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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.9644 of 2020

and W.M.P.Nos.11768 to 11770 of 2020

M/s.South India Road Milk Transport
rep. by its Proprietor N.Vaidhyananathan,
37/15, Nurtech Vishram Apartment,
E Flat, 11th Avenue, Ashok Nagar,
Chennai-600 083.

... Petitioner

Vs

1. The Government of Tamil Nadu
rep. by the Secretary to the Government,
Department of Animal Husbandry,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Managing Director,
The Tamil nadu Cooperative Milk Producers
Federation Ltd., Aavin Illam, 3-A,
Pasumpon Muthuramalinganar Salai,
Nandanam, Chennai-600 035.
3. The Joint Managing Director,
The Tamil nadu Cooperative Milk Producers
Federation Ltd., Aavin Illam, 3-A,
Pasumpon Muthuramalinganar Salai,
Nandanam, Chennai-600 035.
4. Board Level Tender Committee,
rep. by Addl. Finance Secretary to the Government,
Department of Finance, Secretariat,
Fort St. George, Chennai-600 009. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records relating to the issue of the impugned order in intimation dated 12.03.2020 made in Ref.No.2273/T4/Tpt/19, on the file of the second respondent quash the same, restore the tender in Notification



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No.2273/T4/Tpt/2019, dated 27.08.2019 and to direct the second respondent to grant the work order to the petitioner, L1 holder for 15KL vehicles and 8.5 KL vehicles submitted in the tender.

For Petitioner : Mr.V.Raghavachari
for M/s.S.Muthukumar
For Respondents : Mr.Vijay Narayan, Advocate General
assisted by Mr.R.Bala Ramesh,
Special Government Pleader (Co-op.)

O R D E R

Mr.Vijay Narayan, learned Advocate General assisted by Mr.R.Bala Ramesh, learned Special Government Pleader (Co-operative) appears on behalf of the respondents.

2. With the consent of the learned counsel for the petitioner and the learned Advocate General, this writ petition is taken up for final hearing at the admission stage itself via Videoconferencing, on account of the COVID-19 pandemic situation.

3. Challenging the intimation of the second respondent dated 12.03.2020 made in Ref.No.2273/T4/Tpt/19, and seeking to restore the said tender issued on 27.08.2019 and also seeking a consequential direction to the second respondent to grant the work order to the petitioner, being the L1 holder for 15KL vehicles and 8.5 KL vehicles, this writ petition is filed.

4. The petitioner firm, which is engaged in the business of milk transportation owning insulated transport vehicles of various capacities, and it stood as one of the successful bidders in the tender, which was called for by the second respondent vide Notification No.2273/T4/Tpt/2019 on 27.09.2018 for supply of 303 Nos. of various Capacities Road Milk Tankers on Hire for Transportation of Milk for a period of three years from 2019-2022.

4.1. The petitioner has stated that the technical bid of the tender applications was opened on 10.10.2019, and the qualified list of tenderers should be published within 60 days, i.e., on or before 10.12.2019. But the second respondent wantonly delayed the opening of the price bid and it was opened only on 06.02.2020. Though the petitioner's quote was the lowest, there were other contractors, who had also quoted the same rates.

4.2. It is claimed by the petitioner that Section 10(5) of the Tamil Nadu Transparency in Tenders Act, 1998 (in short, "TNTT Act") confers powers on the Tender Accepting Authority (in short, "TAA") to split the procurement amongst the bidders, who



have quoted the same price. Admittedly, the petitioner was declared as L1 on 06.02.2020 and thereafter, negotiations were held by the Tender Committee on the same day, i.e., on 06.02.2020. The petitioner also had given its revised offer at that time. Even thereafter, there was no response.

4.3. It is alleged that though there was a communication dated 13.02.2020 in Ref No.2273/T4/TPT/2019 from the third respondent to the petitioner informing about the re-negotiation meeting to be held on 14.02.2020 at 2.30 p.m., they are not aware of the same.

