

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.01.2020

Pronounced on : 21.01.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos.5304, 10334 and 30075 of 2019
and
W.M.P.No.10878 of 2019

M/s.P.Stellamary Fish Seed Supplier,
Rep by Mrs.Stella Mary

.. Petitioner in all Wps.

..Vs..

1.The Assistant Director of Fisheries,
Parangipettai,
Cuddalore District.

.. Respondent in W.P.Nos.5304 & 10334 of 2019

2.The Director of Fisheries,
Integrated Office Complex for Animal Husbandry and
Fisheries Department,
No.571, 4th Floor,
Anna Salai, Nandanam,
Chennai - 35.

3.The Deputy Director of Fisheries,
Integrated Office Complex for Animal Husbandry and
Fisheries Department,
No.571, 4th Floor,
Anna Salai, Nandanam,
Chennai - 35.

4.The Assistant Director of Fisheries,
Revu Main Road,
Opposite to CAS Marinebiology college,
Annamalai University,
Parangipettai,
Cuddalore District - 608 502.

..Respondents 2,3 & 4 in W.P.No.30075 of 2019

Prayer in W.P.No.5304 of 2019 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to implement / to act upon the supply order issued in Package No.02/IAMP/FISHERIES/LVR/CAR/G/I/18-19/R1 dated 08.01.2019.

Prayer in W.P.No.10334 of 2019 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent made in Na.Ka.No.161/E/2018 dated 06.03.2019 in Package No.02/IAMP/FISHERIES/LVR/CAR/G/I/18-19/R1 and quash the same and consequently direct the respondent to implement the supply order issued in Rc.No.161/C/2018 dated 08.01.2019 Package No.02/IAMP/FISHERIES/LVR/CAR/G/I/18-19/R1.

Prayer in W.P.No.30075 of 2019 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the respondent made in RFQ: Package No.8/IAMP/FISHERIES/LVR/CAR/G/I/19-20 dated 10.10.2019.

For Petitioner : Ms.Selvi George, in all WPs.

For respondents : Mr.S.R.Rajagopalan,
Additional Advocate General,
for R.Govindasamy,
Special Government Pleader
in W.P.No.5304/2019
Mr.S.N.Parthasarathy,
Government Advocate,
in W.P.No.10334/2019
Mr.M.V.M.Karthikeyan, AGP,
in W.P.No.30075/19

COMMON ORDER

The petitioner in all the three Writ Petitions, M/s.Stella Mary Fish Seed Supplier represented by Mrs.Stella Mary, Kanthampatti, Salem, is the proprietrix of the petitioner's firm. The respondent namely, the Director of Fisheries, Chennai, had invited quotation for supply of live fresh water Fish Seeds of Catla, Rohu, Mirgal, Common carp and Grass carp of Fish culture in short seasonal and long Irrigation Tanks in Lower Vellar Sub Basin under the World Bank shopping procedure by invitation dated 10.10.2019. The bidder should have the Fish production / rearing facility of not less than 0.5 hectares.

2. The petitioner had given her quotation on 26.12.2018 and since her offer was the lowest, the quotation was accepted. The petitioner was requested to supply 16,00,000 Fish seeds at the rate of Rs.1.50 per seed with specifications. The supply order was issued on 08.01.2019. The period of delivery was 45 days. The place of delivery was selected tanks in Cuddalore and Villupuram. It was stated that the selected tanks in Cuddalore District would be informed by the Assistant Director of Fisheries. It was stated that 8,00,000 seeds were to be supplied in Cuddalore District and the balance 8,00,000 seeds were to be supplied in Villupuram District. The Nodal Officer was the Assistant Director of Fisheries, Parangipettai.

3. A supply order dated 08.01.2019 was served on the petitioner on 11.01.2019 and the 45 days period came to an end on 26.02.2019. The petitioner was asked to supply 2,60,000 fish seeds in Wellington lake. The petitioner effected the supply on 25.01.2019. Thereafter, there was no further communication from the respondent. Thereafter, the petitioner filed W.P.No.5304 of 2019 for a Mandamus to direct the respondent to implement the supply order. This Court by order dated 04.03.2019, directed the petitioner and the respondent to identify the water bodies where the fish seeds can be stocked. The petitioner thereafter filed an additional affidavit on 11.03.2019, in which she had stated that the respondent can store/stock the Fish Seeds in the following places:

- i. Fish Seed Rearing Farm near Veedur Dam, Villupuram District,
- ii. Fish Seed Rearing Farm at Lalpet, Cuddalore District and
- iii. Veeranam lake, Cuddalore District.

4. The respondent did not file any affidavit. However, the respondent passed an order in Na.Ka.No.161/E/2018 dated 06.03.2019 cancelling the supply order dated 08.01.2019. Among the reasons stated, it was stated that owing to heat and dryness there were no water in the tank and therefore, it was not possible to receive the balance 13.40 lakhs fresh water fish seeds. It must be kept in mind that one of the Clauses in the supply order dated 08.01.2019 was that the requirement of fish seeds will be informed in advance depending upon the water availability in the selected tank. Relying on the said Clause, the respondents had cancelled the supply order dated 08.01.2019.

