



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) No.3557 of 2019

and

W.M.P. (MD) No.2783 of 2019

M/s.Bhavadharani Builders,
Rep by its Managing Partner,
Palanikumar

... Petitioner

Vs

The Collector and Chairman,
District Rural Development Agency,
Madurai - 20.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in Na.Ka.No.D6/1477/2017, dated 18.12.2018, on the file of the respondent and quash the same.

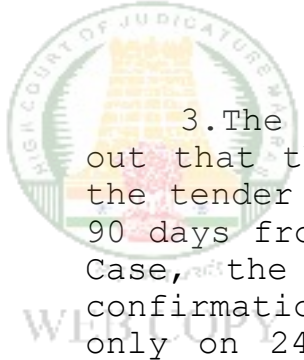
For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.M.Rajarajan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The respondent called for tenders from the interested persons for carrying out improvement and strengthening of two roads in Melur Block under the relevant scheme for the year 2017-18. The petitioner was one of the tenderers. The petitioner's tender was found to be the lowest. The work order dated 03.04.2018 was issued on 24.05.2018 in favour of the petitioner. The petitioner did not come forward to execute any agreement with the respondent for carrying out the said work. Therefore, the respondent issued notice dated 15.09.2018 (received the petitioner on 13.11.2018) for forfeiture of the EMD. The petitioner submitted his explanation, dated 14.11.2018. Not satisfied with the same, the respondent passed the impugned order, dated 18.12.2018, forfeiting the earnest money deposit of Rs.69,000/- made by the petitioner. Challenging the same, this writ petition has been filed.



3. The learned counsel appearing for the writ petitioner pointed out that the tender was submitted on 02.02.2018, even according to the tender notification, the price bid will be valid for a period of 90 days from the date of notified for opening of price bid. In this Case, the price bid was opened on 02.02.2018. But then, the confirmation was not made within a period of 90 days, it was issued only on 24.05.2018. The learned counsel for the petitioner also pointed out that since the work order was issued beyond the period of 90 days, the petitioner was not interested in the work and he intimated the respondent accordingly. He also drew the attention of this Court to the fact that no formal agreement was entered between the parties. He also contended that without affording an opportunity of personal hearing, the impugned order came to be passed.

4. It is not in dispute that the petitioner's tender was found to be the lowest and the respondent had not issued the confirmation order within a period of 90 days. It was certainly open to the petitioner to have taken back the original offer on this ground. The petitioner did not do so. He kept quiet till the work order was issued on 25.04.2018. There is nothing on record to show that the petitioner informed the respondent that since the respondent had not issued the confirmation order within a period of 90 days, the contract cannot be concluded. The only claim made by the writ petitioner in the affidavit is that he orally took up the matter with the respondent. These are matters of commercial contract and we will have to go only by what is on record. There is nothing on record to indicate that the petitioner had taken back his offer. In fact the petitioner chose to respond only when the notice dated 15.09.2018, for forfeiture of the EMD was issued. The petitioner must have withdrawn his tender on the expiry of the 90th day from the date when the price bid was opened. Therefore, I am of the view that the respondent was justified in forfeiting the EMD. I find no ground to interfere with the order impugned in this writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To
The Collector and Chairman,
District Rural Development Agency,
Madurai - 20.

+1 CC to M/s.R.MAHESWARAN, Advocate SR-55229
+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.55303

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