

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

CORAM

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.36514 of 2004

R.Velumani

.. Petitioner

vs.

Tamil Nadu Industrial Investment
Corporation Limited,
692, Anna Salai,
Nandanam,
Chennai - 600 035.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records of the respondent which culminated in the notice Ref: TIIC/SRB-DIV II/PKR/2004-05 dated 10.08.2004 and quash the same and direct the respondent to refund the amount of Rs.60,000/- along with interest at 24% per annum.

For Petitioner : Mr.A.K.Sriram for
M/s.A.S.Kailasam
Associates

For Respondent : No Appearance

ORDER

As would be evident from the prayer extracted adverbatim and set out supra, the writ petitioner individual, who is a bidder in a public auction held on 28th October, 2003 by the respondent, Tamil Nadu Industrial Investment Corporation Limited (hereinafter referred to as "TIIC" for the sake of brevity, convenience and clarity) has assailed an order dated 10th August, 2004 made by the sole respondent-TIIC bearing reference TIIC/SRB-Div II/PKR/2004-05 (hereinafter referred to as "impugned order" for the sake of brevity, convenience and clarity).

2. In and by the impugned order, TIIC, after holding that the petitioner bidder has not paid the balance amount

of Rs.5,90,000/- within thirty days from the date of confirmation letter and has also not produced 'No Due Certificate' from the Deputy Commercial Tax Officer, Thiruvallur Assessment Circle, Thiruvallur, has appropriated a sum of Rs.60,000/- paid by the petitioner.

3. To be noted, the public auction held on 28th October, 2003 is for the primary assets of M/s.Maran Crystal Industrial Private Limited being Shed No.22, SIDCO Industrial Estate, Kakkalur, Thiruvallur District.

4. The writ petitioner would contend before me that effectively there was no delay on his part. It is the case of the writ petitioner that he approached the Commercial Tax Department well in time and also took a demand draft for Rs.2,89,736/- drawn on ICICI Bank Limited, Purasawalkam Branch, Chennai in favour of the Deputy Commercial Tax Officer, Thiruvallur Assessment Circle, Thiruvallur, but the authority did not accept the same on the ground that it is only the basic amount and that some more amount has to be paid.

5. However, it may not be necessary to deal with that aspect of the matter now in this writ petition, as the prayer of the writ petitioner is only with regard to appropriation/ordering forfeiture of a sum of Rs.60,000/- by TIIC.

6. It is the case of the writ petitioner that the Earnest Money Deposit (hereinafter referred to as "EMD" for brevity) is not Rs.60,000/-, but only Rs.5,000/-. For this, the writ petitioner would take me through the auction notice, which is part of the typed set of papers (found at page No.1 of the typed set of papers), wherein it has been clearly set out that EMD is Rs.5,000/-.

7. Mr.A.K.Sriram, learned counsel appearing on behalf of the writ petitioner would contend that this amount of Rs.5,000/- was paid by the petitioner to TIIC on 28th October, 2013. Thereafter, according to him a further sum of Rs.48,000/- was also paid on the same date i.e., 28th October, 2013 towards a percentage of the enhanced bid amount. It is the further say of the writ petitioner that another sum of Rs.7,000/- was voluntarily paid by the writ petitioner to TIIC on 13.11.2003 towards bid amount. All the three payments totalling Rs.60,000/- were received by TIIC and receipts have been duly enclosed in the typed set of papers. Mr.A.K.Sriram, learned counsel took me through the same.

8. As alluded to supra, the learned counsel for the petitioner would contend that only Rs.5,000/- is towards EMD and the remaining amount of Rs.55,000/- comprising of Rs.48,000/- and Rs.7,000/- as set out supra are not towards EMD, but towards

percentage of the enhanced bid amount as well as the voluntary payment made towards the bid amount by the petitioner.

9. The lone respondent before me viz., TIIC has filed a counter-affidavit affirmed on 21.07.2005. There was no representation for the lone respondent before me, when the matter was called in the forenoon, though the learned counsel for the writ petitioner was present in Court and was ready to argue the matter. The matter was passed over and called two hours later. There was no representation for the respondent in the second call also.

10. Notwithstanding the fact that there is no representation for the respondent, considering the fact that the writ petition is of the year 2004 and that the same is pending in this Court over 13 years, I proceed to dispose of this matter on merits, on the basis of the available records particularly, in the light of the fact that the respondent before me viz., TIIC has filed a detailed counter-affidavit on 21.07.2005.

11. In the counter-affidavit, TIIC merely states that 10% EMD being Rs.60,000/- was ordered to be forfeited on 10.08.2004, but the counter-affidavit does not meet the pivotal point raised by the petitioner that EMD is only Rs.5,000/- and that sums of Rs.48,000/- and Rs.7,000/- were paid towards enhanced bid amount as set out supra.

12. No document has been filed along with the counter-affidavit to show that EMD is Rs.60,000/-.

13. No provision or condition of auction has been pointed out in the counter-affidavit to show that EMD is Rs.60,000/-.

14. On the contrary, as set out supra, public auction notice has been placed before me in the typed set of papers filed by the petitioner and the same is found at page No.1, wherein it is clearly set out that EMD amount is Rs.5,000/-. Further if Rs.60,000/- was paid, it would have been paid in one go and not as Rs.5,000/-, Rs.48,000/- and Rs.7,000/- on three different dates.

15. Owing to all that have been stated supra, I have no hesitation in concluding that EMD amount is only Rs.5,000/-. This takes me to the natural corollary that the petitioner is entitled to get back the remaining sum of Rs.55,000/-.

16. As set out supra, in the impugned order dated 10.8.2004, the petitioner has been informed that Rs.60,000/- has been ordered to be forfeited.

17. Though the petitioner has claimed the entire amount of Rs.60,000/- together with interest at the rate of 24% per annum (as would be evident from the prayer set out supra), I am of the view that Rs.5,000/- being EMD has to be necessarily ordered to be forfeited and to that extent the order of TIIC is correct.

18. With regard to Rs.55,000/-, owing to all that have been stated supra, it is untenable, incorrect and illegal on the part of the respondent-TIIC to appropriate Rs.55,000/-.

19. Therefore, I direct as follows:

- The respondent-TIIC is directed to return a sum of Rs.55,000/- (Rupees Fifty Five Thousand) to the petitioner together with interest at the rate of 10% per annum from the date of the impugned order viz., 10.8.2004 to the date of the actual payment.
- The above said amount of Rs.55,000/- together with interest set out supra, shall be returned by the respondent-TIIC to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

20. In the result, the writ petition is partly allowed to the extent indicated above, leaving the parties to bear their own costs. As the learned counsel for the respondent-TIIC has not appeared today though a detailed counter-affidavit, affirmed on 21.07.2005 has been filed, which has been alluded to supra, the Registry is directed to send a copy of this order to the respondent-TIIC at the address given in the cause title of the writ petition.

Sd/-
Deputy Registrar

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

To:

Tamil Nadu Industrial Investment Corporation Limited,
692, Anna Salai,
Nandanam,
Chennai - 600 035.

+1cc to M/s.A.S.Kailasam & Associates, Advocate in sr.no.52144

W.P.No.36514 of 2004

RJ(CO)
NR 10/08/2017