

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2020

Pronounced on : 10.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.6064 of 2019

and

W.M.P.No.6888 of 2019

Muthoot Exim Pvt. Ltd.,
Rep.by its Senior Manager (Business Development)
No.18, 18th Floor, Sunshine Towers,
Senapati Bapat Marg,
Mumbai - 400 013.

.. Petitioner

..Vs..

1.State of Tamil Nadu,
Rep.by its Secretary to Government,
Social Welfare Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner,
Panagal Maaligai, 2nd Floor,
Saidapet,
Chennai - 600 015.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, directing to call for the records on the file of the respondents, relating to the impugned order of the 2nd respondent (i) dated 24.12.2018 in P.R.O.C.No.11549/WW-1(1)/2018 (ii) order dated 05.02.2019 in P.R.O.C.No.11549/WW-1(1)/2018 and quash the same; and consequently direct the respondents to refund to the petitioner the sum of Rs.53,00,000/- paid by way of EMD towards the tender for supply 8 gms of gold coin pursuant to the tender dated 27.07.2018 in P.R.O.C.No.11549/WW-1(1)/2018 issued by the 2nd respondent together with such reasonable rate of interest.

For Petitioner : Mr.V.Anand

For Respondents : Mr.A.Kumar, AAG - VII,
Assisted by E.Balamurugan,
Special Government Pleader.

ORDER

This Writ Petition has been filed in the nature of Writ of Certiorarified Mandamus, calling for the records on the file of the respondents, relating to the impugned order of the 2nd respondent, namely, the Commissioner of Social Welfare, Chennai, dated 24.12.2018 and 05.02.2019 and quash the same and direct the respondents to refund to the petitioner a sum of Rs.53,00,000/- paid by way of Earnest Money Deposit (EMD) towards the tender for supply of 1,11,000 Numbers of 8 grams of gold coins pursuant to the tender dated 27.07.2018, issued by the 2nd respondent.

2. In the affidavit filed in support of the writ petition, it had been stated that the petitioner is a Company incorporated under the provisions of the Companies Act, 1956, having its Registered office in Kerala and office at Mumbai. The petitioner states that the 2nd respondent namely, the Commissioner of Social Welfare, Chennai, had issued an advertisement on 31.07.2018, inviting tender in P.R.O.C.No.11549/WW-1(1)/2018 dated 27.07.2018 for the supply of 1,11,000 Numbers of 8 grams of gold coins of 22 carat each. The tender was floated pursuant to the orders issued by the 1st respondent namely, the Secretary to Government, Social Welfare Department, State of Tamil Nadu. This was to distribute 8 grams of gold coins to the beneficiaries under Assistance Schemes by the Government of Tamil Nadu. It had been stated that the cost would be the price of gold which will be the London Bullion Market Association, London Gold Fixing AM under the RBI reference rate, as on the date of opening of the tender. This would also include the making charge, packing charges, insurance, transport costs, taxes and dues, if any applicable and all other expenses.

3. It was stated that the successful bidder was required to hold the gold price for 30 working days. The delivery of the coins was to be completed within 30 days from the date of issue of the firm order. EMD amount deposit of Rs.2,88,00,000/- for total quantity of 1,11,000 Numbers of 8 grams of gold coins was to be paid along with the technical offer by way of Demand Draft in favour of the 2nd respondent. The EMD amount of the unsuccessful tenderer would be returned. The EMD amount of the successful tenderer can be converted as Security Deposit for successful execution. The EMD shall be forfeited, if the tenderer withdrew the tender during the validity period. The tender was to be submitted in two parts, namely, Technical and Financial.

4. The petitioner claimed that the bidders were not required to fill up the price of gold and it was to be taken at the prevailing rate on the date of the opening of tender as per the London Bullion Market Association. It is claimed that the respondents recognized that the price of gold would vary on a day to day basis. The petitioner offered to supply 20,000 Numbers of gold coins, which was permissible as per the tender conditions. The petitioner had quoted a composite price of Rs.600/- excluding the price of gold, and after negotiation the price was reduced to Rs.590/- per 8 grams of gold coin for 20,000 numbers.

