

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI, J.

W.P.No.24959 of 2009

G.Subramani

...Petitioner

Vs

1. The Managing Director,
Tamil Nadu Co-operative Milk Products
Federation Limited,
Nos.29 & 30, Industrial Estate,
Ambattur, Chennai-600 098.

2. The Joint Managing Director,
Tamil Nadu Co-operative Milk Producers,
Federation Limited,
Nos.29 & 30, Industrial Estate,
Ambattur, Chennai-600 098.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records and to quash the order of the 1st respondent by his proceedings in Ref.No:7229/K5/07 dated 15.10.2009 and direct the respondents to refund the EMD amount a sum of Rs.7,70,000/- deposited by the petitioner on 16.06.2008 with interest immediately.

For Petitioner : Mr.K.Sathish Kumar

For Respondents: Mr.K.R.Ramesh Kumar

O R D E R

The petitioner has filed the writ petition for issuance of a Writ of Certiorarified Mandamus, to call for the records and to quash the order of the 1st respondent in Ref.No:7229/K5/07 dated 15.10.2009 and direct the respondents to refund the EMD amount of a sum of Rs.7,70,000/- deposited by the petitioner on 16.06.2008, with interest immediately.

2. The case of the petitioner is that the 2nd respondent Co-operative Milk Producers Federation Limited has called for open tender for auction sale of the 24 number of condemned vehicles at their transport unit. The said tender notice contained sale conditions Nos.1 to 15. The petitioner participated in the public auction on 16.06.2008 and quoted

the highest rate of Rs.30,78,999/- for the 24 numbers of condemned vehicles. The 2nd respondent accepted the offer given by the petitioner on the same day and the petitioner was asked to remit 25% of the bid value as per the clause(6) of the tender condition. As per condition No.1 of the auction notification, the second respondent is bound to give a confirmation of sale within a period of 30 days. However, the second respondent issued a confirmation of sale only on 22.09.2008 (i.e.,) 3 months after the auction sale and also directed the petitioner to pay the balance money within a period of one week, on failure to remit the full amount, or else, the 25% already remitted would be forfeited.

3. On 14.10.2008, the petitioner informed that the confirmation of sale was issued only after 5 months from the date of auction and therefore he requested the second respondent not to impose any tax and the petitioner issued another letter dated 31.10.2008 to the second respondent requesting them to cancel the confirmation of sale and requested to refund the EMD made to the tune of Rs.7,70,000/- which was paid on 16.06.2008. However, the second respondent has passed this impugned order Ref.No.7229/K5/07, dated 15.10.2009, rejecting the petitioner claim, on the ground that as per Clause 11 of the Tender Condition, if the highest bidder neglects to pay the balance within the notified time, the deposit paid will be forfeited and the lot resold and accordingly, the deposit had been forfeited. Challenging the said order, the present writ petition is filed.

4. The learned counsel for the petitioner would submit that the impugned order of the 1st respondent in Ref.No.7229/K5/07 dated 15.10.2009 is totally erroneous. The learned counsel would further submit that the Division Bench of this Court, Madras in W.A.No.1931 of 2002, reported in 2002 (4) CTC 437 held that when confirmation of bid was issued after the stipulated time limit provided under the notice, the authority cannot invoke forfeiture clause.

5. The learned counsel for the respondent would submit that the petitioner had quoted the highest bid amount of Rs.30,78,999/-. His bid was accepted and confirmed by Tender committee on 16.06.2008 and he has been asked to remit 25% of bid amount (i.e.) Rs.7,70,000/- as per clause 6 of the Tender Condition on the same day. On 13.11.2008, the writ petitioner informed that they are not in a position to comply with the confirmation order due to financial crisis and the respondent federation has once again given one more opportunity to the petitioner to remit the balance bid amount on 28.01.2009 and take delivery of the auction vehicles. Despite the receipt of the same, the petitioner has failed to remit the balance bid amount and preferred a Revision, seeking refund of EMD amount before the first respondent.

