

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.29276 OF 2018

O R D E R

Government issued notification vide No.19/TMSIDC/2016-17 dated 25.02.2017 calling for e-tenders for providing integrated hospital facility management services in hospitals in Hyderabad district in the State of Telangana. Petitioner is a firm, providing security services and it is represented by its Proprietor. In pursuance of tender notification dated 25.02.2017, petitioner participated and submitted all the required documents along with earnest money deposit (EMD) of Rs.40,00,000/- (Rupees forty lakhs only), but remained unsuccessful and the tender was awarded to third party. Challenging the same, it filed W.P.No.18228 of 2017. This court by order dated 08.08.2017 dismissed the writ petition. Aggrieved by the same, petitioner filed appeal in W.A.No.1515 of 2017 and the same is pending adjudication. In the meanwhile, petitioner sought for refund of EMD. Vide Lr.No.27/TMSIDC/Sanitation Policy/2018-19/1188 dated 23.07.2018, the 2nd respondent – Managing Director of Telangana State Medical Services Infrastructure Development Corporation, informed the petitioner that as the matter is *sub judice*, EMD will be released after disposal of the appeal. Assailing the action of the 2nd respondent in not refunding the EMD, the present writ petition is filed.

Learned counsel for the petitioner submits that the EMD of the petitioner is not forfeited under clause 9.3.10 of the tender conditions. Hence, as per clause 9.3.8, the petitioner is entitled for refund of the EMD amount. He submits that the said amount of the petitioner is lying idle with the 2nd respondent and the petitioner is unable to meet its business requirements and hence in need of the amount. Learned counsel submits

that if the petitioner succeeds in the writ appeal, it will deposit the EMD with the 2nd respondent.

Counter affidavit is filed on behalf of the 2nd respondent – Corporation, narrating the above facts.

Shri C.Appaiah Sharma, learned Standing Counsel for the 2nd respondent – Corporation, while not disputing the averment of the petitioner that EMD amount is not forfeited, submits that as the writ appeal is pending, EMD amount could not be refunded.

In this case it is to be seen that admittedly the EMD amount of the petitioner is not forfeited, and as per clause 9.3.8 of the tender conditions, petitioner is entitled for refund of the amount. Grievance of the petitioner in not awarding the tender, is pending adjudication in the writ appeal. Therefore, as long as the EMD amount is not forfeited, 2nd respondent cannot refuse to refund the said amount.

In view of the same, writ petition is disposed of directing the 2nd respondent to refund the EMD amount of Rs.40,00,000/- (Rupees forty lakhs only), subject to condition of petitioner furnishing an undertaking that in the event it succeeds in the writ appeal, it will deposit the said amount with the 2nd respondent.

Interlocutory applications pending, if any, shall stand closed. No costs.

A.PAJASHEKER REDDY,J

DATE:05—09—2018

AVS