5. It was stated that the selection letter dated 19.09.2018 was handed over to the petitioner by the 2nd respondent on 20.09.2018, informing that the petitioner has been selected as the L1 tenderer for supply of 20,000 gold coins. In the interregnum period of 20 days from the date of opening of the tender, there had been a steep rise in the price of gold, due to the volatile market conditions and the price of gold had gone upto Rs.3,065/- per gram as on 19.09.2018 from Rs.3,015/- per gram as on 30.08.2018.

6. The petitioner then addressed a letter dated 24.09.2018 to the 2nd respondent drawing attention to the steep rise in the price of gold, owing to the delay of 20 days in issuing the necessary firm order and due to the fluctuation of the gold price in the London Bullion Market. A reply was sent by the 2nd respondent on 24.09.2018, stating that the final negotiated price of Rs.23,429.76/- per gold coin cannot be varied till the completion of the supply and calling upon the petitioner to furnish Bank Guarantee for a sum of Rs.2,50,00,000/- for issuance of work order. The petitioner addressed another letter dated 26.09.2018, wherein they stated that the price quotation was only for making/packing/hallmarking/insurance/logistic costs and they had no role in quoting the gold price as per the tender conditions and that even during the negotiation, they had not quoted the gold price. The request was made to the respondents to re-appreciate the whole issue.

7. The 2nd respondent replied by letter dated 24.09.2018, that variation in the rate cannot be made till the completion of the supply. Thereafter, the 2nd respondent issued a letter dated 27.09.2018 being the firm order for supply of 20,000 Numbers of gold coins. It was specifically stated that the request of the petitioner for increase in the price of gold cannot be accepted. It was stated that the 2nd respondent had taken the gold price as per the London Bullion Market Association as on 29.08.2018 and the exchange rate as on 30.08.2018.

8. The petitioner claimed that the 2nd respondent had failed to notice that the gold price had increased from 30.08.2018 to 27.09.2018. The petitioner therefore addressed another letter dated 01.10.2018 to the 2nd respondent by e-mail explaining the entire facts. The 2nd respondent issued a reply on 04.10.2018, stating that they will have to forfeit the EMD and blacklist the petitioner's Company, if the Bank Guarantee is not furnished before 04.10.2018. Thereafter, the 2nd respondent issued a show cause notice dated 08.10.2018, calling upon the petitioner to explain as to why the EMD of Rs.53,00,000/- should not be forfeited as per the provisions contained in the Tamil Nadu Transparency in Tenders Act, 1998 and as to why the petitioner should not be blacklisted. The petitioner sent a reply on 11.10.2018.

9. Thereafter, a meeting was held on 22.10.2018. The 2nd respondent then passed an order on 24.12.2018 cancelling the firm order and informing the EMD amount of Rs.53,00,000/- is forfeited and the petitioner's Company would be recommended for blacklisting from participating in any tender of the Government of Tamil Nadu. A 2nd letter containing the para wise remarks of the Department to the reply submitted by the petitioner to the show cause notice. It is stated that the tender document provided for Arbitration which will be applicable only after the agreement for supply being entered into with the 2nd respondent, and since that stage had not been reached, Arbitration clause is not applicable and hence, the petitioner had filed the present Writ Petition.

