



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA  
AND  
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.2099 of 2021 and C.M.P. No.13304 of 2021

Muthoot Exim Private Limited  
Represented by its Senior Manager-  
Business Development  
No.18, 18th Floor  
Sunshine Towers  
Senapathi Bapath Marg  
Mumbai - 400 013

.. Appellant

Vs.

1.State of Tamil Nadu  
Represented by its Secretary to Government  
Social Welfare Department  
Fort St. George, Chennai - 600 009

2.The Commissioner  
Panagal Maligai, 2nd Floor  
Saidapet, Chennai - 600 015

.. Respondents

\* \* \*

Prayer : Writ Appeals filed under Clause 15 of Letters Patent against the order dated 10.02.2020 made in W.P.No.6064 of 2019.

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, directing to call for the records on the file of the respondents, relating to the impugned order of the 2<sup>nd</sup> respondent (i) dated 24.12.2018 in P.R.O.C.No.11549/WW-1(1)/2018 (ii) order dated 05.02.2019 in P.R.O.C.No.11549/WW-1(1)/2018 and quash the same; and consequently direct the respondents to refund to the petitioner the sum of Rs.53,00,000/- paid by way of EMD towards the tender for supply 8 gms of gold coin pursuant to the tender dated 27.07.2018 in P.R.O.C.No.11549/WW-1(1)/2018 issued by the 2<sup>nd</sup> respondent together with such reasonable rate of interest.

\* \* \*

For Appellant : Mr.V.Anand

For Respondents: Mr.J.Ravindran,  
Addl. Advocate Genl.



assisted by  
Mr.D.Ravichander,  
State Govt. Counsel

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J U D G M E N T  
(delivered by PUSHPA SATHYANARAYANA, J.)

This intra-court writ appeal is directed against the order of the learned single Judge dated 10.02.2020 made in W.P. No.6064 of 2019, by which the learned single Judge, declined to interfere with the impugned order. Aggrieved by the same, the writ petitioner is on appeal.

2. The dispute arose out of the tender dated 31.07.2018 advertised in ROC. No.11549/WW-1(1)/2018 dated 27.07.2018, for supply of 1,11,000 numbers of eight gram gold coins of 22 carat each. The said tender was floated to distribute the gold coins to the beneficiaries under five major assistance schemes of the Government of Tamil Nadu.

3. The writ petitioner, who is the appellant herein, had participated in the tender and offered to supply 20,000 numbers of gold coins, which was permissible as per the tender conditions. The selection letter of the appellant was handed over to him only on 20.09.2018, with a delay of 20 days from the date of opening of the tender, within which time, there was a steep rise in the price of gold, due to extremely volatile market conditions. As the appellant herein/writ petitioner was not in a position to absorb the steep rise in the price of the gold, it requested to consider the current rate per gram gold price as on 24.09.2018 or permit the writ petitioner/appellant herein to withdraw from the tender and return the EMD. However, as the appellant herein/writ petitioner did not adhere to the firm order issued by the respondents, proceedings was issued for confiscating the EMD amount of Rs.53.00 Lakhs paid by the appellant along with the tender document, as per Rule 30(5) of Tamil Nadu Transparency in Tenders Rules, 2000 and clause 7(e) of the tender document. In spite of giving sufficient chance, as the appellant did not adhere to the terms and conditions, the firm order was cancelled and the EMD amount was forfeited vide proceedings dated 24.12.2018 and they were blacklisted on 05.02.2019 from entering into any Government tenders. Aggrieved by the said orders, the writ petition was filed.

4. The learned single Judge, had elaborately gone into the merits of the case and found that the petitioner has not made out a case for interference with the impugned orders and hence dismissed the writ petition. Aggrieved by the same, the writ petitioner has preferred the above appeal.

5. The dispute brought-forth by the appellant is based on a contract. The scope of judicial review in such contractual



matters is very limited. Power of judicial review will not be invoked to protect private interest at the cost of public interest or to decide contractual disputes. When the appellant is clear on the facts and dispute and the respondents had acted only as per the tender conditions, by filing a writ petition under Article 226, the appellant herein/writ petitioner, cannot persuade this court to interfere in the matter.

