



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P (MD) No.14693 of 2021

and

W.M.P. (MD) .Nos.11662 and 11663 of 2021

WEB COPY

M.Sathaiya

... Petitioner

Vs.

The District Forest Officer,
District Forest Office,
Sivagangai.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned notice issued by the respondent, dated 05/08/2021 in Na.Ka.No.L/4876/2020 and quash the same as illegal and consequently, direct the respondent to pass a suitable further orders by cancelling the auction held 17/10/2020 and refund a bid amount sum of Rs.82,000/- (Rupees Eight Two Thousand Only) or such other amount to the petitioner by taken into consideration of the representation of the petitioner dated 18/05/2021 and 30/06/2021 within a period as may be fixed by this Court.

For Petitioner : Mr.A.Mohan

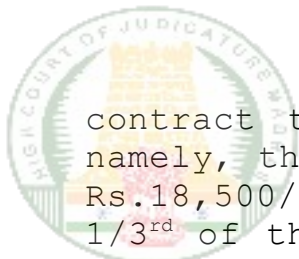
For Respondent : Mr.R.Baskaran

Counsel for State.

ORDER

The petitioner challenges a notice dated 05.08.2021 issued by the respondent herein. By such notice, the petitioner was called upon to pay the remaining 2/3^{rds} of the bid amount within three days from the date of receipt of the notice. In the event of default, the petitioner was informed that the respondent would forfeit the amount tendered by the petitioner towards 1/3rd of the bid value. In addition, the petitioner was informed that he would be removed from the status of contractor in the relevant records. He was also informed that a re-auction would be conducted in such event.

2. The petitioner states that he is a registered Contractor and had participated in the tender process held on 16.10.2020. Pursuant thereto, he was the successful bidder in respect of a

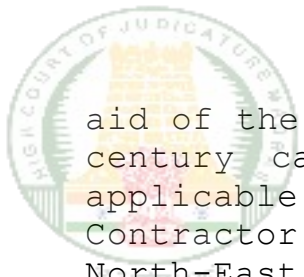


contract to fell Karuvelam trees standing in two water bodies, namely, the Panangadi Tank and Iraniyur Kanmai. He paid a sum of Rs.18,500/- (Rupees Eighteen Thousand and Five Hundred only) as 1/3rd of the bid amount out of a total sum of Rs.54,536/- (Rupees Fifty Four Thousand Five Hundred and Thirty Six only) as regards the Panangadi Tank and a further sum of Rs.82,000/- (Rupees Eighty Two Thousand only), being the 1/3rd of the total bid amount of Rs.2,43,373/- (Rupees Two Lakhs Forty Three Thousand Three Hundred and Seventy Three only) as regards the Irayniyur Kanmai. He was required to pay the remaining bid amount on or before 31.03.2021. He was also required to complete the work on or before 31.08.2021.

3. The petitioner cites the heavy rainfall in the Sivagangai District during the North-East monsoon in the month of November 2020 as the reason for his inability to carry out the work. He also cites the second wave of the COVID-19 pandemic. In these circumstances, he states that he approached the respondent and requested them to refund the 1/3rd amount that he had remitted. According to the petitioner, the impugned notice was issued by the respondent in these facts and circumstances and such impugned notice is liable to be quashed because the respondent did not take into consideration the problems encountered by the petitioner.

4. Mr.R.Baskaran, learned counsel for the State, accepts notice on behalf of the respondent. He refers to the terms and conditions of the auction. With specific reference to Clause 3 thereof, he points out that the successful bidder was put on notice that he cannot cite natural calamities or other related reasons as a justification for delayed execution of work. By referring to Clause 16 thereof, he points out that the petitioner had the option of withdrawing from the contract within a period of sixty (60) days from the date of auction but not thereafter. By referring to Clause 19, he points out that the respondent was required to remit 1/3rd at the time of participation in the bid and that such amount is liable to be forfeited if the successful bidder defaults in paying the remaining amount or in executing the contract.

5. The admitted position in this case is that the petitioner failed to pay 2/3rds of the amount before the stipulated deadline of 31.03.2021. Indeed, it is the admitted position that such amount has not been tendered till date. The two reasons cited as justification for non-payment and non-execution of work are the heavy rainfall in November 2020 and the second wave of the COVID-19 pandemic. As regards heavy rainfall, as correctly pointed out by learned counsel for the State, the terms and conditions of the auction and, in particular, Clause 3 thereof, categorically stipulates that natural calamities cannot be cited as a reason for non-performance of work. While such a Clause may not come to the



aid of the respondent, in the event of an unprecedented once-in-a-century catastrophe such as a Tsunami, it would certainly be applicable in the context of rainfall which any reasonable Contractor should anticipate especially during the South-West and North-East monsoon. As regards the second wave of the COVID-19 pandemic, such second wave affected this part of the country only after April 2021. The payment obligation of the petitioner was to be fulfilled on or before 31.03.2021. Therefore, this reason is also not tenable.

6. The other aspect that remains to be considered is whether the respondent is entitled to forfeit the 1/3rd bid amount. The terms and conditions of auction enable such forfeiture. Even so, it is necessary that the amount forfeited should be reasonable and proportionate to the loss likely to be incurred by the respondent as a result of breach by the successful bidder. The 1/3rd amounts that are sought to be forfeited do not appear *prima facie* to be disproportionate. Nonetheless, this aspect may be re-examined by the respondent because the law requires that such forfeiture should not be penal in nature.

7. Subject to the above observations, W.P.(MD).No.14693 of 2021 is dismissed without any order as to costs. Consequently, W.M.P.(MD).Nos.11662 and 11663 of 2021 are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Forest Officer,
District Forest Office,
Sivagangai.

+1 CC to M/s.SPL GP (SR-26896[F] dated 23/08/2021)

W.P(MD)No.14693 of 2021

19.08.2021