



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.01.2020
CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

**W.P(MD)No.25111 of 2019
and
W.M.P(MD)No.21704 of 2019**

J.Vasanthi

... Petitioner

Vs.

1.The Divisional Mechanical Engineer,
Southern Railway,
Divisional Office,
Mechanical Branch,
Madurai - 625 016.

2.The Divisional Environmental and
House Keeping Manager,
Southern Railway,
Divisional Office,
Mechanical Branch,
Madurai - -625 016.

3.The Divisional Railway Manager,
Southern Railway,
Madurai Division,
Divisional Office,
Madurai - 625 016.

4.The General Manager,
Southern Railway,
Park Town,
Chennai - 600 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in No.U/M.35/Materials Transport/2018 dated 28.10.2019 and the consequential Tender Notification issued by the first respondent in E-Tender No.Mech1-MDU-09-19 dated 07.11.2019, quash the same and consequently direct the respondents to permit the petitioner to continue to perform the contract as per e-tender No.Mech1-MDU-05-19 dated 21.03.2019 and the letter of acceptance dated 11.06.2019.

For Petitioner : Mr.Vijayashankar for
Mr.V.Karthikeyan



For Respondents : Mr.S.Manohar,
Standing Counsel

ORDER

Heard Mr.Vijayashankar for Mr.V.Karthikeyan, learned counsel for the petitioner and Mr.S.Manohar, learned standing counsel for the respondents.

2. The petitioner has filed this Writ Petition, seeking for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in Proceedings No.U/M.35/Materials Transport/2018 dated 28.10.2019 and the consequential Tender Notification issued by the first respondent in E-Tender No.Mechl-MDU-09-19 dated 07.11.2019, quash the same and for a consequential direction, directing the respondents to permit the petitioner to perform the contract as per E-Tender No.Mechl-MDU-05-19 dated 21.03.2019 and the letter of acceptance dated 11.06.2019.

3. The petitioner is a Contractor whose bid was accepted as a lowest bid by the first respondent for hiring of lorry for transportation of materials for maintenance and movement of scrap for all the coaching depots of Madurai Division for a period of three years.

4. It is seen that in the tender document, it is clearly mentioned that the petitioner has to supply a vehicle to carry 7.5 tons capacity of materials and scrap with 3000 K.mts for all the coaching depots of Madurai Division. However, it is now stated that the petitioner has not understood the same properly and there seems to be confusion with regard to the territory within which the lorry has to be plied. Therefore, when the second respondent directed the petitioner to transport materials to Ernakulam, which is in Kerala State, it was not obeyed by the petitioner. Therefore, the second respondent had issued seven days show cause notice on 14.10.2019 to terminate the contract. Thereafter, a consequent notice of 48 hours was also issued on 23.10.2019 to terminate the contract and carry out the same independently without the participation of the petitioner. Though a reply was sent by the petitioner on 25.10.2019, the second respondent had terminated the contract of the petitioner on 28.10.2019 and also issued fresh tender on 07.11.2019 for the same work. Aggrieved by both the orders, this writ petition has been filed.

5. The second respondent has filed a counter affidavit setting out the reasons as to why the contract of the petitioner had to be terminated. It is also stated that despite calling for fresh tender on 07.11.2019, there was no response and whoever had applied were also inexperienced and therefore, the tender could not be completed. It is also stated that now they have issued one more tender, which is to be completed on 27.01.2020.



6. Be that as it may, the petitioner has also filed a reply affidavit, wherein in paragraph Nos.5 and 6, she has stated as follows:

"5.While so, when the respondents asked the driver of the petitioner to transport materials to Ernakulam, on account of a genuine misconception that the scope of work was restricted to transport of the material/scrap within Madurai Division and not outside, the driver expressed his disinclination. It was on account of this misunderstanding on their part that the petitioner's driver expressed unwillingness to transport the materials outside Tamilnadu. Later on making enquiries, the petitioner comes to know that her initial reaction was not correct and therefore, in the affidavit filed in the W.P. Itself, she has indicated her willingness to transport the materials as per the respondent's directives.

6.The respondent in their counter affidavit have stated that the petitioner has not produced indemnity bond, registration certificate, pollution certificate etc. In this connection, the petitioner submits that the said allegations are factually incorrect as the respondents had allowed the petitioner to begin the work only after submission of the above documents. Further, it is also necessary to bring to the notice of the Hon'ble Court that for the work the petitioner has carried out so far, no payments have been made by the respondents."

7. As the petitioner has understood the mistake committed by her by not understanding the tender document properly that it was only the distance that was required to be completed and not the territory, she expressed her willingness to continue the work and transport the materials in and outside Tamil Nadu.

8. It is further stated that the lorry, which has been purchased for the specific purpose is also lying with the respondents from July, 2019. Admittedly, the contract period is from 11.06.2019 for a period of three years. When there are no takers for this kind of contract despite of the tender floated by the respondents, the case of the petitioner can be re-considered by the respondents.

9. Further, the contract was terminated not for any fault or mischief committed by the petitioner. But, it is for the wrong understanding of the tender document and the same need not be viewed seriously, resulting in cancellation of the contract. However, the



establishment like the Respondents has to go by the rules and regulations.

10. In the above circumstances, the petitioner's plea is to consider to continue her as a Contractor, as admittedly the said contract was not awarded to anybody else despite calling for tenders twice and the petitioner is also willing to withdraw her arbitration proceedings, if she is directed to continue the contract.

11. In the peculiar circumstances of the case, the second respondent is directed to consider recalling the order of termination and also the tender that has been floated for the second time and consider the petitioner to continue with the contract till the contract period is over upon any conditions that may be imposed on her by the second respondent.

12. This Court is also of the view that in the interest of the respondents and in the absence of any other contractor to do the similar job, it would be advisable for the respondents to cancel the termination and permit the petitioner to continue with the contract.

13. In this regard, the petitioner is directed to appear before the authorities concerned at the earliest making a request and the authorities are directed to consider the case of the petitioner thereafter within a week.

With the above observation and direction, the writ petition is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Pm

To:

1.The Divisional Mechanical Engineer,
Southern Railway, Divisional Office,
Mechanical Branch,
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Divisional Office,
Madurai - 625 016.

4.The General Manager,
Southern Railway, Park Town,
Chennai - 600 003.

+1 CC to Mr.S.MANO HAR, Advocate (SR-1380[F] dated 10/01/2020)
+2 CC to Mr.V.PERUMAL, Advocate (SR-1166[F] dated 09/01/2020)

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MK (28.01.2020) 5P 8C