10. A counter affidavit had been filed by the 2nd respondent in which it had been stated that the tender for procurement of 1,11,000 Numbers of 8 grams of gold coins (22 carat) for the year 2018-19 was floated on 31.07.2018, to implement five marriage Assistance Schemes of the Government of Tamil Nadu, namely, (i).Moovalur Ramamirtham Ammaiyar Ninaivu Marriage Assistance Scheme, (ii).EVR Maniammiyar Ninaivu Poor Daughter Marriage Assistance Scheme, (iii).Annai Terasa Marriage Assistance Scheme for Orphan girls, (iv).Dr.Dharmambal Ammaiyar Ninaivu Remarriage Scheme, and (v).Dr.Muthulakshmi Reddy Ninaivu Intercaste Marriage Assistance Scheme. The acceptance of the tenders was closed on 30.08.2018 at 03.00 p.m. The tenders were opened by 03.30 p.m., by the Tender Scrutiny Committee. It had been stated that the Technical part of the tender was scrutinized by the Tender Scrutiny Committee and all 7 tenders were found fit. Thereafter, the Financial part was opened. It was stated the London Bullion Market Association gold rate on 29.08.2018 FN was 1204.30 \$ and it was taken into account for calculation of the gold rate. They opened the price bid and compared the rate for custom duty, making charges, packing charges, insurance, transport charges and all other expenses

along with the LBMA/RBI reference rate for 8 grams of gold coin (22 carat).

11. The petitioner was chosen as L1 tenderer, since he had quoted a rate of Rs.23,439.76. M/s.Titan Company Limited, Bangalore, was selected as L2 tenderer with the rate of Rs. 23,545.35/-. All the other tenderers were asked to match the rate quoted by the petitioner. But none of the tenderers were willing to do so. Therefore, the petitioner after negotiation was given a confirmation order for 20,000 Numbers of 8 grams of gold coin on the same day namely, 30.08.2018. Thereafter, on 19.09.2018, the Commissioner of Social Welfare, requested the petitioner to submit the Bank Guarantee for Rs.2.5 crores and sample of blister card for further action.

12. The petitioner by letter dated 24.09.2018 stated that the rate of gold had fluctuated sharply and had changed from INR 3065 on 19.08.2018 and they would have to withdraw from the tender and requested return of the EMD. The respondents stated that the successful bidder was required to hold the price for 30 working days as per the tender stipulations. By letter dated 24.09.2018, the 2nd respondent informed the petitioner that the price quoted cannot be varied and requested for Bank Guarantee of Rs.2.5 Crores. The petitioner by letter dated 26.09.2018, requested for consideration of the rate as on that date or permit the petitioner to withdraw from the tender. Thereafter, the petitioner sent another letter dated 01.10.2018, in which it had stated that forfeiture of EMD would not be applicable to the petitioner. By letter dated 04.10.2018, it was informed that the petitioner had to submit the agreement, Bank Guarantee and Blister Card sample within 24 hours, otherwise, the EMD will be forfeited and the petitioner's Company will be blacklisted. The petitioner had written a letter dated 05.10.2018. In reply, however, the respondents issued a show cause notice on 08.10.2018 for not submitting of Bank Guarantee and sample of Blister Card. It was stated that the petitioner should reply on or before 11.10.2018, as to why the EMD should not be forfeited. The petitioner by letter dated 11.10.2018 requested to refund the EMD and requested an opportunity of personal hearing. The 1st respondent by letter dated 16.10.2018, directed the petitioner to meet the Commissioner of Social Welfare in person on 22.10.2018 at 11.00 a.m. However, the petitioner by letter dated 20.10.2018, requested one further week for enabling their advocate to appear and present the case.

