

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)NO.118 of 2022**

Smt. Namita Paul

.....Petitioner(s)

Vs.

Food Corporation of India and ors.

.....Respondent(s)

For the Petitioner(s) : Mr. R. Datta, Advocate.

For the Respondent(s) : Mr. A. Bhowmik, Advocate.
Mr. S. Dey, Advocate.

Date of hearing and delivery of
Judgment & Order : 11.04.2023.

Whether fit for reporting : YES/NO.

HON'BLE THE CHIEF JUSTICE (ACTING)

JUDGMENT AND ORDER(ORAL)

The brief fact of this case is that the petitioner is a transport contractor. The petitioner participated in the tender process and deposited Earnest Money Deposit (*in short 'EMD'*) of Rs.10,10,000/-. But after the declaration of unsuccessful tender or for any other reason, the tender was scrapped. The respondents did not release the EMD amounting to Rs.10,10,100/- to the petitioner on the ground of pendency of other Court cases.

2. Hence the petitioner filed this present writ petition under Article 226 of the Constitution of India praying for the following reliefs:-

" i) As to why a writ in the nature of Mandamus should not be issued quashing the letter vide No.Cont/NEFR/Namita Paul/SD-EMD Release/2020 dated 29.10.2020 and the letter vide No.Cont/NEFR/Namita Paul/SD-EMD Release/2020/17450 dated 24.12.2020 issued by the Respondent No.2 whereby the respondents refused to release the Earnest Money Deposit amounting to Rs.10,10,000/- to the petitioner on the ground of pendency of other Court cases.

ii) As to why a Writ in the nature of Mandamus should not be issued directing the Respondents to refund Earnest Money Deposit amounting to Rs.10,10,100/- along with interest at the rate of 12% per annum w.e.f. 17.11.2011 till the date of payment in respect of contract No. Cont.50/NEFR/TE/2010 dated 01.07.2010 for transportation of food grains/sugar/allied materials from Rly. Siding changsari/CWC Godown Amingaon/RH FSD Guwahti to Godown Complex, Agartala

AND

As to why Writ in the nature of Certiorari should not be issued quashing/setting aside the letter vide No.Cont.50/NEFR/TE/2010 dated 08.07.2022 whereby the amount of Earnest Money Deposit amount of Rs.10,10,000/- was illegally set off by the respondent.

iii) As to why such other order/orders should not be passed so as to give full relief to the petitioner and, upon causes show, to make the Rule absolute."

3. Heard Mr. R. Datta, learned counsel appearing for the petitioner as well as Mr. A. Bhaumik, learned counsel appearing for the respondents.

4. Mr. R. Datta, learned counsel appearing for the petitioner submits that the petitioner participated in the tender process but the petitioner was not selected for the said tender. But after the declaration of unsuccessful tender or for any other reason the tender was scrapped. So, it was the duty of the respondents to refund the EMD to each and every person who

had participated in the said tender process. But the respondents arbitrarily have withheld the EMD for the last 10 years without any valid reasons. As a result, the petitioner is entitled to refund of the earnest money deposit amounting to Rs.10,10,000/- along with interest @ 12% per annum. The petitioner further states that the respondents have no authority to withheld the EMD amount on the plea that Court cases are pending. The petitioner further states that EMD of Rs.10,10,000/- is no way connected with any other contract or any cases. The petitioner was declared as an unsuccessful tenderer in the said tender process. Thereafter, the respondents have no authority to withhold the said amount of EMD on the ground of pendency of cases although the other Court cases were or are no way connected with the present writ petition.

5. On the other hand, Mr. A. Bhaumik, learned counsel appearing for the respondents submits that this writ petition involves disputed question of facts and the same needs to be dismissed.

6. Heard both sides and perused the evidence on record.

7. The impugned order dated 29.10.2020 and 24.12.2020, is only a communication from the respondent company to the petitioner indicating that his request for return

of Rs.10,10,00/- cannot be entertained. This Court is unable to support the case of the respondent's letters dated 29.10.2020 and 24.12.2020 since the same is an unreasoned communication and it is not fair on the part of the respondents to withhold the EMD deposited by the petitioner herein stating that the same is kept abeyance *until the final outcome of the Court case/in view of the pendency of the Court case*. The same amount to arbitrary action. In any event, if the respondents think that the petitioner is not entitled, it is the prima facie duty of the respondents to indicate under what provision of law her EMD cannot be returned. In the event, if it is to be forfeited a separate proceeding needs to be issued, or in the event if there is any resultant loss that has been suffered by the respondents, on account of the petitioner's contract, it is not just on the part of the respondents to withheld the EMD without there being any expressed order forfeiting her EMD. Withholding the EMD of the petitioner without giving any opportunity to the petitioner amounts to violation of the principle of natural justice and is also against the principle of *ad alteram partem* as clearly indicated herein above.

8. In view of the above discussion, the impugned letter of the respondents dated 29.10.2020 and 24.12.2020 is set aside and the respondents are directed to reconsider the

request of the petitioner in accordance with the law within a period of 2(two) months from the date of receipt of the copy of this order.

9. With the above observation and direction, this present writ petition stands disposed of. Stay if any stands vacated. Pending application(s), if any, also stands closed.

CHIEF JUSTICE (ACTING)

suhanjit



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