

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.30781 of 2013
and M.P.Nos.1 and 2 of 2013

G.Saravanan

..Petitioner

-vs-

The General Manager (T.N.),
Food Corporation of India,
No.8, Mayor Sathyamoorthy Road,
Chetpet, Chennai - 600 031.

..Respondent

* * *

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records relatig to the impugned order passed by the second respondent in his proceedings No.S & C.24/6(1)/2009/cont.-Vol.II, dated 23.10.2013 and quash the same and consequently direct the respondents to return the EMD, Security Deposit and Bank Guarantee to the petitioner.

* * *

For Petitioner : Mr.C.Prakasam
For Respondent : Mr.M.Imthias

O R D E R

This writ petition is heard through Video-Conference on account of COVID-19 pandemic situation.

2.Impugning the order dated 23.10.2013 passed by the respondent and seeking for a consequential direction, the petitioner is before this Court.

3. The petitioner is a registered Contractor with the Food Corporation of India (in short, "FCI"). The petitioner had participated in the tender called for the transport of grains within Sevur by road and he was declared as L1 and was issued with the Acceptance Letter on 17.05.2012. It is stated that at the time of submitting the tender, the petitioner could not enclose the Experience Certificate. The petitioner also had furnished Bank Guarantee (in short, "BG") in lieu of furnishing the Experience Certificate, which according to the petitioner, was accepted by the respondent and thus, he was awarded the

Transport contract on 17.05.2012. The contract was valid for a period of three years from the date of award. The petitioner was also directed to deposit 5% of the value of the contract by way of Demand Draft and was given concession to deposit 50% of the said amount within a period of 15 working days from the date of acceptance of the tender and the remaining 50% had to be paid by deduction at the rate of 10% from the admitted bills and further, he was directed to furnish the BG of 10% of the value of the contract.

4. While so, the petitioner obtained an Experience Certificate from the Tamil Nadu Civil Supplies Corporation and produced before the respondent. However, the respondent insisted the production of the BG and also the deposit of the amounts, as stated above. Since the petitioner was not in a position to produce the BG, he sought for further extension of time, which was also obliged by the FCI. While so, the impugned order dated 23.10.2013 in proceedings No.S & C.24/6(1)/2009/cont.-Vol.II, was passed terminating the contract with effect from 17.05.2012 and also forfeiting the EMD of Rs.17,000/-, Security Deposit of Rs.20,000/- and Bank Guarantee of Rs.3,50,000/- and debarring him from participating in any future tender of the Corporation for a period of five years.

5. According to the petitioner, the said order is vitiated, as the respondent could have terminated the contract even at the earliest point of time, but on its own extended the time for the petitioner to furnish the BG and suddenly withdrew the same. Secondly, since the respondent had not issued any Work Order to the petitioner and had utilized the services of the then existing Contractor, no loss or inconvenience was caused to the respondent in transporting the foodgrains. As no work order was issued, the question of termination also does not arise. Hence, the petitioner has moved this Court impugning the order dated 23.10.2013 terminating the contract and placing the petitioner under the risk and cost basis for a period of two years with effect from 17.05.2012 and also forfeiting the EMD of Rs.17,000/- remitted on 23.03.2012, Part of Security Deposit of Rs.20,000/- remitted on 27.06.2012 and the Bank Guarantee dated 01.08.2012 for a sum of Rs.3,50,000/-, besides debarring the petitioner from participating in any future tender of the Corporation for a period of five years.

6. The respondent has filed a counter-affidavit specifically stating that any document that may be filed by the tenderer can be considered, only if it was filed along with the tender document, whereas, the petitioner had submitted the Experience Certificate two months after the acceptance of the tender, which is in violation of the terms and conditions of the tender. The request of the petitioner to exempt himself from furnishing the

