IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.865 of 2020

1.Southern Railways,
Rep. by the General Manager,
O/o Southern Railways,
Chennai 600 003.

2.Senior Divisional Manager,
Divisional Office, Commercial Branch,
Southern Railway, Chennai 600 003. .. Appellants/
1st and 2nd Respondents

-vs-

1.M/s.Aarthi Enterprises,
Rep. by its Partner Mrs.G.Mythili.
No.1, Chelliamman Colony, Second st,
peravallur, Chennai-600 082. .. 1st Respondents/Petitioner

2.Deputy Chief Labour Commissioner
(Central), No.4, Haddows Road,
Shastri Bhavan, Chennai 600 006.
..2nd Respondent/3rd Respondent

Appeal filed under Clause 15 of the Letters Patent against the order dated 10.03.2020 passed in W.P.No.17160 of 2019 on the file of this Court.

Prayer in WP.No.17160 of 2019:-
Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to direct the Respondents 1 and 2 sanction and release of the Amended Enhanced Minimum Wages based on Notification No. S.O. 190(E) dated 19.01.2017 issued by Ministry of Labour and Employment of Government of India to the petitioner in respect of all 30 Contracts covered in this writ petition from the date of its implementation to continue to release the revised minimum wages to the petitioner, enabling to disburse the wages to the employees engaged by the petitioner as per the Amendement regarding enhancement of wages; to reimburse the entire amount

of excess wages being paid by the petitioner to the employees, based on the Ministry of Labour and Employment of Government of India, along with interest at the rate of 18% from the date of respective payments, made by the petitioner to the employees covered in all 30 contracts and to pay corresponding EPF, ESI and Bonus to the employees engaged by the petitioner on par with the enhancement of minimum wages; with the further direction to the third respondent to ensure the above payments to be made by the respondents 1 and 2 the petitioner within a reasonable period to be fixed by this Court.

For Appellants : Mr.Radhakrishnan,Sr. Counsel, for Mr.M.Vijay Anand

For Respondents : Mr.P.Wilson, Sr. Counsel for Mr.R.Neelakandan

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

The Southern Railway is in appeal against a portion of an order passed on a contractor's writ petition against it. The directions are contained in paragraph 42 of the judgment and order impugned herein dated March 10, 2020. The appellant is not aggrieved by Clauses (a) and (b) of the directions. It is the third clause of the directions which is assailed.

2.Pursuant to a notice inviting tender, bids were made by several, including the writ petitioner firm, for undertaking the work of cleaning Chennai Park Railway Station for a period of three years. There were at least two other bidders. The writ petition was instituted upon the present appellants' failure to accede to the contractor's demand to meet the higher wage bill following the increase in minimum wages by a Government notification of January 19, 2017. The principal contention carried to the writ Court was that the first appellant herein, as the principal employer, was liable to bear the minimum wages of the employees deployed by the contractor and such position was also envisaged in the tender documents. Copious references are made to the schedules pertaining to the tender documents and the bid made on the basis of the four scheduled items. By the judgment and order impugned, the following directions were issued:

"42. Accordingly, the Writ Petition is disposed of on the following terms:

(a) The petitioner is directed to furnish proof of payment of the enhanced minimum wages to the employees as per the notification dated 19.01.2017, apart from the wages already paid as per the amount quoted in Schedule-A, with material details and particulars, within a period of four weeks from the date of receipt of a copy of this order.

(b) On receipt of such details and particulars, the Railways shall, on being satisfied with the said payment made by the petitioner to its employees, reimburse the said amount to the petitioner within a period of four weeks thereafter.

(c) It is made clear that the Railway is entitled to take the rebate offered by the petitioner namely 27% only under Schedule-B and Schedule-C rates and not under Schedule-A or D.”

3.The appellants herein join issue as regards the third of the directions. According to the appellants, the writ petitioner had given a rebate of 27% on the total bid value which included both the minimum wages component and the GST on minimum wages. The appellants assert that if such was the bid of the writ petitioner, upon the minimum wages being enhanced and upon the principal employer being required to bear the enhanced GST component, the percentage of rebate cannot be altered as the rebate amount will operate on the enhanced minimum wages bill and the GST payable thereon.

4.On behalf of the writ petitioner, it is contended that once it is accepted that the principal employer has to foot the minimum wages bill, no deduction can be sought therefrom. It is the further submission on behalf of the respondents that a statutory charge cannot also invite any reduction and, as such, the GST component payable on the minimum wages would not be subject to any reduction by way of rebate.

