

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.5201 of 2016
and W.M.P.No.4573 of 2016

N.Ramanathan, Proprietor,
 Shri Kumaran Steels,
 No.33, Sundaram Pillai Nagar,
 1st Main Street, Tondiarpet,
 Chennai – 600 081.

.. Petitioner

Vs.

Union of India
 Owing Indian Railways and
 the Integral Coach Factory, rep. by
 the Deputy Chief Materials Manager (SD),
 Integral Coach Factory, Chennai – 600 038.

.. Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the respondent in reference No.ICF/Scrap/SD/15-16, quash the order dated 23.10.2015 and consequently direct the respondent to refund the Earnest Money Deposit made in respect of lot No.A/S/58691/2015-16, Award costs.

For Petitioner : Ms.K.Grahalakshmi

For Respondent : Mr.M.Vijay Anand
 Standing Counsel for Railways

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ORDER

The present Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the respondent in reference No.ICF/Scrap/SD/15-16, quash the order dated 23.10.2015 and consequently direct the respondent to refund the Earnest Money Deposit made in respect of lot No.A/S/58691/2015-16.

2. According to the petitioner, he was a successful bidder in respect of low value rusted scrap in lot No.A/S/58691/2015-16 to the extent of 300 Metric Tons (MT). The EMD amount was fixed at Rs.2,48,070/-, which was paid by him. The gross value of the lot was fixed at Rs.29,63,527/-. As per the sale advice, the petitioner was to pay the balance of Rs.27,15,457/- on or before 03.08.2015.

3. The payment of the first installment for 100 MT was paid and delivery order was also received by the petitioner on 24.07.2015. On 14.08.2015, a letter was sent by the petitioner asking for extension of time. The entire contract was for excavation of 300 MTS and the said contract was for a period of 18 days. As the petitioner started excavating, it is found that the actual material was very

less and was jumble with extraneous materials, the extension of time was given by four days. During the extended period, the petitioner had completed delivery of balance quantity of 100 MT of first installment. The Balance Sale Value (BSV) for balance materials was not paid within the permissible period as mentioned in the Bid Sheet i.e. 20 days from the date of auction.

4. Therefore, the petitioner sent a letter on 07.08.2015 giving information about the payment of first installment. On 20.08.2015, the petitioner had requested the respondent to permit him to clear the lot without ground rent. Further, a reply letter was sent by the respondent on 29.08.2015 refusing the request for cancellation of the lot and the petitioner was advised to clear the material as per the terms and conditions of E-Auction Scrap Sales. Free extension of four working days was also granted by the respondent. During extended period, the petitioner could not complete the project. Therefore, EMD was forfeited by the respondent.

5. Now, the petitioner is seeking to quash the said letter dated 23.10.2015 and to consequently direct the respondent to refund the EMD made in respect of lot No.A/S/58691/2015-16.

6. As per ICF e-auction terms and conditions, the same is not recoverable by the respondent as stated in the counter affidavit. Therefore, nothing survives in the Writ Petition and the impugned order is neither arbitrary nor violative under Article 14 of the Constitution of India. Therefore, the payment of EMD deposited by the petitioner was forfeited.

Thus, the Writ Petition is bereft of merits and the same stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.04.2019

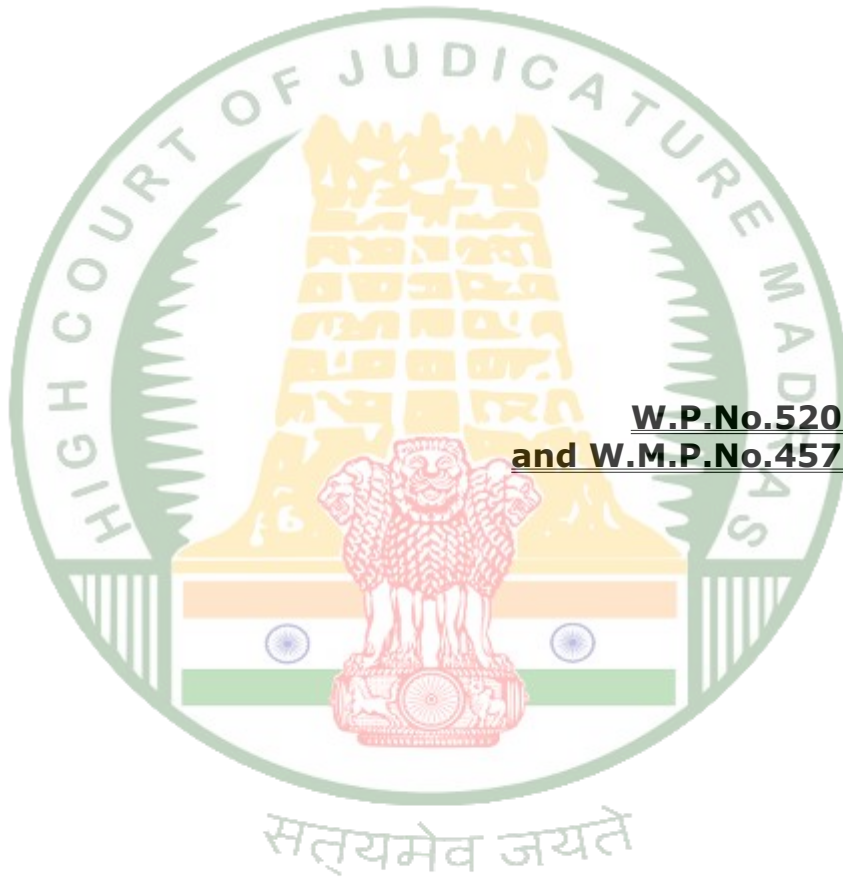
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To

The Deputy Chief Materials Manager (SD),
Union of India,
Integral Coach Factory,
Chennai – 600 038.

PUSHPA SATHYANARAYANA, J.

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