

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.40561 OF 2012

DATED:04-06-2015

Between:

V. Bhasker ... Petitioner

And

The A.P. State Road Transport Corporation

Rep. by its Managing Director

Bus Bhawan, RTC. X Roads

Hyderabad

and others

... Respondents

COUNSEL FOR THE PETITIONER: Mr. K. Narsi Reddy

COUNSEL FOR THE RESPONDENTS : Mr. Aravala Rama Rao,

Standing Counsel for APSRTC

THE COURT MADE THE FOLLOWING:

ORDER:

This writ petition is filed for a *Mandamus* to declare the action of respondent No.2 in forfeiting the Earnest Money Deposit (EMD) amount of Rs.50,000/- vide his order dt.23.11.2012 in Proceedings No.02/122(31)/2012 RM-‘A’, as arbitrary and unconstitutional and also to set aside condition No.4(d) of the tender conditions. The petitioner sought for a consequential direction to refund the EMD of an amount of Rs.50,000/- to him.

I have heard Mr. K. Narsi Reddy, learned counsel for the petitioner, and Mr. Aravala

Rama Rao, learned Standing Counsel for the Andhra Pradesh State Road Transport Corporation.

In pursuance of the tender notification issued by respondent No.2, the petitioner filed his tender for allotment of open space at platform No.4 of Puttaparthi Bus Station, for running a Soda Hub or Hunt. As the petitioner failed to mention the monthly rent against column No.4 of the tender form, his tender was not only rejected treating the same as invalid, but also the sum of Rs.50,000/- paid as EMD was forfeited by respondent No.2. Aggrieved by the said forfeiture, the petitioner has filed W.P. No.21781 of 2012. This Court by order dt.9.10.2012 permitted the petitioner to withdraw the writ petition with liberty to him to make an appropriate representation to respondent No.2. Thereafter, the petitioner has made a representation on 9.10.2012 to respondent No.2 for refund of the EMD. By communication dt.23.11.2012, respondent No.2 declined the petitioner's request placing reliance on condition No.4(d) of the tender conditions. Feeling aggrieved by this action, the petitioner filed this writ petition.

On behalf of the respondents, their Law Officer has filed a counter affidavit. The counter affidavit has justified the forfeiture only on the ground that condition No.4(d) of the tender conditions envisages that in case of incomplete tenders, the EMD will be forfeited.

In order to resolve the dispute, it is necessary to notice condition No.4 of the tender conditions.

*"4. The EMD of the tenderer shall be forfeited under the following circumstances.*

- a. *If the successful tender fails to remit security deposit and one month advance licence fee within seven days from the date of receipt of allotment letter or within 15 days from the date of issue of allotment.*
- b. *When the EMD paid is less than what is stipulated in the Tender.*
- c. *When the EMD paid through other manner i.e., in a manner other than what is stipulated in the tender notification.*
- d. *When incomplete Tender form is submitted or Tender Form other than what stipulated or additional conditions is submitted.*
- e. *When the tender is submitted in an un-concerned Tender.*
- f. *When the Tender form is submitted for the business other than that notified in the Tender Notification.*
- g. *When the Tender is submitted by minor/or on behalf of minors. The EMD of the*

*Tenderer be forfeited with the approval of the Executive Director (Zone) concerned."*

The above reproduced condition envisages various situations under which the EMD of the tenderer shall be forfeited. The purpose of an EMD is to make the tenderer bound by the tender conditions and in the event of violation of the tender conditions the Corporation will recover the loss, if any, caused by such tenderer for his violation through forfeiture of EMD. The inevitable consequence of an incomplete tender is its rejection. In my opinion, forfeiture of EMD merely on the ground that the tender is incomplete is highly irrational. Such an action causes double disadvantage to the tenderer namely, rejection of the tender as well as the forfeiture of the EMD. The respondents have not explained the rationale behind stipulating condition No.4(d). It is not the pleaded case of the respondents that by rejection of the petitioner's tender it has suffered any loss. On the contrary, it has awarded contract to another person by name one Rajendra Prasad who emerged as successful tenderer. Even in the rejection order, except relying upon condition No.4(d) of the tender conditions, respondent No.2 has not assigned any reason for forfeiting the petitioner's EMD. In my considered view, the impugned clause has no nexus to the object sought to be achieved and the same constitutes patent arbitrariness. A Statutory Corporation, such as respondent No.1, cannot resort to unjust enrichment by stipulating such clauses.

For the above mentioned reasons, the writ petition is allowed. The respondents are directed to refund the sum of Rs.50,000/- to the petitioner within one month from the date of receipt of a copy of this order.

As a sequel to disposal of the writ petition, W.P.M.P. No.51444 of 2012 shall stand disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

4-6-2015

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*Note: L.R. copies to be marked.*

(B.O)

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