6. Clause 21 of the tender documents itself contains an arbitration clause and that any dispute between the Commissioner of Social Welfare and the supplier, may be referred to arbitration. The same reads thus:

" 21. Arbitration

The Commissioner of Social Welfare and the supplier shall make every effort to resolve amicably by direct negotiation any disagreement or dispute or misunderstanding arising between them in connection with the contract. If any dispute shall arise between Commissioner of Social Welfare and the supplier on aspects not covered by this tender document or supply order, or operation thereof, or the rights, duties or liabilities under these except as to any matters, the decision of which is specially provided for by the general or the special conditions, such dispute shall be referred to two arbitrators, one to be appointed by each party and the said arbitrators shall appoint an umpire, as the case may be, shall be final and binding on both the parties. The arbitrators or the umpire as the case may be, with the consent of parties, may modify the time frame for making and publishing the award. Such arbitration shall be governed in all respects by the provision of the Indian Arbitration Act or its later modifications and the rules there under and any statutory modification or re-enactment, thereof. The arbitration proceedings shall be held in Chennai, India.

7. The writ court had held that the appellant cannot invoke the arbitration clause as the same can be invoked qua the disputes regarding aspects not covered under the tender documents. However, the appellant has not challenged the same in the appeal or raised as a ground. Hence we are not discussing the said aspect.

8. So far as blacklisting of the appellant is concerned, the finding of the learned single Judge is that there was no reply/response from the appellant when the second respondent originally recommended the appellant to be blacklisted. Therefore, the appellant was blacklisted for its delinquent act, which is well within the power of the State to take any action. In this regard, it would be worthwhile to advert to



the decision of the Hon'ble Apex Court in Patel Engineering Limited vs. Union of India and Another reported in (2012) 11 SCC 257, wherein, the Hon'ble Apex Court, in paragraph Nos.15, 22 and 25, held as follows:

"15. It follows from the above judgment in Erusian Equipment case [(1975) 1 SCC 70] that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors.

22. These two clauses become relevant in the context of the second submission made by the learned counsel for the petitioner that as per the bid document, the power to blacklist is available only in the cases of the commission of any or some of unacceptable practices by the bidder or his agents, etc. but not in the case, where the successful bidder declines to enter into a contract on being declared as a successful bidder. No doubt, the bid document expressly declares that in the case of the commission of a corrupt practice, etc. the bidder shall not be eligible to participate in any tender issued by the second respondent for a period of two years from the date on which it is found that a corrupt practice has been committed. Such an express stipulation is not to be found in the bid document, in the context of the failure of the successful bidder to execute the necessary documents to conclude the contract. In our opinion, that is not determinative of the authority of the second respondent to blacklist a bidder, such as, the petitioner herein, who declines to execute the necessary documents for creating a concluded contract after the offer made by the bidder, is accepted by the second respondent.



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25. The bid document is not a statutory instrument. Therefore, the rules of interpretation, which are applicable to the interpretation of statutes and statutory instruments, are not applicable to the bid document. Therefore, in our opinion, the failure to mention blacklisting to be one of the probable actions that could be taken against the delinquent bidder does not, by itself, disable the second respondent from blacklisting a delinquent bidder, if it is otherwise justified. Such power is inherent in every person legally capable of entering into contracts."

9. In view of the settled position, the petitioner cannot invoke Article 226 of the Constitution of India, when they have got the common law remedy, as the dispute has arisen out of breach of contract. When an alternate remedy is available, unless the appellant establishes that there is a breach of their fundamental rights or violation of principles of natural justice or an excess of jurisdiction which are exceptional cases, the appellant herein/writ petitioner cannot invoke Article 226 of the Constitution of India and we hold that the order of the learned single Judge does not suffer from any infirmity for interference in this appeal.

10. Accordingly, the writ appeal is dismissed. However, there is no order as to costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Asr

To

1.State of Tamil Nadu

Represented by its Secretary to Government

Social Welfare Department

Fort St. George, Chennai - 600 009

2.The Commissioner

Panagal Maligai, 2nd Floor

Saidapet, Chennai - 600 015.

+1 cc to Mr.P.Raj Kumar, Advocate Sr.NO. 49298

+1 cc to Government Pleader Sr.NO. 49452

W.A.No.2099 of 2021 and

C.M.P. No.13304 of 2021

Rgn (CO)

A.SK(20.10.2021)