

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SETHILKUMAR RAMAMOORTHY

W.A.No.833 of 2020
and CMP No.10565 of 2020

1 M/S.SOUTH INDIA ROAD MILK TRANSPORT
REP BY ITS PROPRIETOR N. VAIDHYANATHAN
37/15 NUTECH VISHRAM APARTMENT
E FLAT 11 TH AVENUE ASHOK NAGAR
CHENNAI 83. ... Appellant

Vs

- 1 THE GOVT OF TAMILNADU
REP BY THE SECRETARY TO THE GOVERNMENT
DEPARTMENT OF ANIMAL HUSBANDRY
SECRETARIAT
FORT ST.GEORGE CHENNAI 9.
- 2 THE MANAGING DIRECTOR
THE TAMIL NADU COOPERATIVE MILK PRODUCERS
FEDERATION LTD. AAVIN ILLAM
3-A PASUMPON MUTHURAMALINGANAR SALAI
NANDANAM CHENNAI 35.
- 3 THE JOINT MANAGING DIRECTOR
THE TAMIL NADU COOPERATIVE MILK PRODUCERS
FEDERATION LTD. AAVIN ILLAM
3-A PASUMPON MUTHURAMALINGANAR SALAI
NANDANAM CHENNAI 35.

4 BOARD LEVEL TENDER COMMITTEE
REP BY ADDL.FINANCE SECRETARY TO THE GOVERNMENT
DEPARTMENT OF FINANCE
SECRETARIAT FORT ST.GEORGE CHENNAI 9.

... Respondents

Appeal filed under Clause 15 of Letter Patent to set aside the order passed by the Hon'ble Court in WP No.9644 of 2020 on 04.08.2020.

For Appellant : Mr.V. Raghavachari
For Respondents : Mr.Vijay Narayan
Advocate General
assisted by
Mr.Bala Ramesh
Addl.Govt .Pleader

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Heard Mr.V. Raghavachari, learned counsel for the appellant and Mr.Vijay Narayan, learned Advocate General for the respondents. This is an intra court appeal about a dispute arising out of award of a tender regarding engagement of Milk Tanker Trucks.

2. Mr.Raghavachari, learned counsel for the appellant submits that as a matter of fact, no finality is attached in respect of the rights

of the appellant by virtue of the judgment dated 06.03.2020, where, an incorrect representation was made by the learned Government Pleader and even otherwise, in fact, no order cancelling the tender was passed on the date of the judgment i.e., 06.03.2020. He submits that the order of cancellation came to be passed on 12.03.2020, thereafter, the appellant has taken up fresh proceedings and filed the writ petition, giving rise to the present appeal. He submits that as a matter of fact, the appellant, being one of the lowest tenderers with there being no defect in the tender process, the cancellation of the tender is arbitrary and violative of Article 14 of the Constitution of India.

3. We have considered the submissions raised, but, we are not inclined to enter into the merits of the cancellation process as we find that the conclusion drawn by the learned Single Judge that the order dated 06.03.2020 attaches finality is correct. It is undisputed that no appeal has been filed questioning the correctness of the order dated 06.03.2020.

4. The order dated 06.03.2020 which is relevant for the present controversy can be sufficiently understood with the contents of Paragraphs 3 to 6 of the judgment extracted hereinunder:-

"3. In the light of the decision taken by the respondents federation, this Court cannot issue a writ of mandamus and not compel them to conclude the tender.

4. The argument of the learned counsel for the petitioner is that the petitioners are existing operators and they have invested huge funds in promoting the specially designed vehicle to transport milk with a controlled temperature.

5. Thus, in spite of the fact that in few of the writ petitioner's cases, license has been extended up to end of March, 2020 and considering the scope of the writ petitions, which are before this Court, this Court will not justify in making any observation with regard to availing the service of the petitioners till the end of March, 2020 and it is a

*decision to be taken by the respondents to engage the service of the petitioners. That apart, **unless and until a tender is finalised and work order is issued, no right accrues in favour of the bidder.***

6. In the light of the decision taken by the respondents to cancel the tender, the writ petitions stand disposed of by leaving it open to the respondents to call for fresh tender in accordance with law. The respondents are directed to upload the decision and also communicate to the petitioner about the decision for cancellation of tender stated to be part of the conditions of tender. No costs. Connected miscellaneous petitions are closed.”

