

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

WP.No.3966 of 2017

and WMP. No.4043 of 2017

Thana Industries
Rep by its Managing Partner
Mr.P.Dhanasekar
ITD, SIDCO Industrial Estate,
Paramathi Road,
Namakkal Taluk,
Namakkal District ... Petitioner

Vs.

1.The Principle Secretary,
The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambuswamy Road,
Kilpauk,
Chennai - 600 010.

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Namakkal District,
Namakkal Region.

3.The Deputy Manager,
Tamil Nadu Civil Supplies Corporation,
Namakkal Region,
Namakkal District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records relating to the Impugned Order of the 1st respondent in proceedings order No.MD10/3186/2016 dated 21.09.2016 and the order of the second respondent in Order in Na.Ka.PI.1/1227/15 dated 04.12.2015 and quash the same and direct the respondents to refund the Earnest Money Deposit amount of Rs.8,50,000/- (Rupees Eight Lakhs and Fifty Thousand Only) to the petitioner with interest thereon till realization of the amount.

For Petitioner: Mr.V.Chandrankanthan

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader (Co-op)

ORDER

The writ petitioner challenges an order dated 21.09.2016 passed by the 1st respondent/the Principle Secretary/Managing Director, Tamil Nadu Civil Supplies Corporation confirming an order dated 04.12.2015 passed by the Regional Manager, Tamil Nadu Civil Supplies Corporation.

2. The petitioner had submitted his tender for transportation of commodities from the Food Corporation of India to its Depots for the period from 01.07.2015 to 30.06.2017 and for transportation of stock to its field points for the same period as aforesaid. The Tamil Nadu Civil Supplies Corporation had also floated a tender during the third week of July 2015 for transport of commodities from TNCSC Godown to Anganwadi and Noon Meal Centres for the period 01.07.2015 to 30.06.2017. The petitioner has applied for the same. The 2nd respondent had disqualified the petitioners' applications on the ground that the petitioner had annexed an Experience Certificate that was fake. The petitioner approached this Court challenging the aforesaid order and had been relegated to statutory appellate remedy.

3. An appeal was filed before the first respondent, that had been rejected on 21.09.2016 impugned now, that confirmed the original order passed by the second respondent disqualifying the petitioner from participating in the tender for the year 2015-2017.

4. While confirming the finding of the fact to the effect that the petitioner had forged certain documents and had misrepresented various factual particulars in the application, the first respondent directed forfeiture of Earnest Money Deposit for a sum of Rs.8,50,000/-. The petitioner does not challenge the factual findings of the impugned order but only seeks the refund of the amount forfeited.

5. Heard Mr.V.Chandrankanthan, learned counsel for the petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader (Co-op) for the respondents.

6. My attention had been drawn to various Clauses of the tender documents in terms of which, the respondents are entitled

to cancel the contract/not award the contract upon violation of the tender conditions. Paragraph No.7 of tender conditions provides for forfeiture of the security deposit either partly or fully, if the tenderer fails to comply with the conditions. The clause relied upon by the respondent reads as under:

'7(b) The Security Deposit shall be liable to be forfeited wholly or partly at the sole discretion of Tamil Nadu Civil Supplies, if the successful tenderer either fails to transport as per the schedule specified by the corporation or to fulfill his contractual obligations or to settle in full his dues to Tamil Nadu Civil Supplies Corporation. This will be in addition to Tamil Nadu Civil Supplies Corporation as a right to make alternative arrangement at the risk and cost of the successful tenderer.'

7. However, the position is different in the present case insofar as the tender has not been awarded to the petitioner at all. The only circumstances in which the Earnest Money Deposit is liable to be forfeited as set out in Clause 8 (i) of the tender conditions reads as follows:

'8(i) The amount remitted towards the Earnest Money Deposit is liable to be forfeited if the tenderer withdraws from the offer after submitting his tender'

8. In the present case, there is no dispute that the tender was not awarded at all and Clause 8 (i) of the tender condition will thus not stand attracted.

9. This Writ Petition is thus allowed. The Earnest Money Deposit will be refunded within a period of six (6) weeks from date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

rkp

Sd/-
Assistant Registrar (C.O)

//True Copy//

Sub Assistant Registrar

To

1.The Principle Secretary,
The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambuswamy Road,
Kilpauk, Chennai - 600 010.

2.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Namakkal District, Namakkal Region.

3.The Deputy Manager,
Tamil Nadu Civil Supplies Corporation,
Namakkal Region, Namakkal District.

+lcc to Mr. L.P.Shanmugasundaram, Advocate, SR.No.22679
+lcc to Mr.V.Chandrakanthan, Advocate, SR.No.22003

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Kak (25/04/2019)



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