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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Review Application Nos.43 and 44 of 2023
and C.M.P.Nos.2824, 2827, 2828 and 2831 of 2023

In Rev.Appl.No.43 of 2023 :

M/s.Fun World & Resorts India Pvt. Ltd.,
Rep. by its GPA U.Sivanarayanan .. Petitioner

Versus

1. The Principal Secretary to Government,
   Tourism, Culture, Religious Endowments,
   and Chairman, Tamil Nadu Tourism Development
   Corporation, Fort St.George, Secretariat,
   Chennai - 600 009.

2. The Managing Director,
   Tamil Nadu Tourism Development Corporation,
   No.2, Wallajah Salai, Chennai - 600 002.

3. The General Manager,
   Tamil Nadu Tourism Development Corporation,
   No.2, Wallajah Salai,
   Chennai - 600 002.

4. M/s. Sunlight World,
   Rep. by its Proprietor, Peer Anees Raja .. Respondents

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In Rev.Appl.No.44 of 2023 :

M/s.Fun World & Resorts India Pvt. Ltd.,
Rep. by its GPA U.Sivanarayanan .. Petitioner

Versus

1. The Principal Secretary to Government,
   Tourism, Culture, Religious Endowments,
   and Chairman, Tamil Nadu Tourism Development
   Corporation, Fort St.George, Secretariat,
   Chennai - 600 009.

2. The Managing Director,
   Tamil Nadu Tourism Development Corporation,
   No.2, Wallajah Salai, Chennai - 600 002.

3. The General Manager,
   Tamil Nadu Tourism Development Corporation,
   No.2, Wallajah Salai,
   Chennai - 600 002. .. Respondents

Prayer in Rev.Appl.No.43 of 2023 : Review Application filed under Order XLVII Rule 1 r/w Section 114 of the Code of Civil Procedure to review the common order, dated 23.01.2023 passed in W.A.No.2804 of 2022 and consequently, allow the Writ Appeal No.2804 of 2022.

Prayer in Rev.Appl.No.44 of 2023 : Review Application filed under Order XLVII Rule 1 r/w Section 114 of the Code of Civil Procedure to review the common order, dated 23.01.2023 passed in W.A.No.2803 of 2022 and consequently, allow the Writ Appeal No.2803 of 2022.

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In Rev.Appl.No.43 of 2023 :

For Petitioner : Mr.M.Vijay Anand

For Respondents : Mr.R.Shunmugasundaram,
Advocate General,
Assisted by Edwin Prabakar,
Spl. Government Pleader
and M/s.A.G.Shakeena,
for RR-1 to 3

: M/s.C.Iyyapparaj, for R4

In Rev.Appl.No.44 of 2023 :

For Petitioner : Mr.M.Vijay Anand

For Respondents : Mr.R.Shunmugasundaram,
Advocate General,
Assisted by Edwin Prabakar,
Spl. Government Pleader
and M/s.A.G.Shakeena,

COMMON ORDER

(Made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

By an order, dated 23.01.2023, this Court dismissed two Writ Appeals filed by the petitioner herein, finding no merits therein. The said two Writ Appeals arose out of the common judgment passed by the learned Single Judge dismissing the Writ Petition Nos.32957 and 33477 of 2022.

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2. The review petitioner filed W.P.No.32957 of 2022 for a Mandamus directing the second respondent namely, the Managing Director, Tamil Nadu Tourism Development Corporation to accept its commercial bid submitted along with tender application for conduct of 47th India Tourist and Industrial Fair, 2023 at Island Grounds, Chennai along with other bidders' applications for the same *vide* tender notification, bearing No.51/FS/2022, dated 31.10.2022.

3. Pending the Writ Petition, one *M/s.Sunlight World*, represented by its Proprietor, *Peer Anees Raja*, was granted the permission for conducting the said Fair by an order, dated 03.12.2022 and therefore, challenging the same, the second Writ Petition in W.P.No.33477 of 2022 was filed. As such, both the matters were taken up together and were dismissed by the learned Single Judge rejecting the prayers.

4. The petitioner, contending that there is error on the face of the record in the findings of the Court relating to the rejection of the petitioner's tender as well as upholding the award of contract in respect of the fourth respondent, has filed the Review Applications.

