



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P (MD)No.26729 of 2019

S.M.Subramanian

.. Petitioner

Vs.

The Commissioner,
Keelakarai Municipality,
Keelakarai,
Ramanathapuram District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent Municipality to take appropriate action to refund a sum of Rs.3,40,000/- being Earnest Money Deposit paid by the petitioner by way of Demand draft dated 21/01/2019 towards the execution of tender work in Roc.No.1022/2018/E1, dated 06/03/2019, within the period that may be stipulated by this Hon'ble Court.

For Petitioner : Mr.K.Ponnaiah
for M/s.Ajmal Associates

For Respondent : Mr.A.Kannan, Standing Counsel

ORDER

The petitioner seeks a direction directing the respondent Municipality to take appropriate action for refunding a sum of Rs.3,40,000/-, being the Earnest Money Deposit paid by him by way of a demand draft dated 20.01.2019 towards execution of tender work in ROC.No.1022/38/E1, dated 06.03.2019.

2.The petitioner is a I Class Public Works Department registered contractor. He had taken a contract for the work of construction of Fecal Sludge treatment Plant 20 KLD capacity at Municipality Compost yard in Pallamorkulam Village in the respondent Municipality, offering lower bid of Rs.3,17,44,421/- by depositing a sum of Rs.3,40,000/- being the Earnest Money Deposit by way of demand draft. The respondent had issued a notice on 12.06.2019 to complete the work and hand over the same as per the agreement entered. However, the petitioner had sent a reply on 16.06.2019 stating that the jungle clearance and leveling the ground work have to be done. Apart from that, the petitioner has spent more than 5 lakhs towards (1)centering materials (2)mixture machine and (3) two sheds to accommodate the labourers and store



the materials. There was a delay on the part of the petitioner in completing the contract work on various grounds. He has also given explanation for such delay. On 13.09.2019 the respondent Municipality had issued a notice of ultimatum stating that if the contract is not completed within the agreed time, the same will be terminated. Accordingly, on 09.10.2019 the respondent terminated the work order dated 06.03.2019 issued in favour of the petitioner.

3.As stated earlier, the petitioner claims that he had spent about more than 5 lakhs for the preliminary work and he asked for refund of the same. Besides, as the contract itself was terminated, he had asked for refund of the Earnest Money Deposit of Rs.3,40,000/- from the Municipality by sending the representation dated 23.11.2019. As the same was kept pending, he has come forward with the writ of mandamus seeking a direction to the respondent Municipality to consider the same.

4.The learned counsel appearing for the respondent, upon notice, has produced a letter received from the Commissioner, Keelakarai Municipality stating that as per the Tamil Nadu Tender Transparency Act and Rules, if any successful bidder violates any of the condition, the contract will be cancelled and the Earnest Money Deposit kept by them will also be forfeited. However, so far as the petitioner is concerned, the sum of Rs.3,40,000/- which was paid as EMD will be considered for refund, if the local fund audit is over. Only based on the same, any decision regarding refund of the said amount will be taken.

5.As already the respondent has taken steps for considering the representation of refund of EMD amount, no further direction is necessary in this writ petition. However, the respondent is directed to communicate any decision that may be taken in this regard within a period of four weeks.

6.The writ petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

mj



+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-105468[F] dated 17/12/2019)

+1 CC to MR.A.KANNAN, Advocate (SR-105540[F] dated 18/12/2019)

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