4.3. Thus, the petitioner further alleged that though the tender was processed, the second respondent was delaying in issuing the Work Order (for the sake of brevity, "WO") to the petitioner, which constrained the petitioner to file W.P.No.5954 of 2020 praying a Mandamus seeking for a direction to the second respondent to issue WO to the petitioner.

4.4. The said writ petition was heard along with W.P.Nos.5834, 5958 and 5960 of 2020, which came up for hearing on 06.03.2020. Even though at the time of admission, it was informed to this Court that the subject tender notification issued earlier was cancelled by the second respondent, as the petitioners' therein were unaware of the same, this Court had directed the second respondent to upload the decision and also communicate to the petitioners about the decision for cancellation of tender.

4.5. Accordingly, the said intimation was uploaded on 12.03.2020 in the web, wherein, it was stated that the subject tender has been rejected by the fourth respondent - Board Level Tender Committee (in short, "BLTC"), for the reason that the BLTC observed that the negotiated L1 rate was exorbitant when compared to the existing rate.

4.6. The said intimation is impugned in this writ petition.

5. Mr.V.Raghavachari, learned counsel for the petitioner submitted that the BLTC has got no jurisdiction to decide about the rates, as the said authority is not competent. It is submitted that having finalized the rates of the petitioner to be the L1, the respondents had deliberately delayed the tender without awarding the WO to the petitioner. According to the learned counsel for the petitioner, the BLTC is only a recommendatory body and it is not the rate fixing or finalizing authority and only the TCMPF alone is the competent authority to do so.

6. In response to the arguments of the learned counsel for the petitioner, learned Advocate General pointed out that when the petitioner had moved W.P.No.5954 of 2020 seeking a Mandamus to grant it the WO, it was specifically mentioned before this Court that as per BLTC's recommendations, the rate of L1 was very exorbitant when compared to the existing rates, and after



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detailed discussion, it was resolved to cancel the tender and call for fresh tenders and the petitioner, having come to the Court at the earlier occasion, despite knowledge, cannot challenge the cancellation of the tender again in the instant writ petition. The learned Advocate General also submitted that the petitioner had appeared for renegotiation held on 14.02.2020 and agreed for a revised offer and therefore, the petitioner cannot plead ignorance or complain about the delay. The learned Advocate General produced the copy of the minutes of the renegotiation meeting held on 14.02.2020 to substantiate the said submission. The learned Advocate General relied on the clause 4.20.1 of the tender document to contend that the respondents have the right to accept or reject any or all the tenders fully or partly without assigning any reasons and thus, sought for dismissal of this writ petition.

6.1. The learned Advocate General relied on the following judgments, in support of his submissions :

- i. State of Jharkhand v. CWE-SOMA Consortium, (2016) 14 SCC 172; and
- ii. State of U.P. v. Al Faheem Meetex (P) Ltd., (2016) 4 SCC 716.

7. This Court heard submissions of the learned counsel for the petitioner and the learned Advocate General and perused the materials placed on record.

8. A perusal of the records makes it clear that when the petitioner had moved W.P.No.5954 of 2020 seeking a Mandamus to grant it the WO, it was specifically mentioned before this Court that the rate of L1 was very exorbitant when compared to the existing rates, and after detailed discussion, it was resolved to cancel the tender and call for fresh tenders. This Court had specifically observed that when the respondents had decided to cancel the tender floated earlier, this Court cannot issue the writ of mandamus and compel them to conclude the tender in favour of the petitioner, who is L1. This Court had further observed that unless and until the tender is finalized and WO is issued, no right accrues in favour of the bidder. Thus, the writ petitions were disposed of.