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5. When notices were ordered and the Review Applications were pending, *Mr.M.Vijay Anand*, learned Counsel for the petitioner mentioned this matter for urgent hearing expressing apprehension that on the ground of pendency of the present Review Applications and raising the self-same issue, the petitioner will not even be permitted to take part in the further tender issued on behalf of the respondents.

6. On 27.03.2023, when the matter came for hearing, *Mr.R.Shunmugasundaram*, learned Advocate General made a submission before this Court that since the petitioner himself, after dismissal of the Writ Petitions, has paid the arrears amount of Rs.3,06,903/- and there is being no other arrear and since there is no other order of blacklisting or disqualification which was passed against the petitioner, the petitioner will not be debarred or prohibited from participating in the ensuing tender. Therefore, the said statement is recorded and the same allays the apprehension of the petitioner in respect thereof.

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7. As far as the Review Applications are concerned, it is seen that the very prayers of the writ petitioner in the Writ Petitions is, firstly, to direct the respondents to accept the petitioner's commercial bid along with the other tenderers for conduct of the 47th India Tourist and Industrial Fair, 2023 at Island Grounds, Chennai and secondly, to call for the records relating to the impugned order, dated 03.12.2022, in and by which, the tender was awarded to the fourth respondent to conduct the 47th Indian Tourist and Industrial Fair, 2023. It is to be seen that pursuant to the award of the contract to the fourth respondent, the 47th Indian Tourist and Industrial Fair, 2023 started in the month of December, 2022 and the fair was conducted for a total period of 70 days and is now over. Therefore, the original prayer sought in the Writ Petitions cannot now be granted. However, *Mr.M.Vijay Anand*, learned Counsel for the petitioner submitted that if this Court finds merit in the Review Applications, then the relief can be moulded and damages can be awarded. In view thereof, we once again considered the grievance of the petitioner on merits.

8. The claim of the second respondent is that the petitioner was the successful bidder and conducted 43rd Indian Tourist and Cultural Fair, 2017

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at Island Grounds, Chennai. After conduct of the said fair, after going through the accounts, on 20.08.2019, a demand is made by the second respondent for a due of Rs.3,06,903/-. The entire calculation which was given in the said communication is extracted hereunder:-

Amount due from M/s Fund World Resorts & India Pvt. Ltd.,

S.N	Particulars	Amount Rs.
1.	Rental Due (Rs.2,50,00,000/- (-) Rs.1,88,70,000/-)	61,30,000
2.	60% share on Water charges (Rs.30,600/-) / Fire Service charges (Rs.2,11,200/-)	2,41,800
	TOTAL DUE	**63,71,800**

Amount due from M/s Fund World Resorts & India Pvt. Ltd.,

S.N	Particulars	Amount Rs.
1.	Electricity charges for Govt. pavilions	10,82,000
2.	Performance Security Deposit Amount	15,00,000
3.	40% Revenue share on Gate collection Total Collection = Rs.68,69,655/- Service Tax 15%(-) = Rs. 8,96,042/- ------------------------ Total = Rs.58,39,207/- 60% Revenue share to TTDC = Rs.34,49,762/- 40% Revenue share to organizer = Rs.23,89,445/-	23,89,445
4.	40% Revenue share on Student Concession Tickets Total Amount = Rs.31,43,676/- Service Tax 15% (-) = Rs. 4,10,045/- Balance = Rs.27,33,631/- 60% Revenue share to TTDC = Rs.16,40,179/- 40% Revenue share to the Organizer = Rs.10,93,452/-	10,93,452
	Total Amount	**60,64,897**

Total (Due-Adjustment)	**Rs.63,71,800/- (-) Rs.60,64,897/-**

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Pending Due	**Rs.3,06,903/-**

9. It can be seen from the row No.3 of the tabular column that while total gate calculation stood as Rs.68,69,655/-, the respondent is first deducting the service tax of 15% from the sum and from the balance amount arrived at, 40% share of the organiser as Rs.23,89,445/-. To the said demand, a reply was given by the petitioner herein and the calculation of the petitioner is as follows:-