13. Thereafter, on 22.10.2018, it was informed to the petitioner that the process of procuring gold coins for the

Marriage Assistance Scheme implemented by the Social Welfare is an administrative procedure executed by the Government Department as per the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and Rules 2000. The petitioner was requested to give a written representation with or without their lawyer on or before 5.00 p.m., on 24.10.2018 and it was made clear that this was the final opportunity. The petitioner in their letter dated 24.10.2018, had stated that the show cause notice was baseless and requested to drop the proceedings. By letter dated 24.12.2018, the EMD amount of the petitioner was forfeited for not adhering to the tender stipulations. It was also informed that the petitioner/Company will be recommended for blacklisting. Another letter dated 24.12.2018 was sent to the petitioner, explaining the factors driving to the forfeiting of the EMD amount and recommending the petitioner/Company for blacklisting. In further letter dated 05.02.2019, it was informed to the petitioner that inspite of sufficient time and chances given, the petitioner did not comply with the terms and conditions and the firm order issued was cancelled and consequent to the cancellation of firm order, the EMD amount of Rs.53,00,000/- was forfeited and the petitioner's Company was blacklisted. It was denied that the impugned orders were passed arbitrarily. It was stated that the rate of gold was not fixed by the Department. It was stated that the tender documents had clearly stated that the rate of the gold as per the London Bullion Market Association on the date of the opening of the tender and it shall be converted into RBI rate and the successful bidder will have to hold the price for 30 days. It was also stated that the sample of blister card and model of gold coin was also issued to the petitioner at Mumbai for taking steps to supply of gold coins. It is submitted that the petitioner had been granted adequate opportunity and only thereafter, the impugned orders were passed and it was therefore, stated that the Writ Petition should be dismissed.

14. A re-joinder was filed by the petitioner to the counter affidavit, wherein, it was stated that the tender contained onerous conditions with respect to the uncertainty of prices and therefore, the tender itself is not maintainable. It was also stated that the issue whether the tender was void will also have to be considered. The contentions in the affidavit filed in support of the writ petition were repeated. It was stated that the respondents had not answered the averment that the bullion market was volatile immediately after 30.08.2018. It was stated that the writ petition should be allowed.

15. Heard arguments advanced by Mr.V. Anand, learned counsel for the petitioner and Mr.A. Kumar, learned Additional

Advocate General, for Mr.E.Balamurugan, Special Government Pleader for the respondents.

16. The respondent had floated a tender for procurement of 1,11,000 Numbers of 8 grams of gold coins (22 carat) for year 2018-2019 on 31.07.2018 to implement 5 marriage assistance schemes of the Government of Tamil Nadu namely, (i).Moovalur Ramamirtham Ammaiyar Ninaivu Marriage Assistance Scheme, (ii). EVR Maniammiyar Ninaivu Poor Daughter Marriage Assistance Scheme, (iii).Annai Terasa Marriage Assistance Scheme for Orphan girls, (iv).Dr.Dharmambal Ammaiyar Ninaivu Remarriage Scheme, and (v).Dr.Muthulakshmi Reddy Ninaivu Intercaste Marriage Assistance Scheme. The acceptance of the tender was closed by 30.08.2018 at 3.00 p.m. In the tender notice, it was stated that the tender will be opened on 30.08.2018 at 03.30 p.m., in the office of the 2nd respondent by the Tender Scrutiny Committee in the presence of the Commissioner of Social Welfare and representative of the tenderers. It was stated that the EMD of Rs.2,88,00,000/- has to be remitted by Demand Draft. It was further stated that the pre-bid meeting would be held on 16.08.2018 at 03.00 p.m. In the qualification criteria it had been provided that the gold coin should be 22 carat purity of 8 grams weight.

17. In clause 4.1.g of the tender documents, it was provided as follows:

"4.1.g. The successful bidder (hereinafter called the "supplier") will have to hold the price for 30 working days."

It was stated that the successful bidder will have to hold the price for 30 working days.

18. In Clause 8.7.b and 8.7.c, of the tender documents, it was stated as follows:

"8.7.b.The bidders will quote a firm, fixed and composite price including the making charges, packing charges, insurance, transport charges, taxes and duties if any and all other attendant expenses incurred in the delivery and distribution of the gold coins. The price bid should reflect the cost of individual components. The break-up quoted by the tenderers will be used solely for evaluation purpose but the composite price quote will be treated as fixed for the purpose of payment.

8.7.c.The price of gold will be the London Bullion Market Association London Gold Fixing AM (suitably adjusted for 22 carat i.e., the London Bullion Market Association AM fixing will be multiplied by 22 and divided by 24) and at the RBI Reference Rate-INR/1 USD as on the date of opening of tender."

19. The clause 12 of the tender documents relates to Issue of Firm Orders, it was provided as follows:

"12.The firm orders will be issued to the successful bidder by the Commissioner of Social Welfare after finalization of the rate."