9. At this juncture, it is apt to state that learned counsel for the petitioner, among other judgments, relied on the judgment of the Hon'ble Apex Court in M/s.Star Enterprises Vs. City and Industrial Development Corporation of Maharashtra Limited, 1990 (3) SCC 280, to contend that the respondents ought to have assigned valid reasons for rejecting the L1 bidder and should have communicated the same to the petitioner. The following observations are relevant, according to him :



11. Though it is alleged by the petitioner that as directed by this Court, the respondents had not individually and independently communicated the decision of the authority cancelling the earlier tender, admittedly, the same was uploaded in the web. Besides, the factum of cancellation of the earlier tender was mentioned in the open Court in the presence of the petitioner. Though the learned Advocate General contended that even presuming that individual communication was not served to the petitioner, it is admitted by the petitioner in the



affidavit in paragraph 5 that the second respondent uploaded the cancellation of the tender by its intimation dated 12.03.2020 in the website. The writ petition challenging the said cancellation was filed on 17.07.2020. Despite having knowledge about the cancellation even as early as on 12.03.2020, and even prior to that, i.e., on the date of order passed by this Court in W.P.No.5954 of 2020 on 06.03.2020, the petitioner had waited for four months and file the writ petition only on 17.07.2020, after the fresh tenders were issued by the respondents. Therefore, there is no bonafides in the claim of the petitioner.

12. The contention of the learned Advocate General, by producing the copy of the minutes of the re-negotiation meeting held on 14.02.2020, wherein, the petitioner had appeared and agreed for a revised offer, that the petitioner cannot plead ignorance or complain about the delay deserves merit acceptance.

13. It is relevant to state that clause 4.20.1. of the tender reads as follows :

"4.20.1. Notwithstanding anything contained in the tender schedule, no obligation rests on the Federation to accept the lowest tender and the Federation shall also have the right to accept or reject any or all the tenders fully or partly without assigning any reasons."

14. Thus, it is crystal clear that the respondents have the right to accept or reject any or all the tenders fully or partly without assigning any reasons.

15. The learned Advocate General relied on the judgment of the Hon'ble Apex Court in State of Jharkhand v. CWE-SOMA Consortium, (2016) 14 SCC 172, wherein, it was held as follows :

"13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide Laxmikant v. Satyawan, (1996) 4 SCC 208, Rajasthan Housing Board v. G.S. Investments, (2007) 1 SCC 477 and U.P. Avas Evam Vikash Parishad v. Om Prakash Sharma (2013) 5 SCC 182).



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14. The appellant State was well within its rights to reject the bid without assigning any reason thereof.

In terms of the above Clause 24 of NIT and Clause 32.1 of SBD, though the Government has the right to cancel the tender without assigning any reason, the appellant State did assign a cogent and acceptable reason of lack of adequate competition to cancel the tender and invite a fresh tender. The High Court, in our view, did not keep in view the above clauses and right of the Government to cancel the tender.

15. The State derives its power to enter into a contract under Article 298 of the Constitution of India and has the right to decide whether to enter into a contract with a person or not subject only to the requirement of reasonableness under Article 14 of the Constitution of India."

16. In State of U.P. v. Al Faheem Meetex (P) Ltd., (2016) 4 SCC 716, relied on by the learned Advocate General, the Hon'ble Apex Court held thus :

"15. When the decision-making process had not reached any finality and was still in embryo and there was no acceptance of the bid of Respondent 1 by the competent authority, no right (much less enforceable right) accrued to Respondent 1. In such a situation, there was no question of giving any notice or hearing to Respondent 1.

17. In view of the above settled position, even though the petitioner is the L1, the TAA/second respondent has already reserve its right for cancellation even without assigning any reason and the same cannot be questioned by the petitioner at this stage.

18. In the result, the writ petition is dismissed as devoid of merits. It is made clear that there is no impediment for the TAA/second respondent to reissue the tender and proceed with the same in accordance with law, which cannot be challenged by the petitioner, at this stage. There shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar



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To

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1. The Secretary to the Government,
Department of Animal Husbandry,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Managing Director,
The Tamil nadu Cooperative Milk Producers
Federation Ltd., Aavin Illam, 3-A,
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Federation Ltd., Aavin Illam, 3-A,
Pasumpon Muthuramalinganar Salai,
Nandanam, Chennai-600 035.
4. The Addl. Secretary to the Government
(Board Level Tender Committee),
Department of Finance, Secretariat,
Fort St. George, Chennai-600 009.

+1cc to Mr.S.Muthu Kumar, Advocate, sr.no.25882

W.P.No.9644 of 2020

AD(CO)
RMP(17/08/2020)