

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 34775 of 2013 and M.P. 1 of 2013
and
W.P. 1031 of 2014 and W.M.P.s 2 & 4 of 2014

W.P. 34775 of 2013

Raja & Co.
rep. by its Managing Partner,
K.T.Ramamurthy,
Erode. Petitioner

Vs.

1. The Superintending Engineer (Highways),
NABARD & Rural Road Circle,
Salem.
2. The Divisional Engineer (Highways),
NABARD & Rural Road Division,
Erode-2.
3. Mr.Thangavel,
The Superintending Engineer (Highways),
NABARD & Rural Road Circle,
Salem.
4. Mrs.Vijaya,
The Divisional Engineer (Highways),
NABARD & Rural Road Division,
Erode-2. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring the decision of the 1st respondent as communicated by the 2nd respondent in Letter No.Earnest Money Deposit/2013/Ka/Dated 19.11.2013, in rejecting the petitioner's tenders in respect of the works in Packages - I and VI in Tender Notice No.20/2013-2014/SDO, Dt. 30.08.2013 and Packages - II and V in Tender Notices No.21/2013-2014/SDO Dt. 30.08.2013 issued by the 1st respondent as illegal, null and void and consequentially direct the 1st respondent to award contracts to the petitioner in respect of the above said works by accepting its tenders.

W.P. 1031 of 2014

Raja & Co.
rep. by its Managing Partner,
K.T.Ramamurthy,
Erode.

... Petitioner

Vs.

The Superintending Engineer (Highways),
NABARD & Rural Road Circle,
No.31, Sahadevapuram Extn.,
Arthanari Nilayam, Salem-7.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order Tender Notice 36/2013-2014/SDO, Dt. 23.12.2013 issued by the respondent.

For Petitioner : Mr.R.Neelakandan

For Respondents : Mr.A.Kumar, AAG for
Mr.R.Govindasamy,
Special Government Pleader

C O M M O N O R D E R

These Writ Petitions have been filed challenging the tender notification issued by the respondents.

2. Earlier, notice was ordered to the respondents. Today, when the matter was taken up for hearing, the learned counsel appearing for the respondents, on instructions, submitted that now the tender was over and the work was also completed, no further adjudication is required in the present Writ Petitions.

3. Considering the fact that the tender was also over and the work was also completed, nothing survives in the present Writ Petitions.

4. The learned counsel appearing for the petitioner submitted that so far the, the Earnest Money Deposit amount paid by the petitioner is not returned to him. But, the learned counsel appearing for the respondents, on oral instructions, submitted that the Earnest Money Deposit will be returned to the petitioner. In the said circumstances, on considering the fact that the Earnest Money Deposit amount is still pending with the respondents, the respondents are directed to refund the Earnest Money Deposit to the petitioner within a period of six weeks

from the date of receipt of the copy of this order.

5. In the result, the Writ Petitions are closed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Rpp

19.11.2018

This Petition having been posted on 05/11/2019 for "Being Mentioned" in pursuance of the Order of this Court dated 19/11/2018 and made herein in the presence of the aforesaid Advocates, this Court made the following Order:-

These writ petitions were closed by this court by common order dated 19.11.2018.

2. At the instance of the learned Special Government Pleader, these writ petitions are again listed today before this court under the caption "For Being Mentioned" for modification in the order with respect to the return of Earnest Money Deposit to the petitioner.

3. This court by order dated 19.11.2008 directed the respondents to return the Earnest Money Deposit (in short "EMD") made by the petitioner as if the EMD made by the petitioner was available then with the respondents.

4. According to the learned Special Government Pleader, as on the date of order, no EMD amount was available with the respondents. However, at the time of hearing of the writ petitions, it was inadvertently informed before this court that the EMD would be returned to the petitioner. But, actually, there was no EMD amount available with the respondent and EMD so made by the petitioner has already been adjusted by the respondents towards the another contract entered into with the respondents by the petitioner. Hence, the order with respect of the return of EMD to the petitioner requires modification.

5. The learned counsel appearing for the petitioner, who is present today in court, has also conceded the above said factual position and the order of this court passed earlier may be ordered to be modified suitably. He, however, prayed this court in case if there is any dispute regarding the quantum, the petitioner may be permitted to agitate the same in the manner known to law.

In the light of the above, the common order passed by this court is modified in the following terms:-

Since the EMD made by the petitioner has already been adjusted towards another contract entered into by the petitioner with the respondents, the order in respect of return of EMD amount is recalled. However, if the petitioner has got any grievance regarding the quantum of amount so adjusted, it is open to the petitioner to agitate before the appropriate forum in the manner known to law. The common order passed by this court in these writ petitions on 19.11.2018 is modified accordingly.

Kmk

05.11.2019

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Superintending Engineer (Highways),
NABARD & Rural Road Circle,
Salem.
2. The Divisional Engineer (Highways),
NABARD & Rural Road Division,
Erode-2.

+1 cc to Mr.R.Neelakandan, Advocate, S.R.No.78842
+1 cc to the Government Pleader, S.R.No.91966

सत्यमेव जयते

W.P. 34775 of 2013
& M.P.1 of 2013
and

W.P. 1031 of 2014
& M.P.s 2 and 4 of 2014

SSI (CO)
SSM(31/01/2019)

GN(11/11/2019)

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