BG also could not be considered by the respondent. The petitioner had exhausted all the concessions that was available to him under the tender conditions. Despite the same, the petitioner failed to produce the BG as per Clause 7(i)(c) of the tender notice, which was as per the undertaking submitted by him along with the tender, which is again a breach of the tender conditions, which resulted in issuing the Show Cause Notice dated 21.08.2012 (in short, "SCN"). Thus, it is submitted that the respondent have to follow due process of law and termination was issued and the petitioner was debarred from participating in any future tender, after issuance of the SCN. The response given by the petitioner for the SCN were all unacceptable to the respondent and hence, the contract was terminated.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The learned counsel for the respondent produced the copy of the tender notice, in which, clause 7(iv) specifically provides that in the event of tenderer's failure, after the communication of acceptance of the tender by the respondent Corporation, to furnish the requisite Security Deposit by the due date, including extension period, the contract shall be summarily terminated, besides forfeiture of the EMD and the Corporation shall proceed for appointment of another Contractor. Any losses or damages arising out of and incurred by the Corporation by such conduct of the Contractor will be recovered from the Contractor without prejudice to any other rights and remedies of the Corporation under the Contract and Law. The said clause also provides for debarring the petitioner from participating in any future tender of the Corporation for a period of five years. As the petitioner is bound by all these conditions and the breach of the said conditions was also specifically admitted by the petitioner himself, his challenge to the impugned order has to fail.

9. There is no mala fides or any arbitrariness in the impugned order passed by the respondent and in view of the factual details narrated, as also admitted by the petitioner, the impugned order cannot be set aside and the same is affirmed.

10. In fine, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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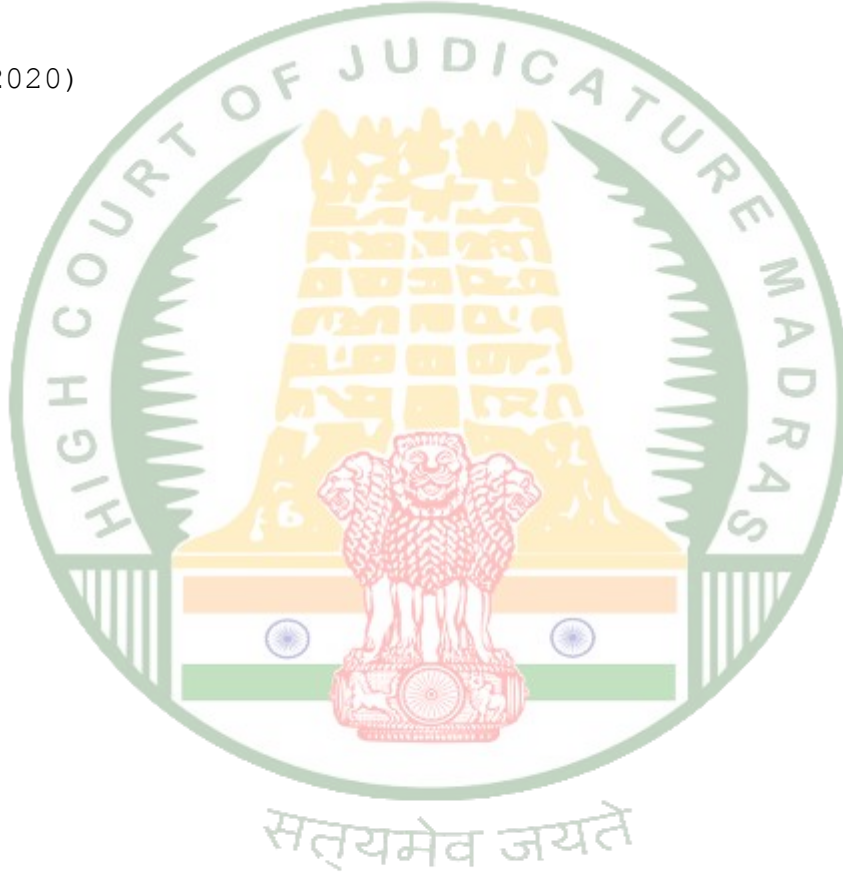
Sub Assistant Registrar

To

The General Manager (T.N.),
Food Corporation of India,
No.8, Mayor Sathyamoorthy Road,
Chetpet, Chennai - 600 031.

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SSV(CO)
RV(09/10/2020)



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