6. The condition No.1 clearly states that the second respondent is bound to give confirmation of sale within a period of 30 days from the date of auction. However, in the present case, the second respondent has issued the confirmation order only on 22.09.2008, after a period of three months.

7. The petitioner while participating in the bid, submitted EMD to the value of Rs.7,70,000/-. Since he could not mobilize funds to honour the commitment, he requested the respondents to refund the part of the EMD deposited by him. The respondents rejected the said request vide the impugned order dated 15.10.2009 in view of Clause 11 of the tender condition. On going through the records it is seen that the petitioner has deposited a sum of Rs.4,71,310/- when the bid was confirmed on 09.12.2009. The respondents have acknowledged the receipt of the said delivery order.

8. The respondents are correct in their stand that due to failure on the part of the petitioner to deposit the entire bid amount within the notified date, he has forfeited the deposited amount. Because of the failure on the part of the petitioner to mobilize funds, the respondents cannot be allowed to suffer loss. However, this Court is of the opinion that interest of justice would be subserved by directing the respondents to refund a sum of Rs.4,71,310/-, which was deposited by the petitioner. The said sum of Rs.4,71,310/- shall be paid to the petitioner within a period of six weeks from the date of receipt of a copy of this Order.

9. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar

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Sub Assistant Registrar

To

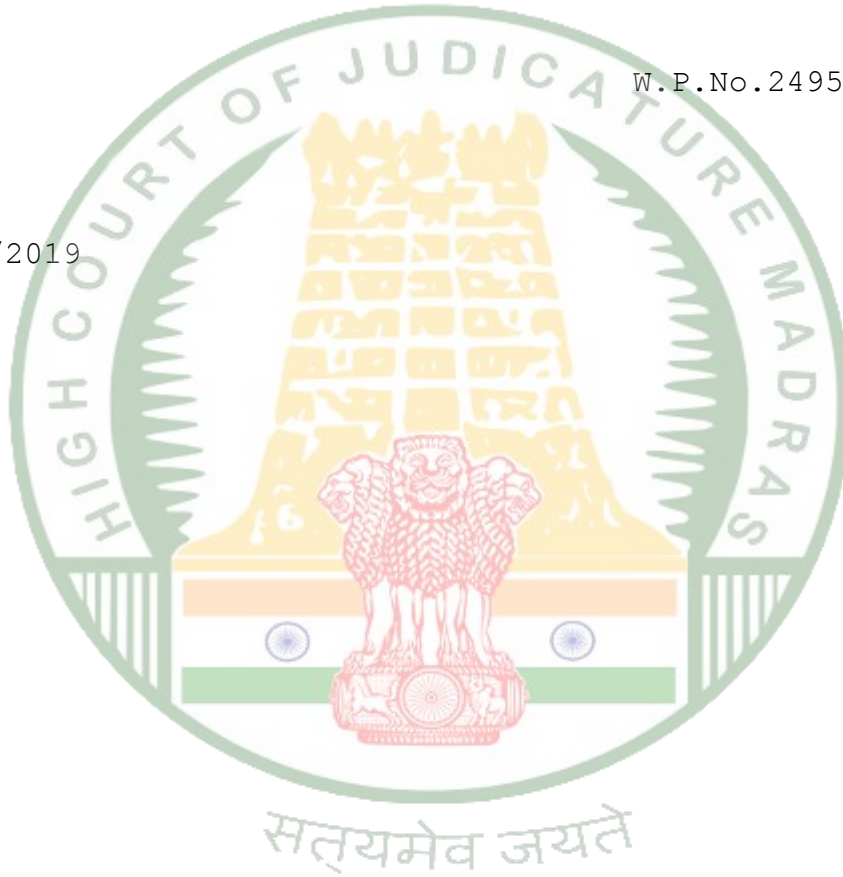
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+lcc to M/s.K.Sathishkumar, Advocate Sr.59069

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