



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16406 of 2015

V.Saravanan

... Petitioner

Vs.

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation,
(TASMAC), No.100, Anna Nagar,
Madurai.

2. The District Manager,
Tamil Nadu State Marketing Corporation,
(TASMAC),
Tirunelveli.

3. R.Mangala Ramasubramanian

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings passed by the second respondent dated 11.08.2014 in Na.Ka.A5/1859/13 as confirmed by the proceedings of the first respondent dated 10.07.2015 in Roc.No199/2014/-D and quash the same and further directing the second respondent to release the sum of Rs.5 Lakhs which was offered as security deposit and to pay a sum of Rs.2 Lakhs as compensatory damages.



For Petitioner : Mr.M.P.Senthil
For R-1 & R-2 : Mr.Sivanesan
For R-3 : Mr.S.Visvalingam

* * *

ORDER

Heard both sides.

2. The writ petitioner was awarded the contract of transportation of liquor bottles from depot / godowns of TASMAC to the various retail outlets. The contract was for the period from 21.12.2013 to 20.12.2014. One of the conditions set out in the notification was that the petitioner must own a minimum number of 10 eicher lorries / 706 lorries. It is beyond dispute that the petitioner did not own even a single lorry. He only had an arrangement with lorry owners. Be that as it may, RC books also were in the names of third party names. I fail to understand as to how the tender inviting authority issued contract in favour of the petitioner even without verification of the same.



3. However, dispute arose between the petitioner and one Balakrishnan who owned 5/ 10 lorries. Criminal cases were registered against the petitioner. The said Balakrishnan also lodged a complaint on 03.02.2014. Based on the said complaint, the second respondent issued notice to the petitioner on 08.02.2014. After getting the petitioner's explanation, show cause notice was issued by the second respondent proposing cancellation of the contract. Challenging the show cause notice dated 14.03.2014, the petitioner filed W.P.No.5388 of 2014. The said writ petition was dismissed along with two other writ petitions on 30.07.2014. The petitioner filed writ appeals before the Hon'ble Division Bench in W.A.(MD)Nos.996 and 997 of 2014. The writ appeals were also dismissed. Immediately thereafter, the present impugned proceedings were issued on 11.08.2014 by the second respondent. The petitioner's contract was cancelled directing forfeiture of security deposit. Aggrieved by the same, the petitioner filed an appeal before the first respondent. The first respondent also confirmed the order passed by the second respondent. Challenging the same, the present writ petition came to be filed.



4. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned orders and grant relief as prayed for.

5. Allegations have been made against the second respondent who passed an order dated 11.08.2014. He has also been named in person as the third respondent. The third respondent has filed counter affidavit controverting all the contentions made by the writ petitioner. The learned counsel appearing for the petitioner took me through its contents.

6. The learned Standing counsel appearing for TASMACH also filed counter affidavit. He pointed out that admittedly, the petitioner was not eligible to bag the contract. He wants this Court to sustain the impugned order and he pressed for dismissal of this writ petition.

7. I carefully considered the rival contentions and went through the materials on record.



8. As rightly pointed out, the petitioner has been visited with twofold consequences:

- a) Cancellation of contract and
- b) Forfeiture of security deposit as regards the cancellation of contract.

The writ petition has become infructuous as regards cancellation of contract and there is nothing to go into the same.

9. I do not find that the allegation of *malafides* have been made out. The only question that calls for consideration is whether respondents 1 and 2 were justified in forfeiture of security deposit of Rs.5,00,000/-.

10. The relationship between the petitioner and the TASMAL was covered by contract. The contractual terms and conditions have been set out in the tender document. Clause 9 of the tender document deals with security deposit. It reads as follows:-

“9. Security Deposit:

- (a) The successful tenders will be



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required to remit Security Deposit of Rs. 5,00,000/- (Five Lakhs only) by means of Demand Draft within two days from the date of receipt of communication intimating them of the acceptance of the tenders. If the accepted tenderer fails to remit the Security Deposit the EMD remitted by him will be forfeited to TASMACH and his Tender will be held void. The Acceptance Order will be issued after execution of a contract by the successful Tenderer and after the production of Demand Draft for the Security Deposit remittance. (The terms and conditions contained in this tender document will be converted into contract).

(b) The security Deposit furnished by the Tenderer in respect of his Tender will be returned to him on expiry of the contract period to the satisfaction of the TASMACH.

(c) If the tenderer failed to act up to the tender or backs out when his tender is accepted, his security deposit mentioned above will also be



forfeited to TASMAL.”

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11. Clause 9(c) provides for forfeiture. From a careful reading of the same, one can come to the conclusion that only if the petitioner fails to fulfill the contractual obligations, his security deposit could have been forfeited. My attention has not been drawn to any other forfeiture clause. Admittedly, the petitioner had fulfilled the terms of contract. It is true that he was not even eligible to participate in the tender. I am not able to understand as to how he was awarded the contract. The tender inviting authority should blame himself. Since there is nothing on record to show that the petitioner had not performed the contractual obligations and since there is nothing on record to show that TASMAL was put to loss, the forfeiture clause set out in Clause 9(c) is not attracted. The impugned order is set aside to this extent. Respondents 1 and 2 are directed to return the security deposit of Rs.5,00,000/-. The question of awarding interest does not arise. This writ petition stands partly allowed. No costs.

02.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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