Rep.by its Managing
Partner M.Mahendran

... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Warehousing Corporation,
& Principal Secretary to Government
for Co-operation,
Food and Consumer Protection
Department,
Secretariat, Chennai - 600 009.

2.The Managing Director,
Tamil Nadu Warehousing Corporation,
Guindy, Chennai.

3.Saravana Transports,
Rep.by its Managing Partner
Rama Mahalingam

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the 2nd Respondent from awarding the contract of Handling and Transportation of Food grains, other notified commodities etc & allied services in Karaikudi and Trichy A Grade Warehouses for a period of two years from 2018 to 2020 in respect of the e-Tender Notice in Rc.No.489/2018/G1 dated 18-05-2018 and the Corrigendum dated 26.06.2018 to the 3rd respondent and consequently directing the second respondent to appoint the petitioner as the H&T Contractor for Karaikudi and Trichy A Grade Warehouses as he is the next eligible lowest bidder in the e-Tender in Rc.No.489/2018/G1 dated 18.05.2018 and Corrigendum dated 26.06.2018.

For Petitioner : Mr.Ajmal Khan, Senior Counsel
for Mr.D.Shanmugarajasethupathi

For R1 & R2 : Mr.Chellapandian,
Additional Advocate General
for Mr.M.Rajarajan

For R3 : Mr.K.Elangoo for R3

**ORDER**

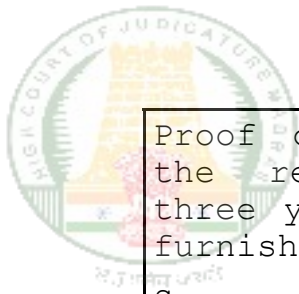
The Tamil Nadu Warehousing Corporation issued a tender notification calling for tenders for fixing Handling and Transport contract for 41 warehouses for the period of two years ie., 2018-2010. The writ petitioner was one of the tenderers for Karaikudi-Trichy A Grade Warehouses. The petitioner came to know that they had been placed as L2 while the Contract was to be finalised in favour of the third respondent. It is true that the third respondent was L1. But then, according to the writ petitioner, the third respondent did not satisfy some of the basic eligibility requirements set out in the tender notification and therefore he lodged a complaint before the Tender Committee. The Tender Committee examined the writ petitioner's representation, but did not accept the same. Therefore, the writ petitioner filed this writ petition for forbearing the second respondent from awarding contract in question in favour of the third respondent.

2. Heard the learned Senior Counsel appearing for the writ petitioner, the learned Additional Advocate General appearing for the respondents 1 and 2 and the learned counsel for the third respondent. The Tamil Nadu Warehousing Corporation had filed a counter affidavit and the third respondent had also filed his counter affidavit.

3. The learned Senior Counsel appearing for the writ petitioner raised very many contentions apart from reiterating the stand projected in the affidavit filed in support of the writ petition. In particular, he focussed on the condition no.15 which is to the effect that the tenderer shall furnish proof of having registrations with EPF payment with code number specified and the proof of deposit of EPF for the relevant period of experience reckoned under qualification criteria wherever applicable.

4. In this case, it is beyond dispute that the tenderer must have a minimum three years experience in combination of similar type of handling and transport contract works without any specific adverse complaints. They should also enclose experience certificate obtained from the organisation of State/Central/Government/Public Sector Undertaking. In this case, the third respondent had registered themselves with EPF only on 01.10.2017 and paid EPF contribution from November 2017 to May 2018 only.

5. This stand taken by the writ petitioner is sought to be rebutted by the Warehousing Corporation in the following manner :



Proof of EPF deposit for the relevant period of three years experience not furnished. Saravana Transports got EPF registration on 01.10.2017 and paid EPF contribution for November 2017 to May 2018 only.	As per Tender condition proof of EPF payment to be produced for the relevant period of experience wherever applicable and not compulsory for 3 (three) years. EPF Payment challan from November 2017 to May 2018 was produced by M/s.Saravana Transport. Therefore, the complaint is not sustainable.
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Likewise, the third respondent in their counter also had the taken the following stand :

"7.I further submit that the 2nd objection of writ petitioner is that the 3rd respondent has not furnished the proof of payment of EPF for the relevant period of experience. As has been stated above the 3rd respondent firm has been into the business of handling and transport of food grains of FCI, TNCSC, CWC, etc. But the TNCSC is not at all insisting for registration with EPF and whereas the CWC ask for it only when the contract is awarded. And FCI does not insist for it if the contract is below Rs.5 crores, however they collect 10% of the work value in lieu of EPF. Therefore, there was no necessity for the 3rd respondent to register with EPF until 2017. Only during 2017 the 3rd respondent herein has obtained PF code and have been paying provident fund for its employees. As this is not a vital and mandatory condition the 2nd respondent thought fit to declare 3rd respondent as L1."

6.It is not the stand of the warehousing corporation that this condition regarding registration of EPF is directory and not mandatory. When a tender notification has been issued incorporating certain conditions, both the parties, namely, tender inviting authority as well as the tenderers are bound by the same. In this case, the condition is that the applicants must have a minimum of three years experience. It follows as a natural corollary that the tenderer must have been registered with EPF for the said period and that he must have made the contribution without any delay. The stand taken by the third respondent is rather strange. He appears to be under the impression that they did not register themselves with EPF because there was no insistence by the organisation concerned. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficial legislation introduced for the purpose of upholding the welfare and interest of the workers.

7.The third respondent has been handling high value contracts and he cannot be allowed to indulge in an unfair labour practice. It has been made to appear in the document filed by the third respondent as if their organisation crossed the minimum labour strength only in the year 2017. This obviously could not be true. The averments set out in paragraph no.7 of the counter affidavit



filed by the third respondent give an indication that there was no necessity for them to register with EPF because Tamil Nadu Civil Supplies Corporation and Food Corporation of India did not insist on such registration. As already pointed out, registration with the EPF cannot be dependent on insistence by the tender inviting organisations like FCI and TNCSC. I hold that Clause No.15 of the tender notification contemplates that the tenderer must have registered with EPF for a minimum period of three years. Since in this case this requirement was not satisfied and the third respondent even though was L1, could not have been chosen.

8. Therefore, this Court restrains the respondent warehousing corporation from awarding the petition mentioned contract in favour of the third respondent. But then, this Court will not be justified in straightaway awarding the contract to the writ petitioner. That is a decision that should be taken by the respondent corporation. The respondent corporation will take a decision in this regard within a period of two weeks from the date of receipt of a copy of this order. This writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

/TRUE COPY/

Sub Assistant Registrar(CS)

To

1. The Chairman, Tamil Nadu Warehousing Corporation,
& Principal Secretary to Government for Co-operation,
Food and Consumer Protection Department,
Secretariat, Chennai - 600 009.

2. The Managing Director,
Tamil Nadu Warehousing Corporation,
Guindy, Chennai.
Kanyakumari District.

+1 CC to Mr.D.SHANMUGARAJA SETHUPATHI, Advocate SR-74690.
+1 CC to Mr.K.ELANGOO, Advocate SR-74637.
+1 CC to Mr.M.RAJARAJAN, Advocate SR-74828.

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