5. The petitioner then filed W.P.No.10334 of 2019 challenging the cancellation order. Even, when that writ petition was pending, the respondent had issued a fresh Request for Quotation for supply of 28.90 lakhs of live water fish seeds of Catla, Rohu, Mirgal, Common carp and Grass carp and the last date for submission of quotation was 24.10.2019. Claiming that

such Request for Quotation was borne out of malafide intention, the petitioner filed W.P.No.30075 of 2019.

6. In the counter affidavit filed in W.P.No.5304 of 2019, the respondent had stated that procurement of fish seeds under TNIAM Project has to be followed as per World Bank Procurement guidelines. It was stated that Request For Quotation (RFQ) formats are distributed by hand or through post or electronic media and also uploaded in Tamil Nadu Tender Web Portal to encourage transparency and competition. It was stated that the Request for Quotation was called and it was mentioned that the requirements for fish seed would be informed in advance depending upon the water availability in the selected tanks. It was stated that water was totally dependent on monsoon. It was further stated that the petitioner was the successful bidder for which supply order was effected, requesting the petitioner to supply 16,00,000/- of fish seeds. The delivery period was 45 days.

7. However, it was stated that thereafter the water level in the tanks fell down drastically due to the failure of North East Monsoon in the Northern parts of Tamil Nadu including in Cuddalore and Villupuram Districts. The petitioner was directed to supply the fish seeds to Wellington lake and the petitioner also supplied 2,60,000 fish seeds. Since the other tanks did not have adequate water, the respondents were not able to procure the seeds as per the supply order. It was stated that W.P.No.5304 of 2019 would not stand scrutiny in view of condition No.9(c) which stated that the requirements of fish seeds would be informed in advance depending upon the water availability in the selected tanks. It was therefore stated that the said writ petition should be dismissed.

8. In the counter affidavit filed in W.P.No.10334 of 2019, the very same averments had been repeated word by word and no specific reason was given for cancellation of the supply order except placing reliance on condition 9(c) of the supply order.

9. In the counter affidavit filed in W.P.No.30075 of 2019 it was stated that the claim of the petitioner that she had procured fish seeds based on the supply order and had incurred losses was not maintainable. Once again reference was made to condition No. 9(c) and it was stated that there was failure of North East Monsoon. It was stated that the World Bank funded TN IAM Project, which is a time bound project was implemented in a phased manner. It was stated that the tank did not have adequate water for stocking of fish seeds. Again no other reason was given either for cancellation of supply order or for seeking fresh tender.

10. Heard arguments advanced by Ms.Selvi George, learned counsel for the petitioner and Mr.S.R.Rajagopalan, learned Additional Advocate General for the respondents.

11. The learned counsel for the petitioner once again stated that there was no fault on the petitioner since she was always ready and willing to supply 16,00,000 fish seeds as per the supply order dated 08.01.2019 and it was the fault of the respondents that they did not take the supply. Infact reliance was also placed on the additional affidavit filed, mentioning the availability of water in three other lakes. The learned counsel stated that the petitioner had participated in the second tender which was challenged in W.P.No.30075 of 2019, but claimed that since the petitioner had already had a stock 13.40 lakhs fish seeds, calling for tender for 28.90 lakhs struck of malafide intention and therefore stated that the entire tender process should be quashed.

12. The learned Additional Advocate General on the other hand stated that in the first instance there was no water in the tanks and consequently, the fish seeds could not be received. At present a fresh tender had been invited. It was stated that the description of the fish now sought was slightly different. In the first instance quotation was called for fish seeds to be about 6 cms size and in the second tender it was stipulated they should be above 8 cms. It was stated that the petitioner had participated in the second tender and was the second lowest bidder and it was also stated that therefore, the writ petition has to be dismissed.

13. I have carefully considered the rival arguments advanced.

14. This is a classic case where a small time business person had been led to believe that the respondents would be following the letter and spirit of an agreement and had been invited to participate in the tender for supply of 16,00,000 live fish seeds and having participated in the tender and having been selected as the lowest bidder was left high and dry without any remorse. The respondents had originally invited a tender for supply of 16,00,000 live fish seeds. The petitioner had participated in the same. She was the lowest bidder. She was ready and willing to supply the fish seeds. In the supply order among other clauses, clause 9(c) is as follows:

"The requirement for fish seed will be informed in advance depending upon the water availability in the selected tanks."

