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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6716 of 2022
and
W.M.P(MD)Nos.5191 & 8699 of 2022

Saidalavi and Co through its Proprietor
V.K.Saidalavi ... Petitioner

Vs

1.The Southern railways Rep.by its
Senior Divisional Railway Manager [Commercial]
Madurai Division, Madurai.

2.The Divisional Commercial Manager,
Southern Railways, Madurai Division,
Madurai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings in No.U/C 37/PHC/MDU/2022-24 dated 01.04.2022 of the second respondent and quash the same and consequently direct the respondents to issue work order to the petitioner for the contract for Parcel Handling at Madurai Railway Junction.

For Petitioner : Mr.VR.Shanmuganathan

For Respondents : Mrs.L.Victoria Gowri
Assistant Solicitor General of India

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ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Assistant Solicitor General of India appearing for the Southern Railways.

2.The respondents issued tender notification dated 20.10.2021 calling for tenders for awarding contract for parcel handling at Madurai Junction Railway Station for a period of two years. The writ petitioner applied in response to the same. The total number of participants in the tender process was seven. The technical bids as well as the price bids were opened simultaneously. The writ petitioner was found to be eligible.

3.The second respondent issued a letter of acceptance on 15.12.2021 in favour of one V.Balasubramaniam who was also the rival tenderer. Challenging the same W.P(MD)Nos.325 & 3273 of 2022 have been filed. The stand of the said V.Balasubramaniam was that he was the lowest tenderer and that he should be have been awarded a contract. The writ petitioner herein figured as the third respondent in the said writ petition. After hearing both sides, vide order dated 17.03.2022, these writ petitions were dismissed.

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4.The case of the petitioner is that inspite of calling them to take up the contract, the impugned order dated 01.04.2022 was passed whereby the letter of acceptance dated 15.12.2021 was cancelled. Challenging the same, this writ petition came to be filed. An order of interim stay was granted at the time of admission. To vacate the same, the respondents have filed a counter affidavit.

5.When the matter was taken up for final hearing, the learned counsel representing Mr.V.Balasubramaniam submitted that he will file an application for impleading himself in the writ petition. His request was not accepted by me because the petition earlier filed by Mr.V.Balasubramaniam had been dismissed and therefore, he cannot have any further stake in the matter. Of course, I make it clear that this Court will not take cognizance of the allegations made by the writ petitioner against the said Mr.V.Balasubramaniam.

6.The learned counsel for the writ petitioner fairly states that he would argue the matter purely on legal grounds and that the allegation made against Mr.V.Balasubramaniam may not be taken note of. He also reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned order and allow the writ petition.

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7.Per contra, the learned Assistant Solicitor General of India appearing for the Southern Railways submitted that it is open to the tender accepting authority to cancel the process even after acceptance. She strongly contested the claim of the writ petitioner that they were allowed to carry out the contract works after the issuance of letter of acceptance. According to her, except issuing the letter of acceptance, nothing further had taken place in favour of the writ petitioner. It is true that the writ petition filed by the rival tenderer – Mr.V.Balasubramaniam was dismissed by this Court. But thereafter, the next level authority scrutinized the entire tender file and came to the conclusion that in the interest of administration, the tender process has to be cancelled and they have to go for a fresh notification. In the counter affidavit the following reason has been set out:

> *"11. I. .....*
>
> *However the next level authority above the Tender Accepting Authority (TAA) had perused the tender the file and advised to cancel the LOA, pointing out that, while the bidders in tender quoted their price based on the quantum of work to be done, the tender committee had finalized the tender based on the responsibility of the quoted price so as to pay the minimum wages to the labourers to be employed. The authority had advised to cancel the contract since such*

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decision will vitiate the contract and invite litigation and advised to go for new tender, in the interest of the administration as well as the public."

She called for dismissal of the writ petition.

8.I carefully considered the rival contentions and went through the materials on record. I endorse the contention of the learned Assistant Solicitor General of India that it is open to the tender accepting authority to cancel the tender process even after issuing the letter of acceptance. But this decision cannot be taken arbitrarily. Such a decision must be backed by good reasons. The impugned order is non-speaking. It merely states that the letter of acceptance dated 15.12.2021 stood cancelled due to administrative reasons. Of course, by producing the relevant file, the authority can always satisfy the Court that the impugned decision was not arbitrarily taken or is irrational. Though the files have not been produced before this Court, the content of the files have been summarized in the counter affidavit. I have to test whether the ground set out in the counter affidavit is reasonable or not. The only the reason for cancelling the contract awarded to the petitioner was that while the other bidders quoted their price based on the quantum of work done, the tender committee had finalized the tender based on the reasonability of the writ petitioner's quote. The Southern Railways, is a State instrumentality. It must

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ensure that the workers are paid minimum wages. In fact, in the letter of acceptance dated 15.12.2021, the following class regarding labour payment and the rules of wages have been set out :

> *"Labour Payment:: The payment to the labourers working under your control should be provided through their bank account only. The monthly payment should be in tune with the prevailing Minimum Wages Act/Rules. Similarly, the privileges like ESI, EPF & Bonus etc also should be provided to the labourers as per the prevailing Rules/Acts. The payment particulars of the labourers should be submitted to this office for verification every month. The details of labours engaged should be registered in shramik kalyan portal www.shramikkalyan.indianrailways.gov.in and the payment details of the labours should be updated regularly.*
>
> *Labour Registration:: You should obtain necessary labour registration from the appropriate authority and the same should be produced to this office before signing the agreement and starting the work.*
>
> *Rules of Wages:: A notice showing the rules of wages to be paid to workers should be published and exhibited prominently near the place of work and should be made easily accessible to all workers."*

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9.The petitioner had quoted Rs.30,00,972.88/-. On the other hand, the rival bidder V.Balasubramaniam quoted only a sum of Rs.3,90,583.00/-. The reason for rejecting the V.Balasubramaniam tender was that with the amount offered by him, he will not be in a position to pay proper wages to the workers. Having taken such an enlightened decision, I fail to understand as to why the next level authority should interfere with the well settled decision of the tender committee. If the workers are paid well, they would definitely discharge their work properly and the interest of general public will also be fully met. By no stretch of imagination can this award of tender trigger further litigation. There was only one challenge and it was already rejected by this Court. The reasons given by the next level authority for cancelling the letter of acceptance are patently unsustainable. The impugned order is quashed. This writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

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Index : Yes / No
Internet : Yes/ No
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To

1.The District Collector,
Ramanathapuram District, Ramanathapuram.

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G.R.SWAMINATHAN, J.

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2.The Revenue Divisional Officer,
Revenue Division Office, Paramakudi,
Ramanathapuram District.

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