BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.07.2025**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No. 18643 of 2025
and
W.M.P.(MD) Nos.14297 & 14299 of 2025

M/s. Sree Sakthi and Co.,
rep. by the Managing Director M.Mahendran. ... Petitioner

Vs

The Regional Manager,
Central Warehousing Corporation,
No.4, North Avenue,
Sri Nagar Colony,
Saidapet,
Chennai - 600 015. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned show cause notice issued by the respondent *vide* No.CWC/RO-CNI/H&T-TRY/2025-26, dated 02.07.2025, quash the same and consequently, direct the respondent to permit the petitioner to participate in the tender issued by the respondent *vide* Bid Number. GEM/2025/B/6408864, dated 02.07.2025.

For petitioner : Mr.D.Shanmugaraja Sethupathi

For respondent : Mr.R.Thirunavukarasu

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ORDER

This Writ Petition is disposed of at the time of admission with the consent of the learned counsel for the petitioner and the learned counsel for the respondent.

2. In this Writ Petition, the petitioner has challenged the impugned communication, dated 02.07.2025, bearing reference No.CWC/RO-CNI/H&T-TRY/2025-26 issued by the respondent. The impugned communication is not only a communication but also a Show Cause Notice calling upon the petitioner to show cause as to why the petitioner should not be blacklisted for the ensuing tender to be floated.

3. The background is a tender floated on 24.04.2025 by the respondent. A Pre-bid Meeting was also held pursuant to the aforesaid Tender that was floated by the respondent on 02.05.2025. Pursuant to the aforesaid Meeting, the

petitioner had made a bid in response to the aforesaid Tender Notification issued by the respondent on 09.05.2025. On 14.05.2025, the technical bid was opened. On 24.06.2025, the price bid was opened.

4. It appears that the petitioner had quoted a sum of Rs.6,60,00,000/- as against the estimated value in the Tender Document of Rs.14,61,29,000/-. After the price bid was opened on 24.06.2025, the petitioner immediately sent a communication withdrawing the offer. However, on 25.06.2025, the respondent awarded the contract to the petitioner by accepting the offer of the petitioner.

5. It is in this background, the impugned Show Cause Notice has been issued by the respondent, which calls upon the petitioner to show cause as to why the petitioner should not be debarred in terms of Clause 41.4.4 of the Tender Document. Relevant Clauses from the Tender Document, dated 24.04.2025 read as under:

> *"41.4.3 On termination under this Clause, the Contractor in default, shall be debarred for participating in any future tenders of the Corporation for a period of five years. After completion of such five years, the defaulting Contractor may be permitted to participate in the future tenders of the Corporation provided that all the recoveries/ dues/ adjustments have been effected by the Corporation*

and there is no dispute pending with the Contractor

41.4.4 On occurrence of any of the events contemplated under Clause 41.4.1, above, whether or not leading to termination of the Contract by the Corporation, the Regional Manager/Tender Awarding Authority shall have, without prejudice to other rights and remedies, the right, in the event of breach by the contractors of any of the terms and conditions of the contract, to terminate the contract forthwith and to get the work done for the unexpired period of the contract, at the risk and cost of the contractors and/or forfeit the security deposit or any part thereof for the sum or sums due for any damages, losses, charges, expenses or costs that may be suffered or incurred by the Corporation due to the contractor's negligence or un-workman like performance of any of the services under the contract and to claim from the contractors any resultant loss sustained or cost incurred. The Contractor shall not, however, be entitled to any gain resulting from entrustment of the work to another party. The non performing/defaulting H&T contractor may also be suspended/banned for trade relations/blacklisting for a next 5 (Five) years based on the gravity of non-performance/default of the contractor by the Regional Manager/Tender Awarding Authority, CWC, RO/CO (Address of the RO/CO) whose decision in the matter shall be final and binding."

6. The learned counsel for the respondent submits that this Writ Petition is premature and therefore, liable to be dismissed. Earlier, an interim order came to be passed by this Court on 10.07.2025, wherein a reference was made to para 7.5 of the Tender Document, which reads as under:

"7.5 FORFEITURE OF EMD & DEBARMENT OF BIDDER

7.5.1 The bidders shall be debarred by Corporation for participating in future tender enquiries for a period of two (02) *years and EMD will be forfeited, if deposited, in case the bidder:-*

7.5.1.1.Withdraws or modifies or impairs or derogates from the bid in any respect within the period of validity of its bids; or
7.5.1.2 Fails to furnish requisite performance security within stipulated time required as per e-bid; or
7.5.1.3 in the event of bidder, not accepting the offer and/or not formally executing the contract after acceptance of bid/proposal by CWC within the stipulated time period."

