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W.P.No.32194 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2024

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.32194 of 2023

& WMP.Nos.31798, 31796, 31800 and 34579 of 2023

M/s.Elektronik Lab India Pvt Ltd
Rep by its Director:K.Harirajan
No 10-D, Massilamani Street,
T.Nagar, Chennai – 600 017.

... Petitioner

VS

1.Deputy Conservator
Chennai Port Authority
Administrative Office:
No.1, Rajaji Salai, Chennai 600 001

2.The Manager,
Bank of Baroda,
R.K.Nagar Branch,
Chennai – 600 028.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent passed in G1/297/2023/M dated 30.10.2023 and quash the same as illegal, contrary to the terms of the Letter of Intent and in violation of principles of natural justice and fair play and consequently direct the 1st respondent to refund the amount of bank guarantee encashed in pursuance to the letter dated 01.11.2023 issued to the 2nd respondent vide BG No.08141GP002957923 dated 04.10.2023 for Rs.8,09,424/-.

(Prayer amended vide Order of this Court dated 20.02.2024 in WMP.No.34574 of 2023 in W.P.No.32194 of 2023)



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For Petitioner : Mr.Pramod Kumar Chopda
Senior Counsel
for Mr.Prithvi Chopda

For Respondents : Mr.P.Ulaganathan (R1)
Ms.Revathi Manivannan (R2)

ORDER

The petitioner is aggrieved by an order passed by the first respondent, being the Deputy Conservator, Chennai Port Trust cancelling the tender issued to the petitioner for deployment of manpower, and proposing to invoke performance security furnished in the form of bank guarantee in terms of Clause 42 of the Instructions to Bidders. The prayer originally was for a direction to R1 not to proceed for re-tender but had to be amended on 20.02.2024 to relief of refund, as, pending writ petition, the respondent had invoked the bank guarantee and appropriated the funds.

2. Heard Mr.Pramod Kumar Chopda, learned Senior Counsel, for Mr.Prithvi Chopda, for the petitioner, Mr.P.Ulaganathan, learned counsel for the Chennai Port Trust / R1 and Ms.Revathi Manivannan, learned counsel for R2, the Bank of Baroda.

3. The petitioner was a successful bidder for the '*Re-Tender for Engaging Contractors for supply of 6 nos of personnel holding certificate of competency as first class master (Inland Vessels Act or Harbour Craft*



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Rule) per day on contract basis for operating Chennai Port Authority's Craft for a period of two years extendable by another one year'.

4. The award of the tender was under proceedings dated 15.09.2023 hereinafter referred to as Work Order ('WO'). The admitted position is that the Instructions accompanying the tender notice did contain a stipulation in regard to the end date by which the personnel were to be supplied, which was 40 days from the date of WO.

5. By a communication dated 24.10.2023, which was the 39th day from the date of WO, the petitioner had furnished particulars of 6 Masters/Personnel along with supporting documents relating to their credentials. The next date i.e., on 25.10.2023, hard-copies of the e-mail and the accompanying documents had also been supplied. However, only 3 Masters/Personnel had been presented before R1 and time was sought by petitioner for production of the remaining 3 Masters/Personnel. Undoubtedly, the non-production of the remaining three members is an aberration on the part of petitioner.

6. By e-mail dated 26.10.2023, which is the 41st day from date of WO, petitioner refers to the discussion had with R1 in person the previous day where they had tendered an explanation stating that the Masters had been delayed on account of their arrival from West Bengal. They had sought extension by three weeks for submission of further relevant documents and deployment of the Masters. The very explanation tendered would make it clear that the petitioner had not been ready on the 40th day for deployment of 6 Masters per the tender condition.



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7. Faced with the above position, the case of the petitioner turns to highlight certain admitted defaults on the part of R1. The tender conditions required R1 to execute a contract confirming the requirement for deployment of Masters per Clause 31.3 of the Instructions to Bidders. According to the petitioner, the contract had never been executed as R1 had not called for the same. The parties had thus been engaging with each other sans a valid contract having been executed.

8. The impugned order has come to be passed on 30.10.2023 cancelling a contract that had admittedly not been executed, and this Court finds this act to be misconceived.

9. The re-tender has been awarded on 30.10.2023 itself and the petitioner's allegation is that the process of re-tender was rushed through merely to frustrate the tacit agreement had with the petitioner. The tender has been awarded to a third party and such award is not agitated as part of the cause of action in this writ petition. The petitioner only assails the enforcement of the bank guarantee and abrogation of the funds on that score.

10. Aside from cancelling the non-existent contract, the impugned order rejects the request for extension of time sought for by the petitioner on the ground that there is no scope for such extension under the tender conditions. While R1 may, at its discretion decide not to proceed with the understanding with the petitioner, the invocation of the bank guarantee unilaterally on the 45th day from the date of WO, even



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without reference to the petitioner is, in my considered view, erroneous, and an unjustified move.

11. There has, in my view, been non-application of mind and haste on the part of R1 in doing so and such act is dis-proportionate to the admitted lapses on the part of the petitioner. This lack of proportion becomes apparent supply by virtue of the admitted default of R1 in not executing a contract within the time stipulated. There is hence a need to balance the interests of both parties taking note of the violations committed by both parties.

12. Since the interests of R1 have been duly protected by virtue of the subsequent re-tender it is unwarranted that the petitioner must alone be penalised by invocation of the bank guarantee and appropriation of performance security of a sum of Rs. 8, 09,424/-.

13. In light of the discussion as aforesaid, the following order is passed:-

(i) the directions under the impugned order for cancellation of contract are erroneous as there is no valid contract executed and, in any event, become irrelevant now in light of the subsequent re-tender and no directions are necessary in this regard;

(ii) as far as the invocation of performance security and encashment of bank guarantee is concerned, they are set aside and a direction is issued to R1 to refund the amount of Rs.8,09,424/- forthwith,



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and in any event within a period of two (2) weeks from date of receipt of a copy of this order.

14. This writ petition is allowed in the aforesaid terms. No costs.

Connected miscellaneous petitions are closed.

31.07.2024

Index : Yes / No
Neutral citation: Yes
ssm

To

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- 2.The Manager,
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DR.ANITA SUMANTH,J.

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