

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No. 9565 of 2019
and
W.M.P. Nos. 10182 and 10185 of 2019

Sriram Technical Training Institute,
Rep. by its Partner,
D.Arumugam,
Having office at,
No.14, Kansamettu Street,
1st Lane, Jewellery Bazar,
Madurai - 625 001. Petitioner

Vs.

1.The Additional Registrar / M.D,
Tamilnadu Cooperative Union,
N.V.Natarajan Malligai,
No. 170, Periyar E.V.R. Road,
Kilpauk,
Chennai 10.

2.M/s.Gem and Jewelry Tech Training,
Rep. by its Co-Ordinator,
No.17/57-A, Lalkhan Street,
1st Floor, Sri Ranjani Hotel,
Chidambaram

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order in Na.Ka.No.2283/2018/D2 dated 25.02.2019 passed by the first respondent and quash the same and consequently direct the first respondent to permit the petitioner to continue for conduction of the classes of "Jewel Appraisal and its techniques" training to the 20 institute of Co-operative management in the state of Tamilnadu in view of the agreement dated 29.12.2017.

For Petitioner	:	Mr. Rajendiran. M
For Respondent - 1	:	Mr. L.Chandrakumar for R1
		Mr.M.Babumuthumeeran for R2

O R D E R

This Writ Petition has been filed challenging the impugned order passed by the first respondent allotting the tender in favour of the second respondent.

2. The case of the petitioner is that the petitioner is a partnership firm which trains in "Jewel Appraisal" for the past several years. Initially, the petitioner participated in the tender in the year 2017 and the petitioner was selected to provide training in Jewel Appraisal for students on regular and part time basis. According to the petitioner, a contract was entered into to continue with the training for a period of three years. The grievance of the petitioner is that even before the completion of the period, the first respondent had issued tender and allotted the work to the second respondent.

3. Learned counsel for the petitioner submitted that the tender is not valid due to the reason that the earlier contract is in force. Learned counsel further submitted that the petitioner was allowed to participate in the tender and his bid was rejected even without assigning the reasons and therefore, there is absolutely no transparency in the process of tender conducted by the first respondent. Learned counsel further submitted that a letter was issued by the first respondent even as late as 31.10.2019 asking the petitioner institute to continue with the training to the students. Therefore, the petitioner is continuing the training even till today. Learned counsel submitted that the entire tender called for by the first respondent is illegal and has to be interfered by this Court.

4. The first respondent has filed a counter affidavit in this case. The relevant portions in the counter affidavit is extracted hereunder:

"...

3. This respondent further submits that the averments made in paragraphs 2 to 6 are specifically denied as false and without any basis, except those that are admitted herein. It is stated that the petitioner's firm initially took part in the tender and there being no effective competitors was declared successful bidder and it was initially for a period of 3 years, way back in 2004. Subsequently, there was no adherence of tender procedures after initial bid and an oral terms and conditions, the agreement stood extended. As it was failed that the price quoted was on the higher side as because there were subsequent representations being received to comply the conditions for effective imparting to training

techniques for the part-time course to the 20 Institutes of the Cooperative Management in the State of Tamilnadu and that the petitioner not cooperating for reducing the bid which was already extended without recourse to the procedure as contemplated under the Act and Rules, a Tender Notification dated 22.10.2018 was called for to provide Jewell appraisal and its techniques vide. Tender Notice No.1/2283/2018/D2 dated 22.10.2018 and the petitioner participated in the sealed tenders. After opening of the tenders it was found that the 2nd respondent's tender was the lowest and in view of the petitioner already continuing negotiations which were called for as to whether he would be able to reduce the bid to that of the lowest already been quoted by the second respondent. Since after negotiations as the petitioner failed to reduce the bid and in fact had quoted more than the second respondent despite negotiations and as per the existing procedure, Rules and Regulations and that of settled principles of law, the second respondent was declared as the successful bidder vide proceedings dated 25.02.2019, pursuant to which the said 2nd respondent had commenced imparting of training from 04.03.2019 and is presently being imparting training in all the institutes.