5.Provisions of the Minimum Wages Act are sought to be cited in such regard. However, it does not appear that such provisions have any relevance in the present context. It is the bid of the writ petitioner which has to be noticed. The bid was made in respect of four scheduled items. Schedule A pertained to the Cost of Labourers; Schedule B pertained to the Cost of Consumables; Schedule C pertained to the Rental for Vehicles for Garbage Removal; and Schedule D pertained to Service Tax @ 15%. Indeed, the financial offer of the writ petitioner may be seen in its entirety so that there may not be any room for equivocation.

CHENNAI DIVISION-COMMERCIAL/SOUTHERN RLY

Offer of M/S AARTHI ENTERPRISES-CHENNAI

Tender No: comml16020 | Closing Date/Time: 02/12/2016 11:00

Bidder Details:

Address :	[illegible]		
Contact Person	[illegible]	Landline	[illegible]
Mobile	[illegible]	E-Mail Id	[illegible]
Fax	Nil	Website URL	Nil

Tender Details :

Tendering Department:	CHENNAI DIVISION COMMERCIAL	Section:	CLEANING
Name of Work:	CLEANING OF CHENNAI [illegible] RAILWAY STATION FOR A PERIOD OF THREE YEARS		
Bidding Style	Single Rate for Each Schedule	Bidding Unit	[illegible]
Tender Document Cost	[illegible]		
Earnest Money:	[illegible]	Submitted Via (Rs)	[illegible]
Period of Completion :	[illegible] Months	Offer Validity:	[illegible] (Days)
Tender Opened By1 (Exec):	[illegible]	Tender Opened By (Accts)	[illegible]

Financial Offer

Bid ID/Date/Time	[illegible]	Price File Reference	[illegible]
Inter-Se Ranking	L1		

Item Description	Item Code	Qty	Unit Rate(Rs.)	Advt. Value (Rs.)	Bid Rate	Bid Amount (Rs.)
Schedule A				1943825.00	0.00 At Par	1943825.00
COST OF LABOURERS FOR NORMAL CLEANING WORK & RAG PICKING AS PER ANNEXURE-A, COBWEB REMOVAL AS PER ANNEXURE-B AND GARBAGE REMOVAL AS PER ANNEXURE-C NOTE:ONLY AT PAR/ABOVE TO BE CHOOSEN IF BID QUOTED AS "BELOW" WILL BE REJECTED.						
01				1943825.00	-	-
COST OF LABOURERS FOR NORMAL CLEANING, RAG PICKING, COBWEB REMOVAL AND GARBAGE REMOVAL						
			Schedule value	1943825.00	Schedule Total	1943825.00
Schedule B				345360.00	0.00 At Par	345360.00
COST OF CONSUMABLES AS PER ANNEXURE-D AND PROTECTIVE GEARS & UNIFORMS AS PER ANNEXURE-E.						
01				345360.00		-
COST OF CONSUMABLES AS PER ANNEXURE D AND E						
			Schedule value	345360.00	Schedule Total	345360.00
Schedule C				820800.00	0.05 % Below	820389.60
RENTAL FOR VEHICLE FOR GARBAGE REMOVAL/DUMPING CHARGE (excluding wages payable to driver and labourers) AS PER ANNEXURE- F						
01				820800.00	-	-
RENTAL FOR MACHINERIES/VEHICLE AS PER ANNEXURE F						
			Schedule value	820800.00	Schedule Total	820389.60
Schedule D				753976.00	0.00 At Par	753976.00
Service Tax @ 15% NOTE: Service Tax is applicable only to the labour portion of the estimate. Service Tax at applicable rate including cess/surcharge should be quoted. But the same will not be taken in to account for evaluation of inter se position of offers. Service Tax as mandatory payable, including statutory variation, if any, as due and paid will be reimbursed on production of documentary proof.						
01				753976.00	-	-
SERVICE TAX, EPF, ESI & BONUS						
			Schedule value	753976.00	Schedule Total	753976.00
					Gross Bid Value	[illegible]
					Rebate on Total Value	[illegible] %
					Net Bid Value	[illegible]

Technical Offer

General Instructions

I have read and understood the following General Instructions, and I agree to abide by these instructions. I have also downloaded and read/understood the complete tender document, and all the documents attached with this tender.

S.No	Description

Run Date/Time: 02/12/2016 [illegible]

6.In respect of Schedule A, the bid rate was at par with what was indicated in the tender documents, implying thereby that no reduction was offered by the contractor. Schedule B, pertaining to Cost of Consumables, was also quoted at par. Schedule C relating to Rental for Vehicles, was quoted at 0.05% below the price indicated in the tender documents. Schedule D was quoted at par. Indeed, no reduction could have been granted in respect of either Schedule A or in respect of Schedule D since these were actuals to be paid on account of minimum wages and the statutory impost thereon.