7. The learned counsel for the respondent submits that the petitioner's attempt to resile from the offer made in the Tender Document on 09.05.2025 by giving a letter withdrawing the offer on 24.06.2025 after the price bid was opened was not *benefide* as the petitioner resiled after the petitioner came to know that L-2 had offered Rs.18,41,05,924/- as against the estimated bid value of Rs.14,61,29,000/- as per the Tender Document, while the petitioner had quoted only Rs.6,60,000/-.

8. On a specific query as to how the petitioner would have been in a position to execute the contract pursuant to the contract awarded on 25.06.2025 based on the calculation in the Tender Document, the explanation forthcoming from the learned counsel for the respondent is that the petitioner is bound by the

offer made in the bid document, dated 09.05.2025.

9. Two points question (1) as to how the amount offered by the petitioner at Rs.6,60,00,000/- was feasible of being performed; and (2) why the contract was awarded if it was not feasible of performance for a period of two years at Rs.6,60,00,000/- in respect of the bid offered by the petitioner, dated 09.05.2025. It is informed by the learned counsel for the respondent that the petitioner had made an offer and since the respondent has accepted offer, it has awarded the contract to the petitioner on 25.06.2025 and since the petitioner failed to undertake the obligation after the contract was awarded on 25.06.2025, the negative clauses in the Tender Document, content of which have been extracted above, is to be applied against the petitioner.

10. In this connection, the learned counsel for the respondent has drawn attention to the Methodology for offering/quoting price bid in respect of the handling and transporting goods at Central Warehouse, Trichy from Annexure-II to the Tender Document. The same is reproduced below:

Methodology for offering/Quoting of Price Rid in resnect of landling and Transport Contract at City, Trichy

The prospective bidders are advised to follow the given below methodology for quoting the rates in GeM Portal:

Out of various items stipulated for the work of HTC, Bidder shall quote one single rate in absolute terms for the foremost or biggest item. The rate of major activity involved in a particular center, for handling and transportation of (Name of Commodity) shall be reported in absolute terms by the bidders. This rate shall then be compared with Schedule of Rates (SOR), and percentage increase shall be worked out and this SOR/ASOR shall be made applicable to all other items. Thus, the rate putting through the GeM in absolute terms shall be almost similar to the existing practice of quoting percentage of SOR.

Handling and Transport contract at CW, Trichy is primarily for handling of Food Grains and allied commodities at Trichy Railway Goodshed and transportation of Food Grains and allied commodities from Trichy Railway Goodshed to CW, Trichy and/or vice versa.

Remarks: In respect of HTC/HC Contracts average schedule should be worked out considering the major items involved in the operation. Regional Manager/Tender Awarding Authority shall decide rates based on experience and conditions of that particular centre. ASOR means "Above SOR". BSOR means "Below SOR", (Illustration may be given for the applicable commodity)

a) For foodgrains: (If Applicable else may be deleted while floating the tender)

<u>Illustration:</u>

Calculation of Quantitative SOR in Absolute Terms based on Actual QTY Handled during the contract period, and the Schedule of Rate (SOR)

S.No.	Operation details	SOR Rate (Rs. Per MT) (Inclusive of all taxes, except GST) (in Rs.)	Volume handled in 24 months		Total value of work done (Rs.) (exluding GST
			No. of bags handled	Quantity handled in MT	
		1	2	3=2/20	4=1*3
1	Unloading bags from wagons and loading Directly in to trucks	54	4840760	242038	13070052
2	Unloading bags from trucks and stacking in godowns				
a	Up to 10 Height	54	2121580	106079	5728266
b	Up to 16 Height	64.8	1257580	62879	4074559
c	Up to 20 Height	75.6	827500	41375	3127950
d	Above 20 Height	86.4	634100	30705	2739312
3	Transportation from RH to WH-FOR 5 KMS	57	4840760	242038	13796166
4.	Loading of bags from stacks directly into trucks Delivery	64.8	3153120	157656	10216109
	TOTAL (exluding GST)				52752414
	Applicable GST rate	NIL			NIL
	TOTAL (including GST)				52752414

