

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2771 OF 2013**

Abdul Razzak Amjad Ali Choudhary. .. Petitioner.

V/s.

The General Manager, Central Railway & ors. .. Respondents.

Mr. Afroz A. Siddiqui, advocate for petitioner.

Mr. T.J. Pandian, advocate for respondent Nos. 1 to 5.

**CORAM : RANJIT MORE &
SMT. SADHANA S. JADHAV, JJ.**

**RESERVED ON : MAY 3, 2018
PRONOUNCED ON : AUGUST 6, 2018.**

JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

1 Heard the learned Counsel for the petitioner and the learned Counsel for respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner is the proprietor of a firm namely M/s. Gulzar Steels and is doing business of purchase and sale of scrap materials from various institutions such as Bombay Port Trust(BPT), Indian Railway,

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MSCT etc. since long.

4 The Petitioner herein is aggrieved by the order dated 4/1/2012. The Petitioner is seeking the refund of Earnest Money Deposit paid by him in favour of the General Manager, Central Railway. The Petitioner wanted to participate in the public E-auction sale for purchasing the scrap. He had paid one time registration fee of Rs. 10,000/-. The registration fee was to be refunded on request, if the bidder does not desire to participate in future E-Auction. Respondent No. 2 and 3 i.e. the Deputy COS(Sales), Central Railway and the Controller of Stores, Central Railway had floated tender online in the month of December, 2012 for sale of scrap of Ms. Trolley & Bolster Weighing 23.4 MTS. It was in the nature of scrap. The Petitioner had participated in the bid. He offered first bid for Rs. 20,000/- per metric ton and thereafter, the second bid for Rs. 22,000/- per metric ton and third bid was given for Rs. 22,305/- per metric ton. He had learnt that there was a bid of Rs. 22,519/- per metric ton from another bidder and therefore, he had decided to bid the same for Rs. 22,805/- per metric ton. The bid forms were to be filled in online. While filling the form, the petitioner had typed the amount as Rs. 2,22,805/- per metric ton. The Counsel orally contended that Petitioner deposited an amount of Rs. 5,20,000/- towards Earnest Money Deposit i.e. 10% of total bid amount.

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5 The petitioner had later on realised that he had typed figures wrongly. He immediately informed respondent no. 2 by a letter dated 27/12/2012 and requested him to refund the said earnest money deposit of Rs. 5,20,000/-, which was deducted from his account online after error had occurred. The petitioner had then approached respondent nos. 2 and 3 and demonstrated the error committed by him. There was no response from the respondents except an assurance that the matter would be sorted out in due course.

6 He learnt from reliable sources that an arbitrator could be appointed for settling the dispute and therefore, he had requested the respondents vide letter dated 24/4/2013 requesting them to refund EMD or in the alternative appoint arbitrator for the same. It appears that the petitioner had reiterated his requests vide letter dated 15/7/2013, there was no response from the respondent Nos. 2 and 3 and therefore, the petitioner had filed application under Right to Information Act, 2005, enquiring about the steps taken by the respondent Nos. 2 and 3. By letter dated 2/9/2013 request for appointment of arbitrator was turned down.

7 The learned Counsel for the Petitioner submits that in fact, the petitioner is not an Internet savvy and has no knowledge about the

same. He did not have the knowledge and skill to 'fill forms online' and hence an error had occurred. He is a small trader in scrap business. The Petitioner was filling online form first time and inadvertently had typed 2,22,805 instead of 22,805. Earnest Money deposit of Rs. 5,20,000/- is lying with the respondents.

8 It is apparent on the face of the record that it is an error on the part of the Petitioner who is a small time scrap trader. He deserves benefit of doubt as in normal course of circumstances, he would have never filed a bid of Rs. 2,22,805/- per metric ton for the scrap as he has been seasoned scrap dealer.

9 To err is human and error can be rectified. That soonafter, he had filed the bid, he had immediately written a letter to the respondents and requested them to refund the earnest money deposit. He should not be a victim of procedural aspects. In these circumstances, the petition deserves to be allowed.

10 Hence, following order is passed :

(i) The Writ Petition is allowed.

(ii) The Rule is made absolute in terms of prayer clause (a), which reads as follows :

“(a) that this Honourable Court be pleased to issue a

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Writ of Mandamus or any other appropriate Writ, direction or order, directing the Respondents to cancel the said bid "MS TROLLY & BOLSTER WEIGHING 23.4 MTS" Lot No. 04-01-2012 42-02-107 dated 26.12.2012 and refund the security deposit amount of Rs. 5,20,000/-(Rupees Five Lakhs Twenty Thousands only), in the interest of justice."

[SMT. SADHANA S. JADHAV, J.]

[RANJIT MORE, J]

Aruna
Sandeep
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by Aruna
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