20. In clause 13(a) of the tender documents, it was provided as follows:

"13.a.Successful bidder shall execute and agreement with Commissioner of Social Welfare within two days of award of contract, duly accepting the terms and conditions for carrying out the work."

21. The clause 21 of the tender documents relates to Arbitration, it was provided as follows:

"The Commissioner of Social Welfare and the supplier shall make every effort to resolve amicably by direct negotiation any disagreement or dispute or misunderstanding arising between them in connection with this contract. If any dispute shall arise between Commissioner of Social Welfare and the supplier on aspects not covered by this tender document or supply order, or operation thereof, or the rights, duties or liabilities under these except as to any matters, the decision of which is specially provided for by the general or the special conditions, such dispute shall be referred to two arbitrators, one to be appointed by each party and the said arbitrators shall appoint an umpire in writing before entering on the terms or reference and the award of the arbitration or umpire, as the case may be, shall be final and binding on both the parties. The arbitrators or the umpire as the case may be, with the consent of

parties, may modify the time frame for making and publishing the award. Such arbitration shall be governed in all respects by the provision of the Indian Arbitration Act or its later modifications and the rules there under and any statutory modification or re-enactment, thereof. The arbitration proceedings shall be held in Chennai, India."

22. In Annexure-III, the component-wise break up (in Rupees) of 8 grams of gold coin was given. It was provided as follows:

Component	Quantity offered	Unit Cost	Total Cost	Amount in words
1.Price of gold		The price will be the London Bullion Market Association London Gold Fixing AM (suitably adjusted for 22 carat) and at the RBI Reference Rate INR/1 USD as on dd.mm.yyyy, i.e., on the date of opening of tender		
Taxes, duties if applicable				
Discount on price of Gold coins in absolute numbers				
II.				
a. Making charges				
b. Packing charges				
c. Insurance				
d.Transport charges				
e.Other attendant expenses (Please specify)				
GST as applicable				
Total II (Composite price)				

* The London Bullion Market Association AM fixing will be multiplied by 22 and divided by 24."

23. In Annexure-III (2), it was provided as follows:

"2.Conditional tenders will not be accepted and rates once fixed shall be valid for the entire contract period."

24. By letter in ROC.No.11549/WW-1(1)/2018 dated 30.08.2018, the 2nd respondent had issued the following letter to the petitioner:

"ROC.No.11549/WW-1(1)/2018 dated 30.08.2018:

Sub: Social Welfare-Woman Welfare-Marriage Assistance Scheme-procurement of gold coins for 2018-19 - Tender for 20,000 nos.of 8 grams gold coin - Selected as L1 Tenderer - Negotiation requested - Reg.

Ref: Your Tender bid dated 30.08.2018.

As per the reference cited, you have quoted the rate of eight grams gold coin as Rs.23,439,76/- for supply of 20,000 nos. and you have been selected as the L1 tenderer. In this connection, you are requested to come for negotiation at 11.00 a.m on 31.08.2018 to the office of the Commissioner of Social Welfare without fail."

25. It is seen that on the date of the opening of the tender, the petitioner had been informed that they were L1 Tenderer and they were called for negotiation on the very next day, namely, 31.08.2018. The petitioner replied as follows on 30.08.2018:

"Dear Sir/Madam,

Sub: Social Welfare-Woman Welfare-Marriage Assistance Scheme-procurement of gold coins for 2018-19 - Tender for 20,000 nos.of 8 grams gold coin - Selected as L1 Tenderer - Negotiation requested - Reg.

Ref: ROC.No.11549/WW-1(1)/2018.

We are glad to revise the composite price from Rs.600/- to Rs.590/- per 8 gram coin for 20,000 units. Hope this suits your requirement."