Note: 1. Contract period is taken as 24 Months
2. 01H MT = 20 Bags of 50 Kg. each

Hence, the quantitative SOR in absolute terms will be Rs.5,27,52,414/- (excluding GST, GST @ applicable is added by Regional Office to this SOR to calculate final SOR)

Note:
1. Figures highlighted RED in colour as mentioned above are for illustration purpose only & should be calculated and checked accordingly.
Note: The quantity and the Quantitative SOR (expenditure) mentioned above in the methodology shall be assumed for illustration purpose only. The quantity to be handled and expenditure to be obtained shall be based totally on the actual work done basis.
Illustration (To be treated only as example considering the commodity as Non-taxable and GST is not applicable):

	Details	Quoted amount including GST (considering GST as NIL for Food grains)	Quoted amount excluding GST	SOR excluding GST	ASOR/BSOR (%)
		(1)	(2)=(1)	(3)	(4) = {(2)-(3)} X 100/(3)
a	If bidder quotes	5,80,27,655	5,80,27,655	5,27,52,414	10%
b	If bidder quotes	5,27,52,414	5,27,52,414	5,27,52,414	0.00%
c	If bidder quotes	4,74,77,173	4,74,77,173	5,27,52,414	-10%

In Illustration (a) above, the rate will be treated as 10% ASOR.
In Illustration (b) above, the rate will be treated as 0% ASOR i.e., equal to SOR
In Illustration (c) above, the rate will be treated as 10% BSOR.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent and I have perused the impugned Show Cause Notice and the Tender Document.

12. In my view, the estimated value of the contract as per the Tender

Document is Rs.14,61,29,000/-. The offer of the petitioner for Rs.6,60,00,000/- is far below the estimated value of Rs.14,61,29,000/-. The petitioner would have certainly failed during the evaluation of the offer during the price bid, as the petitioner has offered an abysmally lower amount. Merely because lower amount is offered would not mean that the same has to be accepted even if the same was incapable of being performed for a period of two years. The respondent is expected to exercise their intelligence as to whether the offer of the petitioner was realistic and capable of being performed.

13. In this Case, the petitioner appears to have referred to the above methodology and has added 26.37% over and above Rs.5,27,52,414/- to arrive at the bid amount of Rs.6,60,00,000/-. Under these circumstances, the respondent ought to have rejected the bid offer of the petitioner. Instead the respondent has awarded the contract to the petitioner despite the petitioner's letter on the same time informing the respondent about the mistake.

14. The mechanism of awarding a contract under the tender process is invitation of the offer and thereafter, evaluation of the offer and thereafter,

acceptance. Unless the offer is accepted before its revocation, there is no concluded contract.

15. That apart, there is no binding contract, as the offer made by the petitioner has been withdrawn even before the contract was awarded on 25.06.2025. In this connection, Section 5 of the Indian Contract Act, 1872, is also relevant, which reads as under:

> ***"5. Revocation of Proposals and acceptance.—***
>
> *A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.*
>
> *An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards."*

16. Therefore, there is no justification in the impugned Show Cause Notice as the intention of the respondent is only to debar the petitioner from participating in the future tender. It was open for the respondent to either award the contract to L2 or in the alternative call for a fresh tender.

17. Since the respondent has already floated a fresh tender on 02.07.2025

and an order came to be passed by this Court on 10.07.2025, pursuant to which the petitioner was allowed to participate in the bid pursuant to the tender that was floated on 02.07.2025, the respondent is at liberty to evaluate the offer of the petitioner in response to the aforesaid tender, dated 02.07.2025.

18. Needless to state, for the expenses incurred and for the losses suffered for floating two tenders, the respondent is at liberty to recover the same from the petitioner irrespective of the fact that the petitioner emerges as a successful bidder in the tender that was floated on 02.07.2025.

19. In view of the above discussion, the impugned order is quashed.

20. This Writ Petition is disposed of, with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

30.07.2025

C.SARAVANAN, J.

apd

To

The Regional Manager,
Central Warehousing Corporation,
No.4, North Avenue,
Sri Nagar Colony,
Saidapet,
Chennai - 600 015.

W.P.(MD) No. 18643 of 2025

30.07.2025