<u>Dues to TTDC (2017 Fair)</u>

Rental charges Rs.25000000-paid Rs.18870000 = Rs.6130000/-

60% share towards Fire & water charges Rs. 241800/-

Total Rs.6371800

<u>Dues Payable by TTDC</u>

1. EB Charges for Govt Pavilions Rs.10,82,000/-
2. Performance security paid by us Rs.15,00,000/-
3. 40% share in gate collection out of Rs.6869655/-. Rs.2747862/-
4. 40% share in student concession ticket out of Rs.3143676/- Rs.12,57,470/-

Total Rs.65,87,332/-

Dues to TTDC Rs.63,71,800/-

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Dues Pending from TTDC	Rs. 2,15,532/-

10. It can be seen from Sl. No.3 of the petitioner's calculation that 40% and 60% of the share of the petitioner and the second respondent should be arrived at on the basis of total gate calculation and each party should bear the 15% service tax of their respective shares. If calculated in that order, the amount receivable by the petitioner would be Rs.27,47,862/- and if said amount is taken, it will not be the petitioner who will be liable to pay to the second respondent, but, the second respondent would be liable to pay a sum of Rs.2,15,532/-.

11. It is the further contention of learned Counsel for the petitioner that when representation has been made on 12.08.2019 and 14.08.2019 in respect of the said subject matter also and when the said representation has also been considered and by an order, dated 26.09.2019, the accounts were settled and the petitioner was refunded a sum of Rs.8,42,918/-, it should be deemed that the petitioner's above explanation was accepted by the second respondent and therefore, the rejection of their tender is illegal.

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12. Per *contra*, *Mr.R.Shunmugasundaram*, learned Advocate General would contend that the said communication, dated 26.09.2019 though refers to the above two letters, it ultimately deals with the 45th India Tourist and Industrial Fair and it was only the said account which was settled. As far as the reply of the petitioner is concerned, the same was by communication, dated 05.09.2019 and specifically referring to the said communication, a reply was again given by the second respondent on 18.05.2020 reiterating the due of Rs.3,06,903/- and the said letter was also followed by one more reminder on 18.06.2020. The learned Advocate General would also rely upon postal receipts for sending both the said communications by way of registered post.

13. In reply thereof, Mr. *Vijay Anand,* learned Counsel for the petitioner would submit that during the relevant time, the office of the petitioner itself was not functioning at the address mentioned therein. Be that as it may, when this Court questioned the respondents as to on what basis the respondents are pleading that the entire service tax of 15% on the total gate collection can first be deducted, the learned Advocate General would rely upon Clause - 19 of the Tender Conditions which reads as hereunder:-

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> "*19) As per the Service Tax Regulations, the tenderer is the organiser and service provider for the exhibition and hence he comes under the Service Tax Regulations. Therefore, he shall be liable to pay service tax as applicable at the existing rate from time to time as per rules prescribed / or may be prescribed by the Government.*"

14. But, it is seen that no specific final orders have been passed quoting the said regulations. In any event, there was a dispute between the parties as to whether the petitioner has to pay the said sum or not. Therefore, since the dispute was not resolved either by the second respondent passing a detailed and specific order or by the petitioner challenging the said demand, it cannot be said at this juncture that the rejection of the bid of the petitioner is illegal and therefore, we hold that the petitioner is not entitled for the relief of compensation on the ground of wrongful rejection of the bid of the petitioner. As recorded by us *supra*, in any event, the same cannot be put against the petitioner in any of the ensuing tenders. In the context of this case, we are only inclined to remove the costs as imposed by the learned Single Judge.

15. In the result, the Review Applications are disposed off with the observation that for the future tenders, the petitioner cannot be treated as a

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defaulter and that no disability would ensue on account of the above said dispute in respect of the sum of Rs. 3,06,903/-. The order of the learned Single Judge, insofar as it relates to costs, shall stand modified. There shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

(T.R., ACJ.) **(D.B.C., J.)**
03.04.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

1. The Principal Secretary to Government,
   Tourism, Culture, Religious Endowments,
   and Chairman, Tamil Nadu Tourism Development
   Corporation, Fort St.George, Secretariat,
   Chennai - 600 009.

2. The Managing Director,
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T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,

grs

Review Application Nos.43 and 44 of 2023

03.04.2023