7.It is evident from the offer that an amount of Rs.19,43,625/- was bid in respect of Schedule A, an amount of Rs.3,45,360/- was bid in respect of Schedule B, an amount of Rs.8,20,389.60 was bid in respect of Schedule C and an amount of Rs.7,53,976/- was bid in respect of Schedule D, which included Service Tax, EPF, ESI and Bonus.

8.The gross bid value was indicated in the bid document to be Rs.38,63,350.60. As is arithmetically evident, the gross bid value of Rs.38,63,350.60 was the sum of the quantum bid in respect of each of the Schedules. In other words, Rs.19,43,625/- on account of Schedule A was added to Rs.3,45,360/- on account of Schedule B, Rs.8,20,389.60 was added on account of Schedule C and Rs.7,53,976/- was added on account of Schedule D to arrive at the gross figure of Rs.38,63,350.60.

9.So as to obtain the job, the writ petitioning contractor offered a rebate of 27% on the total value and arrived at a net bid value of Rs.28,20,245.94. Again, it is arithmetically obvious that the rebate that was offered operated on the gross bid value to arrive at the net bid value.

10.It may be of some relevance to record that the two other bidders, Siva Hygienic Chemicals and Archana Enterprises, did not offer any rebate on the gross value and the respective net offered values were Rs.32,35,694.92 and Rs.38,83,197.25. As a consequence of the writ petitioner offering a rebate of 27% on the gross bid value, its reduced net offered value stood at Rs.28,20,245.94 and it was easily identified as a L1 and obtained the contract.

11.It was not for the appellants herein to look a gift horse in the mouth. The appellants had to identify L1 and award the contract to L1, subject to being satisfied that L1 was capable of performing the work. It was not the appellants' concern as to how L1 met its expenses or costs in undertaking the work once L1 had made a conscious bid.

12.There is no doubt that neither the contractor nor the employer could have deducted from the minimum wages bill or from the GST imposed on the minimum wages since minimum wages are statutorily payable and the tax thereon is also a statutory obligation that requires to be discharged. The net effect is that while considering the offer of rebate that had been offered, the writ petitioner must be seen to have offered the rebate from that part of the expenditure that was permissible. Indeed, in respect of the individual heads pertaining to Schedule A and Schedule D, the writ petitioner's bid did not offer any concession. The concession, thus, could only have come from the costs to be incurred under Schedules B and C. The rebate offered was on the gross value of the bid and the bid, since it was accepted, has to be honoured. By the judgment and order impugned, a distinction has been made in the impugned part of the judgment in Clause (c) between the several entries in the Schedules, which was uncalled for. The writ petitioner had offered a rebate on the gross value of the bid and it is the enhanced value now after the increase in the wage bill and the GST payable that will determine the rebate that has to be offered. If that implies that it reduces the income of the writ petitioner on account of Schedules B and C, so be it. The writ petitioner had made a bid with its eyes wide open and the writ petitioner has to live with it.

13.Accordingly, the impugned order in so far as it permits the rebate offered by the writ petitioner to be confined only to Schedule B and Schedule C rates is set aside. The total value, including the enhanced amount on account of minimum wages and the enhanced amount on account of Service Tax, EPF, ESI and Bonus, ought to be taken into account and the rebate provided on the entire quantum rather than being confined to Schedules B and C only. Only such a course would be in tune with the bid made by the writ petitioning contractor since it did not confine the extent of its rebate in its original bid to Schedules B and C but allowed the bid on the total amount by taking into account the amounts covered by Schedules A and D, too.

14.The appeal, W.A.No.865 of 2020, is allowed to the extent indicated. The interim application, C.M.P.No.10823 of 2020, is closed.

15.The appellants should ensure that the enhanced amounts on the basis of actuals in terms of the order impugned as modified by the present order are tendered to the contractor within a period of six weeks from date or from the date of furnishing the particulars, whichever is later; failing which the contractor will be entitled to claim interest at the rate of 8% p.a. simple on the amount already expended. Since it appears that this order operates harshly on the contractor, particularly since the contractor may not have conceived of the present situation, the appellants will do well to release the contractor's bills in time so as to lighten the contractor's hardship.

There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

1.The General Manager,
Southern Railways,
O/o Southern Railways,
Chennai 600 003.
2.The Senior Divisional Manager,
Divisional Office, Commercial Branch,
Southern Railway, Chennai 600 003.
3.The Deputy Chief Labour Commissioner
(Central), No.4, Haddows Road,
Shastri Bhavan, Chennai 600 006.
+1 cc to M/s.M.Vijay Anand, Advocate Sr.No. 2998
+2cc to Mr.R.Neelakandan, Advocate, Sr.No. 3525

W.A.No.865 of 2020

PM(CO)
RMP(12/03/2021)