4.This respondent further submits that all along the petitioner has been continued at the highest rates and that since the tender procedure was failed to be followed during previous year and that the petitioner along had been quoting fanciful prices consequent upon fresh tender in order to afford him an opportunity when negotiations were called for to bring down the bid price from that of Rs.2360/- to that of Rs.1990/- in so far as the petitioner is concerned and that he having failed to accept the same and in furtherance to the second respondent having reduced the bid amount from Rs.1990/- to that of Rs.1980/- he was declared as successful bidder and has been issued will all consequential orders which has been commenced and in continuance since 04.03.2019. It has been brought to the notice of this respondent that this Hon'ble Court was pleased to grant interim protection from cancellation of the agreement in and by an order dated 01.04.2019. The said order had become inoperative and had also worked itself out as because the second respondent had commenced imparting of training from 04.03.2019, much and well ahead of the grounds of the above said interim order. Moreover, once the successful bidder having been commenced and the consequential

conferment of right being entrusted to him and in the teeth of the fact that the petitioner was un-successful bidder and despite action and an opportunity being provided to him to reduce the bid amount by negotiations and in having failed to accept the same the writ petition as such is liable to be dismissed, as he was participated in the tender and was an unsuccessful."

5. Mr. L.Chandrakumar, learned counsel appearing on behalf of the first respondent, apart from reiterating the contentions raised in the counter affidavit, submitted that the petitioner has also participated in the tender and therefore, he cannot be allowed to turn around and now challenge the tender on the ground that the tender process should not have taken place during the subsistence of the period which was given to the petitioner. Learned counsel further submitted that the petitioner was given sufficient opportunity to bring down the bid price and he failed to accept the same. Since the second respondent had given the lowest bid, he was declared as successful bidder and consequently, he commenced to impart training to the students from 04.03.2019 onwards. Learned counsel further submitted that this fact was taken into consideration by this Court and the interim order granted in favour of the petitioner was vacated by this Court by an order dated 20.11.2019. Learned counsel submitted that there are absolutely no grounds in the present Writ Petition and the same is liable to be dismissed.

6. This Court has carefully considered the submissions made on either side and perused the entire materials that are available on record.

7. The petitioner was declared as successful bidder in the earlier tenders that were called for by the first respondent. The first respondent found that the price quoted by the petitioner was on the higher side and the petitioner was not co-operating for reducing the amount. Therefore, left with no option, the first respondent went ahead with the tender notice on 22.10.2018. It is important to note that the petitioner had also participated in the process. On the opening of the tender, the first respondent found that the rate quoted by the petitioner was very high and therefore, he was requested to reduce the bid amount. The petitioner was not willing to reduce the bid amount and the second respondent had quoted a reduced bid amount and therefore, they were declared as the successful bidder.

8. This Court had taken into consideration the fact that the second respondent had already commenced imparting the training

from 04.03.2019 onwards and therefore, this Court by order dated 20.11.2019, vacated the interim order.

9. The fact remains that the second respondent had already started imparting of training to the students. The petitioner having participated in the tender process cannot be allowed to challenge the same on the ground that the tender was called for even during the subsistence of the earlier period. The petitioner having participated in the tender process cannot be allowed to raise this ground. The second respondent was chosen as the successful bidder based on the rate quoted by him. This Court does not find any illegality or irregularity in the tender conducted by the first respondent.

10. In the result the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bkn

To

1.The Additional Registrar / M.D,
Tamilnadu Cooperative Union,
N.V.Natarajan Malligai,
No. 170, Periyar E.V.R. Road,
Kilpauk,
Chennai 10.

+1cc to Mr.M.Rajendiran, Advocate, S.R.No.23056
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.22333
+1cc to Mr.M.Babu muthumeeran, Advocate, S.R.No.

W.P. No. 9565 of 2019
and

W.M.P. Nos. 10182 and 10185 of 2019

jp(CO)
jrs(29/05/2020)