15. Since, the rains failed, the tanks went dry and the respondents could not receive the supply of fish seeds. They had received a supply of 2.60 lakhs fish seeds. It was not their case that the supply was of inferior quality. It was not the case of the petitioner that she was not capable of supplying live fish seeds. The respondents did not have tanks with water. Till this date, the respondents have not answered the contention in the additional affidavit, wherein, the petitioner had very specifically stated that there were three other tanks namely, (i) Fish Seed Rearing Farm near Veedur Dam, Villupuram District, (ii) Fish Seed Rearing Farm at Lalpet, Cuddalore District and (iii) Veeranam lake, Cuddalore District, in which also live fish could be filled. The respondents should inculcate the spirit of serving the people of the country and encourage small businesses. They would have received the fish seeds for these tanks as well. Thus, this case is another instance where the Legislature extends its helping hand to the citizens but the Executives, as in the present case, the respondents, have deliberately stifled any business activity and progress. Instances like this would only reflect on the Government namely, the Legislature and not on the Executives. The petitioner had to keep knocking the doors of this Court again and again.

16. When the petitioner filed W.P.No.5304 of 2019, this Court had called upon both the petitioner and respondents to identify the water bodies where the fish seeds can be stocked. The petitioner identified three tanks. The respondents cancelled the supply order. This cancellation smacks of malafidee and cannot be condoned by this Court. The respondents should have abided by the orders of this Court and should have identified tanks where the fish seeds could have been accommodated. I hold that the cancellation of the supply order dated 08.01.2019 is a malafide act and must be set aside. Even when the said writ petition was pending challenging cancellation, the respondents in that all audacity proceeded to issue a fresh Request for Quotation. The respondents if they wanted supply of fish seeds could have sought the balance fish seeds already available with the petitioner. The respondents must realize that they should serve the people and not destroy the businesses of the people. For every such thoughtless act of the Executive, it is the representatives of the people in the Assembly who suffer and get a bad name. The laws are meant to protect the rights of the governed and not those in governance. The laws have been made for the welfare of the society. Here the Executive had taken the contract in their own hands and interpreted the clauses in their own manner to destroy the business of the petitioner. The respondents have repeatedly stated that they are functioning under the World Bank Scheme. The World Bank itself has extended schemes only for the welfare of the people. The World Bank does not extend the schemes to destroy businesses. The Executive

must understand that concept since, cancellation of the supply order dated 08.01.2019 is held to be malafide, the subsequent Request for Quotation for 28.90 lakhs has to be necessarily struck down. The respondents are therefore directed to secure a further 13.40 lakhs fish seeds available with the petitioner. They may stipulate the requirement. If they are of bad quality or of inferior quality or not of the quality and description expected, then they can be rejected, but even without calling for the supply they cannot be rejected. The respondents are therefore directed to issue a fresh supply order after adjusting the supply already made by the petitioner. They may stipulate the quality expected.

17. The learned Additional Advocate General stated that the petitioner had participated in the tender and therefore the petitioner cannot question the tender process. It was also pointed out that the petitioner was the second lowest bidder and therefore has no inherent right. However, the petitioner participated only by directions of this Court by order dated 22.10.2019 which very specifically stated that the respondents can proceed further but a final decision should be taken for issue of supply order to the successful bidder only with prior permission of this Court. It was at that juncture, the learned counsel for the petitioner stated that the petitioner would also participate in the impugned tender. Therefore, the fact that the petitioner participated in the tender also cannot be held against the petitioner. In view of the above discussion, the following orders are passed;

i).W.P.No.5304 of 2019 is disposed of with the direction to the respondents to implement the supply order dated 08.01.2019 in full by issuing a fresh supply order for supply of 13.40 lakhs fish seeds.

ii).W.P.No.10334 of 2019 is allowed by quashing the order dated 06.03.2019, cancelling the supply order dated 08.01.2019.

iii).W.P.No.30075 of 2019 is allowed by quashing the Request for Quotation dated 10.10.2019. The respondents are directed to issue a fresh supply order for supply of 13.40 lakhs fish seeds and also stipulate the requirements and description of the fish seeds.

iv).If the description and requirements supplied by the petitioner are not to the satisfaction then, the respondents may pass appropriate orders explaining the reasons.

v).The respondents are at liberty to call for a fresh Request for Quotation after adjusting the 13.40 lakhs fish seeds now directed to be sought for by issue of fresh supply order to the petitioner.

vi).Connected Writ Miscellaneous Petitions are closed.

vii).No orders as to costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

smv

To

1.The Assistant Director of Fisheries,
Parangipettai, Cuddalore District.

2.The Director of Fisheries,
Integrated Office Complex for Animal Husbandry and
Fisheries Department, No.571, 4th Floor,
Anna Salai, Nandanam, Chennai - 35.

3.The Deputy Director of Fisheries,
Integrated Office Complex for Animal Husbandry and
Fisheries Department,
No.571, 4th Floor, Anna Salai, Nandanam,
Chennai - 35.

4.The Assistant Director of Fisheries,
Revu Main Road,
Opposite to CAS Marinebiology college,
Annamalai University, Parangipettai,
Cuddalore District - 608 502.

+1cc to Ms.Selvi George, Advocate, SR.No.4634.

Order made in
W.P.Nos.5304, 10334 and 30075 of 2019

CA(CO)
CSR:22/01/2020
CSR:19.02.2020