

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 28894 of 2008 (M)

PETITIONER :

**M/S. MANGAL STEEL ENTERPRISES LTD.,
248, G.T.ROAD (N), SALKIA, HOWRAH -711106
REP. BY ITS DIRECTOR SRI.B.N.GARODIA.**

**BY ADVS.SRI.K.N.SIVASANKARAN
SRI.SUNIL SHANKAR**

RESPONDENT(S) :

- 1. THE KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVAN, TRIVANDRUM.**
- 2. THE CHIEF ENGINEER (DISTRIBUTION NORTH)
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN
GANDHI ROAD, KOZHIKODE.**
- 3. THE DISTRICT COLLECTOR,
COLLECTORATE, KOZHIKODE.**
- 4. THE DISTRICT COLLECTOR,
COLLECTORATE, HOWRAH, WEST BENGAL**
- 5. CERTIFICATE OFFICER,
COLLECTORATE, HOWRAH, WEST BENGAL**
- 6. STATE OF KERALA.
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM.**

**R1 & R2 BY ADV. SMT.NAZEEBA O.H., SC
R3 & R6 BY SR. GOVT. PLEADER SRI. K.K.SAIDALAVI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE TENDER NOTICE NO. TSS/MATERIAL/2/05-06 DATED 2-6-2005.
- EXT.P2 COPY OF PURCHASE ORDER DTED 20-12-2005.
- EXT.P3 COPY OF THE SPECIAL INSTRUCTIONS BY THE 2DN RESPONDENT.
- EXT.P3(a) COPY OF THE FORMAT OF THE AGREEMENT FORWARDED BY THE 2ND RESPONDENT.
- EXT.P4 COPY OF PETITIONER'S LETTER DATED 2-1-2006.
- EXT.P5 COPY OF PETITIONER'S LETTER DATED 24-1-2006.
- EXT.P6 COPY OF 2ND RESPONDENT'S LETTER DATED 25-1-2006.
- EXT.P7 COPY OF LETTER DATED 1-2-2006 OF THE PETITIONER.
- EXT.P8 COPY OF 2ND RESPONDENT'S LETTER DATED 4-8-2006.
- EXT.P9 COPY OF LETTER OF THE PETITIONER DATED 9-9-2006.
- EXT.P10 COPY OF 2ND RESPONDENT'S LETTER DATED 15-6-2007.
- EXT.P11 COPY OF THE PETITIONER'S LETTER DATED 2-7-2007.
- EXT.P12 COPY OF THE CERTIFICATE OF DEMAND OF 5TH RESPONDENT DATED 25-8-2008.

(Contd...)

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EXT.P13 COPY OF THE REQUISITION OF THE 2ND RESPONDENT TO THE 3RD
RESPONDENT DATED 22-5-2008.

EXT.P14 COPY OF THE LETTER OF THE 3RD RESPONDENT DATED 18-6-2008
TO THE 4TH RESPONDENT.

EXT.P15 COPY OF THE CERTIFICATE DATED 18-6-2008 ISSUED BY THE 3RD
RESPONDENT TO THE 4TH RESPONDENT.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.28894 of 2008

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Dated this the 23rd day of September, 2015

JUDGMENT

In this writ petition, the petitioner is challenging the attempt of respondents 1 and 2 to mulct the petitioner with the liability of paying damages which, according to him, is without any adjudication of settlement of the same.

2. The petitioner is contesting the very conclusion of the contract much less its breach and the steps initiated by respondents 1 and 2 in conjunction with respondents 3 and 4 to initiate coercive action through recovery proceedings. According to the petitioner, the tender was effected on 2.6.2005 inviting offers for supply of 2 lakhs pieces of two line cross arm (G1) with clamp, bolts and nuts, to which the petitioner responded by submitting the bid. However, on 23.12.2005, the petitioner revoked the bid and on 4.1.2006 Ext.P1 purchase order dated 20.12.2005 was communicated to the petitioner stating the quantity as 4,00,000 pieces.

3. The petitioner alleges that on 24.1.2006, at the request of the second respondent, he submitted Ext.P5 revised bid. On 25.1.2006, the second respondent asked the petitioner to extend the validity of the bid by one month as per Ext.P6 and on 1.2.2006,

the petitioner extended the validity of the revised offer by one month as per Ext.P7. According to the petitioner, there was no further response to Ext.P7 thereafter. On 4.8.2006, the second respondent sent Ext.P8 letter stating that a sum of ₹79,72,000/- as additional financial commitment for arranging alternate purchase and informing the petitioner that EMD of ₹5 lakhs stood forfeited on account of the petitioner's default. In Ext.P8, the second respondent had asked the petitioner to remit the balance amount of ₹74,72,000/-.

4. The above notice was replied against as per Ext.P9 letter stating that there was no concluded contract since the bid was withdrawn prior to the acceptance of the same. At any rate, the purchase order for 4 lakhs pieces is only a counter offer; according to the petitioner. On 15.6.2007, the second respondent by Ext.P10 letter asked the petitioner to remit an amount of ₹74,72,000/- within 15 days. However, on 2.7.2007 by Ext.P13, the second respondent requisitioned the third respondent for recovery of a sum of ₹74,72,000/-. Consequently, the third respondent issued Ext.P14 letter and Ext.P15 certificate to the fourth respondent seeking collection of amounts due on account of electricity dues. The petitioner is aggrieved by Exts.P12, P13, P14 and P15 and thus, he

has come up before this Court.

5. No counter affidavit has been filed by the respondents.

6. I have heard the learned counsel for the petitioner and the learned standing counsel for the fifth respondent.

7. The learned counsel for the petitioner invited my attention to the decree passed by the Sub court, Kozhikode in O.S Nos.67, 68 and 80 of 2009 which were disposed of by a common judgment permitting the petitioner to recover ₹5 lakhs which is the EMD, with 12% interest from the date of suit till realisation from the defendant, who is the respondent board herein with costs. It is submitted that the above decree has become final.

8. As the competent forum has found that the petitioner is entitled to the refund of EMD, it can be safely concluded that the petitioner cannot be mulcted with the liability of paying the amount demanded as per the orders under challenge.

Therefore, the writ petition is allowed. Exts.P12, P13, P14 and P15 are quashed. It is declared that the petitioner is not liable to remit any amount demanded as per the impugned orders.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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