



W.P.(MD)No.20469 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.20469 of 2021
and
W.M.P.(MD).No.17114 of 2021

V.Prabu

... Petitioner

Vs.

1.The District Collector,
Theni District,
Theni.

2.The Assistant Director,
Andipatti Town Panchayat,
Theni District.

3.The Executive Officer cum Tender Inviting Authority,
Andipatti Town Panchayat,
Theni District.

... Respondents

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 order in Na.Ka.No.42/2019/A3 dated 18.06.2021 on the file of the third respondent and quash the same as illegal and direct the third respondent to refund the petitioner's earnest money deposited amount sum of Rs.10,00,000/- which was deposited by the petitioner to participating in the tender for Andipatti Town Panchayat within the time stipulated by this Court.



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For Petitioner : Mr.T.Thirumurugan
For R-1 and R-2 : Mr.B.Saravanan
Additional Government Pleader
For R-3 : Mr.R.Ragavendran
Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned proceedings of the third respondent in Na.Ka.No.42/2019/A3 dated 18.06.2021 and for a further direction to the third respondent to refund the earnest money deposit of the petitioner to the tune of Rs.10,00,000/- (Rupees Ten Lakh only).

2. The case of the petitioner is that he participated in the tender called for by the third respondent on 08.07.2019 for collecting fees in the weekly market at Aundipatti Town Panchayat. The petitioner paid the earnest money deposit of a sum of Rs.10,00,000 (Rupees Ten Lakh only) for participating in the tender. The petitioner was under the impression that there will be 160 shops available in order to collect the fees in the weekly market. However, the petitioner found that there were only 60 shops in the weekly market. This came



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to the knowledge of the petitioner only after participating in the tender and after he was declared as a highest bidder. In view of the same, the petitioner did not pay the balance amount and hence, the tender was cancelled.

3. The petitioner aggrieved by the same filed W.P.(MD).No.18814 of 2019 challenging the cancellation of tender and this Writ Petition was subsequently dismissed as withdrawn on 13.03.2020. Thereafter, the petitioner gave a representation to the third respondent on 05.09.2020 seeking for the refund of the Earnest Money Deposit of a sum of Rs.10,00,000/- (Rupees Ten Lakh only). This representation was not considered and hence the petitioner filed W.P.(MD).No.16297 of 2020 for a direction to the third respondent to consider the representation and to refund the earnest money deposit. This Writ Petition was disposed of by an order dated 19.11.2020 by directing the third respondent to consider the representation and to pass orders within a time frame.

4. Pursuant to the above order, the third respondent has passed the impugned order through proceedings dated 18.06.2021 and had refused to repay the earnest money deposit and that apart, the petitioner was also directed to offset the loss caused to the third respondent to the tune of Rs.14,85,000/-



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(Rupees Fourteen Lakh Eighty Five Thousand only). Aggrieved by the same,

the present Writ Petition has been filed before this Court.

5. The third respondent has filed a counter affidavit. The third respondent has taken a stand that the petitioner had quoted an amount of Rs.25,00,000/- (Rupees Twenty Five Lakh only) and as per the terms of the tender, the petitioner was supposed to deposit the entire balance amount on the same day and the petitioner did not comply with the said condition. In view of the same, the third respondent had to cancel the tender and issue a fresh tender. It is under these circumstances, the earnest money deposit of the petitioner was forfeited and the petitioner was asked to offset the loss that was caused to the third respondent. The third respondent has accordingly sought to the dismissal of this Writ Petition.

6. Heard the learned counsel appearing on behalf of the petitioner, the learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 and the learned Government Advocate appearing on behalf of the third respondent.



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7. The main ground that was urged by the learned counsel for the petitioner is that the petitioner was made to believe that he will be able to collect the fees in the weekly market from 160 shops and whereas on verification, the petitioner found that there were only 60 shops. It is under such circumstances, the petitioner was not willing to pay the balance amount. It was further contended that the petitioner has raised this issue at the earliest point of time and inspite of the same, it was never considered and tender was cancelled and the re-tender was made wherein the highest bid was only for a sum of Rs.10,15,000/- (Rupees Ten Lakh and Fifteen Thousand only) which was confirmed by the third respondent. Hence, the learned counsel submitted that it is unreasonable on the part of the third respondent to forfeit the Earnest Money Deposit amount and also direct the petitioner to pay a sum of Rs.14,85,000/- (Rupees Fourteen Lakh and Eighty Five Thousand only) to offset the loss caused to the third respondent.

8. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 submitted that clause 17 of the terms and conditions of tender clearly stipulated that the person in whose favour the tender is allotted, should pay the entire balance amount within a period of 24 hours



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failing which the tender will be cancelled. It was further submitted that as per the terms and conditions, the Earnest Money Deposit will be forfeited and the loss incurred by the Panchayat will also be recovered from the petitioner. Hence, only in compliance with the terms and conditions of the tender, the Earnest Money Deposit was forfeited and the petitioner was directed to offset the loss caused to the Panchayat.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. It will be relevant to take note of some of the clauses available under the terms and conditions of the tender and the same are extracted hereunder:

“17. ஏலம் எடுத்த நபர் ஏலம் முடிந்த அன்றே அலுவலக நேரத்திற்குள் ஏலத்தொகை முழுவதையும் செலுத்தி ரசீது பெற்றுக் கொள்ள வேண்டும். தவறும் பட்சத்தில் அன்னாரின் ஏலம் ரத்து செய்யப்படுவதுடன் டேவணி தொகை பறிமுதல் செய்து பேரூராட்சி கணக்கில் செலுத்தப்படும்.

23. இந்த பொது நிபந்தனைகளை மீறினாலோ, உதாசீனம் செய்தாலோ ஏலம் ரத்து செய்ய பேரூராட்சிக்கு அதிகாரமுண்டு. மேலும் அதனால் ஏற்படும் நஷ்டங்களையும், மற்றும் எல்லா செலவினங்களையும் பேரூராட்சி உசிதம் போல் வசூல் செய்ய நடவடிக்கை எடுக்கப்படும்.”



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11. The terms and conditions that are provided under the tender is more in the nature of a contract between the petitioner and the third respondent and both of them are bound by the same. The terms and conditions specifically provides that the highest bidder must deposit the entire balance amount on the same day failing which the tender will be cancelled and the Earnest Money Deposit will be forfeited. It also provides that on account of the violation of / non compliance of any of the terms and conditions, if the Panchayat suffers any loss, it must be offset by the highest bidder.

12. The main grievance that was expressed by the petitioner was that he had participated in the tender under the impression that there will be totally 160 shops from which he can collect the fees during the weekly market and whereas only 60 shops were available. That apart, some of the shop owners were also threatening the petitioner that he cannot collect the fees from them. In view of the same, the petitioner wanted some resolution of the dispute before he deposits the balance tender amount. Since no solution was found out by the third respondent, the petitioner did not deposit the balance tender amount. In view of the same, it was contended that the petitioner cannot be found fault with and made to suffer a loss.



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13. As stated supra, the petitioner was bound by the terms and conditions of contract. If the petitioner had any issues in collecting the fees, on any ground, the same should have been raised by the petitioner after fulfilling his obligation under the contract. However, the petitioner raised the dispute after he was declared as the highest bidder and also refused to deposit the balance amount as per clause 17 of the terms and conditions. The terms and conditions under the tender has not been put to challenge and therefore, the petitioner is bound by the terms and conditions. The other issues that have been raised by the petitioner to the effect that lesser number of shops were only available for collecting the fees and that there was some threat by some of the shop keepers that they will not pay the fees to the petitioner, are all issues which should have been raised, after the petitioner fulfills his obligation under the tender. Ultimately, if the petitioner had suffered a loss after participating in the tender due to the issues that have been raised by the petitioner, the petitioner can always proceed against the third respondent seeking for compensation for the loss sustained by the petitioner. However, the petitioner anticipated the loss due to certain issues and therefore, the petitioner refused to pay the balance amount on the same day. By resorting to this action, the petitioner took a risk and thereby had failed to comply with the terms and conditions of the tender.



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14. In the considered view of this Court, the third respondent was entitled to forfeit the Earnest Money Deposit and also to recover the loss from the petitioner as per the terms and conditions of the tender and the same cannot be faulted and such stand taken by the third respondent cannot be held to be illegal. Hence, this Court does not find any grounds to interfere with the impugned proceedings of the third respondent dated 18.06.2021.

15. This Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

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N.ANAND VENKATESH, J.

Nsr

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