

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.28706 of 2008
and M.P. No.1 of 2008

M/s.Vaibava Steels
rep. by Muthu Ganapathy

.. Petitioner

-vs-

The Managing Director,
State Express Transport
Corporation TN Limited,
Thiruvalluvar House,
Pallavan Salai, Chennai-2.

.. Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in proceedings Na.No.469/H2/Scrap/STC.08 and dated 19.11.2008 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondent to reimburse the earnest money deposited to a tune of Rs.1,32,000/- paid by the petitioner for lot Nos.40, 41 and 36.

For Petitioner : Mr.V.Raghavachari

For respondent : Mr.R.P.Prathap Singh,
Standing Counsel

ORDER

The writ has been filed challenging the correctness of the impugned proceedings in Na.No.469/H2/Scrap/STC.08 dated 19.11.2008 issued by the respondent and seeking a direction to the respondent to reimburse the earnest money deposited to a tune of Rs.1,32,000/- by the petitioner for lot Nos.36, 40 and 41.

2.Learned counsel appearing for the petitioner submitted that a Tender cum auction was conducted by the respondent at Central Work Shop, Trichy on 24.07.2008, wherein the petitioner, having participated, deposited the sum of Rs.46,000/- each in

respect of Lot Nos.36, 40 and 41. According to the learned counsel appearing for the petitioner, as there was a delay in process of sale confirmation, the petitioner requested the respondent to return the earnest money deposit and expressed its disinclination to proceed further. Thereafter, instead of reimbursing the amount, the respondent had issued sale confirmation letter on 13.10.2008 and directed the petitioner to deposit the balance amount.

3. According to the learned counsel appearing for the petitioner, the respondent without initiating steps to refund the earnest money deposit, had passed the impugned order on 19.11.2008 threatening the petitioner to pay the balance of the auction amount. However, the respondent, overlooking the fact that the tender condition imposes the confirmation of sale ought to be done within a period of one month, has no right to withhold the EMD amount once the petitioner has disclosed his intention not to continue with the tender. Therefore, the petitioner has come to this Court challenging the same.

4. By filing counter affidavit filed by the respondent, learned Standing Counsel appearing for the respondent would submit that the petitioner participated in the tender cum public auction for the disposal of condemned bus as scrap without R.C. Book, held on 24.07.2008 at Central Work Shop, Trichy and the petitioner was successful for three lot Nos.36, 40 and 41 and they had remitted the EMD i.e. Rs.46,000/- Rs.40,000/- and Rs.46,000/- respectively. However, the respondent sent sale confirmation letter to the successful bidder namely, the petitioner on 13.10.2008 through RPAD after obtaining approval from the Board with a request to make payment of balance amount with ST and SC at the office of the Deputy Manager on or before 25.10.2008 and to take delivery of the vehicles on or before 31.10.2008. According to the learned Standing Counsel, it was made clear that if the petitioner failed to remit the balance amount for three lots confirmed to them before the due date 25.10.2008 as mentioned in the sale confirmation letter dated 13.10.2008, further action will be taken as per Tender cum Auction conditions vide letter No.4691 H2/DIS/SETC/2008. On receipt of the said communication dated 13.10.2008, the petitioner sent a telegram on 28.10.2010 stating that they were not interested in the tender for the delay caused by the respondent which is not correct.

5. It is informed that after the withdrawal from the auction proceeding, the same bus was also sold away in another auction and the respondent realised the money and there was no loss sustained by them. Secondly, though the auction was held on 24.07.2008 in which the petitioner had deposited Rs.46,000/-, Rs.40,000/- and Rs.46,000/- in respect of lot Nos.36, 40 and 41

respectively, as there was a delay in processing the sale confirmation, the petitioner requested the respondent to return the earnest money deposit and expressed its disinclination to proceed further, because the respondent cannot take long time for confirmation of sale auction, which took place only on 13.10.2008.

6.For the above stated reasons, the impugned order passed by the respondent is set aside and the writ petition stands allowed. The respondent is directed to return the money without interest. Consequently, M.P. is closed. No costs.

Sd/-

Assistant Registrar(AD IV)

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Sub Assistant Registrar

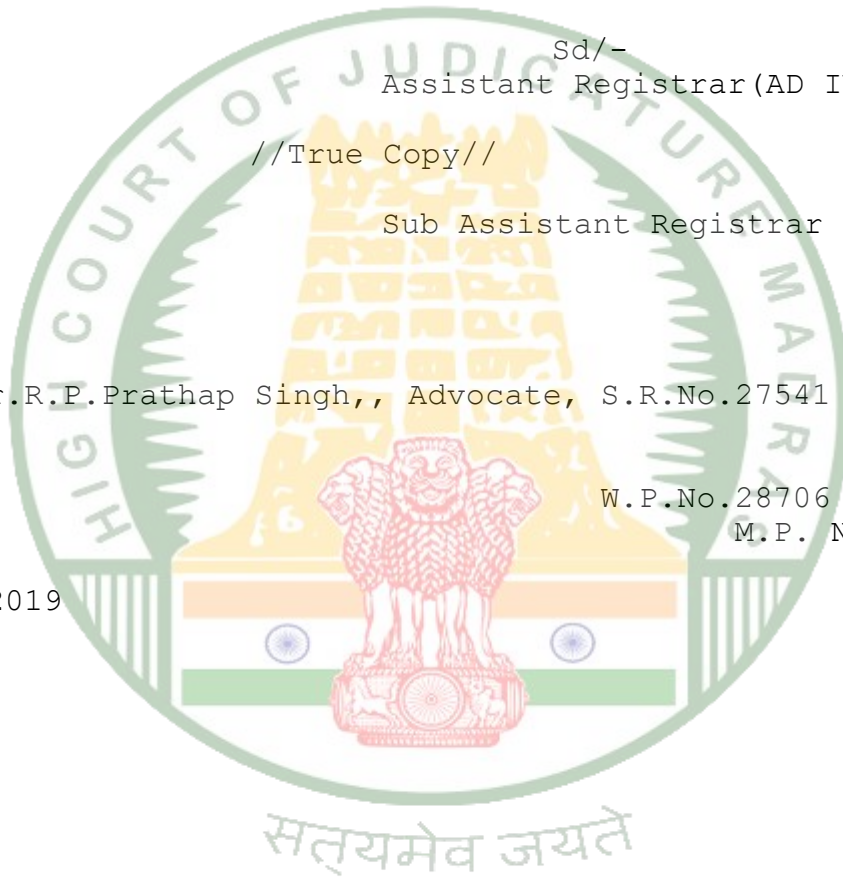
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To

+1cc to Mr.R.P.Prathap Singh,, Advocate, S.R.No.27541

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CS/15/05/2019



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