5. Having perused the same we find that the said judgment categorically indicates that the Court was not inclined to interfere at all with the tendering process and rather made it clear that unless a tender is finalised, no right accrues in favour of the bidder. It was also

held that a writ of mandamus cannot be issued to compel the respondents to conclude the tender. The third observation in paragraph 6 of the judgment quoted above is that it was open to the respondents to call for fresh tender. The said judgment has not been assailed and is therefore final.

6. What the learned counsel contends that the entire judgment proceeds on some sort of misconception of the cancellation of tender which was not in existence as on the date of judgment. It was open to the appellant to question the said judgment, but, it appears that according to Mr.V.Raghavachari, same clarification application has been moved.

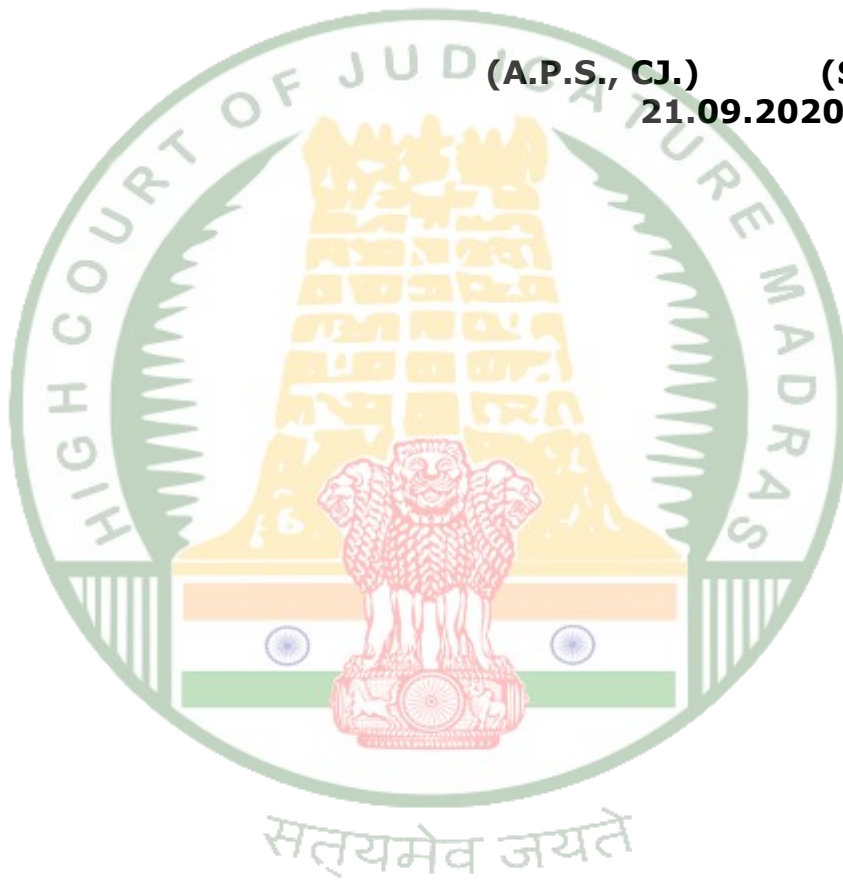
7. We are not impressed by this argument inasmuch as either the appellant could have proceeded by way of an appeal or could have filed a Review Application.

8. In the circumstances, the conclusion drawn by the learned Single Judge that the entire matter stood foreclosed with the judgment dated 06.03.2020 does not suffer from any infirmity.

9. The writ appeal lacks merits and accordingly, rejected. No costs. Consequently, connected miscellaneous petition is closed

(A.P.S., CJ.) (S.K.R., J.)
21.09.2020

sr



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To

- 1 THE SECRETARY TO GOVERNMENT,
GOVERNMENT OF TAMIL NADU,
DEPARTMENT OF ANIMAL HUSBANDRY
SECRETARIAT
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**The Hon'ble Chief Justice
and
Senthilkumar Ramamoorthy, J.**

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