

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.23202 of 2013
& WMP.No.6998 of 2016

Shrishti Enterprises Pvt Ltd,
rep. by its Managing Director
R.Kannan,
No.38B/44B First Floor,
G.S.T. Road, Guindy,
Chennai 600 032

... Petitioner

Vs

1.Union of India,
rep. by the Chief Commercial Manager,
Southern Railway(Administration),
Park Town,
Chennai -600 003

2.Union of India,
rep. by the Divisional Railway Manager,
Southern Railway(Commercial),
Park Town,
Chennai-600 003.

....Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to refund the amount collected from the petitioner viz., the Earnest Money Deposit of Rs.1,09,743/- in DD No.003272 dated 01.08.2012 drawn in HDFC Bank, Kotturpuram and Guarantee bond value of Rs.3,00,000/- in BG No.004GTO11122130001 dated 31.07.2012 drawn in HDFC Bank, Kotturpuram and Guarantee Bond of value of Rs.2,25,000/- in DD No.003274 dated 01.08.2012 drawn in HDFC Bank, Kotturpuram, to a total amount of Rs.6,34,743/- since the contract is rescinded due to administrative problem of the respondent.

For Petitioner : Mr.Swaranam J.Rajagopalan for
Mr.M.Jayapal Rajan

For Respondents: Mr.P.T.Ramkumar

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus to direct the respondents to refund the amount collected from the petitioner viz., the Earnest Money Deposit of Rs.1,09,743/- in DD No.003272 dated 01.08.2012 drawn in HDFC Bank, Kotturpuram and Guarantee bond value of Rs.3,00,000/- in BG No.004GTO11122130001 dated 31.07.2012 drawn in HDFC Bank, Kotturpuram and Guarantee Bond of value of Rs.2,25,000/- in DD No.003274 dated 01.08.2012 drawn in HDFC Bank, Kotturpuram, to a total amount of Rs.6,34,743/- since the contract has been rescinded due to administrative problem of the respondent.

2. It is the case of the petitioner that as per Clause 8A of tender conditions, the acceptance or rejection of the tender will have to be communicated within 120 days from the date of receipt of the petitioner's bid. It is also the case of the petitioner that the petitioner's bid was submitted on 06.07.2012, but the respondents communicated the acceptance of the bid only on 30.11.2012 beyond the period of 120 days as stipulated under Clause 8 of the terms and conditions. Since the acceptance was intimated beyond the period of 120 days, the petitioner is entitled for refund of the EMD as well as the return of the Bank guarantees. However, it is the case of the respondents that as per Clause 8(B) of the terms and conditions, the petitioner has given an undertaking that he will not rescind from his offer or seek to modify the terms and conditions. Therefore, he is not entitled for refund of EMD as well as return of the Bank guarantees as they have been forfeited in accordance with the terms and conditions of the tender.

3. Heard, Mr.Swaranam J.Rajagopalan for Mr.M.Jayapal Rajan, learned counsel appearing for the petitioner. and Mr.P.T.Ramkumar, learned Standing Counsel appearing for the respondents. The learned Standing Counsel appearing for the respondents drew the attention of this Court to Clause 37 of the Agreement, which reads as follows:

"37.If any dispute, difference or question shall arise between the Railway Administration and the Licensee as to the respective rights, duties and obligations of the parties hereto or as to the constructions or interpretations of any of the terms and conditions of the Agreement as to its applications(except the decision whereof it herein expressly provided for) then the same shall be referred to the Chief Commercial Manager of the Southern Railway Administration whose decision shall be final".

4. Referring to the aforesaid Clause, the learned Standing Counsel for the respondents would point out that without approaching the Chief Commercial Manager, Southern Railway Administration as stipulated under Clause 37, the petitioner has directly filed the present Writ Petition.

5. The learned Counsel appearing for the petitioner on instructions, submitted that the petitioner is willing to approach the Chief Commercial Manager, Southern Railway Administration in accordance with Clause 37 to seek refund of EMD as well as return of the Bank Guarantees.

6. Recording the submissions made by the learned Counsel on either side, the petitioner is directed to submit a representation to the Chief Commercial Manager, Southern Railway Administration in accordance with Clause 37 of the Agreement for refund of EMD and for return of the original Bank Guarantees within a period of one week from the date of receipt of a copy of this order. On receipt of such representation, the Chief Commercial Manager, Southern Railway Administration, the first respondent herein is directed to dispose of the same by passing final orders on merits and in accordance with law within a period of eight weeks thereafter. It is made clear that the first respondent/ Chief Commercial Manager, Southern Railway Administration shall pass final orders uninfluenced by the earlier order passed by the second respondent, which is the subject matter of this Writ Petition.

7. With the aforesaid direction, this Writ Petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. Union of India,
rep. by the Chief Commercial Manager,
Southern Railway (Administration),
Park Town,
Chennai -600 003

2. Union of India,
rep. by the Divisional Railway Manager,
Southern Railway (Commercial),
Park Town, Chennai-600 003.

+1cc to Mr.P.T.Ramkumar, Advocate SR.2362
+1cc to Mr.Jayapal rajan, Advocate SR.2479

W.P.No.23202 of 2013

SSD(CO)
CB(28/02/2020)



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