IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2010

CORAM

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

W.P.No.6455 of 2010

Allwyn Builders,
Engineering Contractors,
69/246, Aganagam,
Agan Nagar, Palanipet Post, Arakkonam
rep. by its proprietor
Y.Ruban Das. .. Petitioner

Vs.

1. Union of India,
rep. by Divisional Railway Manager/works,
Southern Railway/MAS,
Chennai Division, Park Town, Chennai-3.

2. Senior Divisional Engineer Co ordination/Works
Southern Railway,
Chennai Division, Park Town, Chennai-3.

3.K.Ravindran ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the respondents 1 and 2 from processing or considering the 3rd respondent's tender document along with other sealed tenders submitted in respect of ITEM No.7 of the tender Notice No.MAS/09 of 09 dated 05.11.2009.

For Petitioner ... Mr.G.Jeremiah

For R1 and R2 ... Mr.M.Vellaisamy

ORDER

The learned standing counsel for the respondents 1 and 2 is present. Though the 3rd respondent is duly served with notice he does not make his appearance before this court. On consent, writ petition is taken up for final hearing at the admission stage.

2. The relief sought for herein is for forbearing the respondents 1 and 2 from processing and considering the 3rd respondent's tender document along with other sealed tenders

submitted in respect of item 7 of the tender notice no. MAS/09 of 09 dated 05.11.2009 issued by the first respondent.

3. The facts remains undisputed are that the first respondent floated tender notice on 05.11.2009 inviting sealed tenders in respect of several items of works one among which related to the supply of coarse river sand. The tender notice was issued subject to terms and conditions contained in the tender schedule enclosed at pages 1 to 14 of the typed set of papers filed by the petitioner.

4. The petitioner, the 3rd respondent and few others participated in the same by submitting their tender. The main grievance raised by the petitioner herein is that the tender submitted by the 3rd respondent does not satisfy two of the conditions, and the tender ought not to have been for non-fulfillment of the tender requirement opened and taken up for consideration along with the tenders submitted by others, which are in strict compliance with the conditions contained in the tender schedule. The two of conditions which are admittedly not complied with by the 3rd respondent are enclosed at pages 2 and 13 of the typed set of papers as follows :

> PAGE - 2
> ITEM NO.07 OF TENDER NOTICE NO.MAS/09 OF 2009 DATED 5-11-09
> DUE ON : UPTO
> TO
> FROM
> Note : This page is to be pasted on the top of the sealed cover, used for submitting the tender, without which tenders will not be opened.
> PAGE - 13
> "25. Submission Tender : Tender must be enclosed in a sealed cover, super scribed "Tender Notice No.MAS/09 of 2009"/" Item No.07" name of work - As per the schedule" and must be sent by registered post to the address of the Divisional Railway Manager/Works/MAS/Southern Railway so as to reach his office not later than 11.00 hours on 11.12.09. Or deposited in the special box allotted for the purpose in the office of the Divisional Manager/Works/MAS, Southern Railway. This special box will be sealed at 11.00 hours on 11.12.09. The tender will be opened at 11.30 hours on the same day. The tender papers will not be sold after 15.00 hours on 09.12.09."

5. It is fairly conceded by the learned standing counsel for the respondents 1 and 2, that the II respondent has not pasted page 2 on the top of the sealed cover used for submitting the tender and instead of superscribing as "tender notice MAS/09 of 09 item 7" the same is written as "Item 6" on the top of the sealed cover. The same certainly amounts to failure to strictly comply with the tender conditions.

6. That being so, the tender submitted by the 3rd respondent is as per the instructions No.2 enclosed at Page 1 of the typed set of papers in violation which renders the tender submitted by the 3rd respondent not to be opened but to be rejected. However, the respondents 1 and 2 have opened it and allowed the same to be considered along with other tenders submitted by the petitioner and others. Such action on the part of the respondents is illegal and without jurisdiction and against tender conditions and the same entitles the petitioner to get the relief as sought for herein.

7. In the result, writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsh

To

1. The Divisional Railway Manager/works,
Union of India,
Southern Railway/MAS,
Chennai Division, Park Town, Chennai-3.

2. The Senior Divisional Engineer Co ordination/Works
Southern Railway,
Chennai Division, Park Town, Chennai-3.

1 cc To Mr.G.Jeremiah, Advocate, SR.72437

1 cc To Mr.M.Udhayakumar, Advocate, SR.72267

NSM(CO)
sra 25/10/2010