26. On the very same day, the 2nd respondent had informed the petitioner that they have been selected and the following letter was addressed:

"ROC.No.11549/WW-1(1)/2018

Sub: Social Welfare-Woman Welfare-Marriage Assistance Scheme-procurement of gold coins for 2018-19 - Tender for 20,000 nos.of 8 grams gold coin - Selected as L1 Tenderer - Negotiation requested - Reg.

Ref: Your Tender bid dated 30.08.2018.

As per the reference cited, you have quoted the rate for eight grams gold coin as Rs.23,429,46/- for supply of 20,000 nos. and you have been selected as the L1 tenderer. Further process in respect of issue of firm order will be informed to you in due course.

Commissioner of Social Welfare"

27. This aspect has been pointed by the learned counsel for the petitioner who stated that the firm order which was stated would be issued in due course of time, was not issued within a reasonable period of time. It was stated that after 30.08.2018 when the petitioner had quoted the price, there was a volatile fluctuation in the gold market and the London Bullion Market Association rate increased sharply. The petitioner also addressed the letter on 03.09.2018 to the 2nd respondent to give one sample of 8 grams of gold and blister, which would be returned by 07.09.2018. This was also given by the 2nd respondent. Thereafter on 19.09.2018, the 2nd respondent addressed the following letter to the petitioner:

"ROC.No.11549/WW-1(1)/2018, dated
19.09.2018

Sub: Social Welfare-Woman Welfare-Marriage Assistance Scheme-procurement of gold coins for 2018-19 - Tender for 20,000 nos.of 8 grams gold coin - Selected as L1 Tenderer - Bank Guarantee and Blister card sample requested - Reg.

Ref: Your Tender bid dated 30.08.2018.

As per the reference cited, you have been selected as L1 tenderer for supply of 20,000

nos.of eight grams gold coins at the rate of Rs.23,429.46 (including GST). The firm order for the supply of 20,000 nos. of eight grams gold coins will be issued to you shortly. In the meantime, you are requested to submit the Bank Guarantee for Rs.2.50 Crores (Rupees Two Crore Fifty Lakh only) and sample of blister card for further action.

Sd/-

V.Amuthavalli

Commissioner of Social Welfare"

28. It was only after this letter that the petitioner started complaining about the fluctuations in the rate. It must be mentioned that according to the terms and conditions, the successful tenderer should hold on to the price for a period of 30 days. The learned counsel for the petitioner, in this connection, stated that the contract envisaged a contingency and therefore, it was a void contract. He relied on Sections 31 - 36 of the Contract Act, 1872. I disagree with the said contention.

29. In the present case, the price was fixed as on 30.08.2018 and it was to be kept in hold for 30 days. That was the basis of the invitation to participate in the tender. The 2nd respondent had floated a tender inviting offers for supply of 1,11,000 Numbers of 8 grams of gold coins (22 carat). The petitioner had an option, he could participate in the tender and submit the bid. He can also stand in the byeline and be a mere spectator. The petitioner chosen to participate in the tender. The petitioner then submitted their prices. The petitioner being in the very same business and being incorporated under the provisions of the Companies Act, 1956, and experienced in the trade, would have been aware, that if one of the terms of the tender was that the price should be held for 30 days, there was always a possibility of fluctuation in the price. The petitioner should have factored those aspects while deciding to participate in the tender. The petitioner voluntarily participated in the tender and offered the price. The petitioner also appeared for negotiation and reduced the price offered. After having appeared for the negotiation, the petitioner effectively, snuffed out all other bidders from even being considered by the respondent. The petitioner were also informed on 30.08.2018 itself, that they have been selected as the L1 Tenderer. They had sought for samples of gold coin and blister card. This was given on 03.09.2018. The tender was for supply of 1,11,000 Numbers of 8 grams of gold coins of 22 carat each. There being no indication that there would be a cancellation of

the requirement, an obligation had been placed on the petitioner to commence production of such gold coins. The petitioner had not chosen to do so. The petitioner cannot turn around and put the blame on the 2nd respondent for this inaction on their part. The petitioner who should have held on to the price for a period of 30 days had on 24.09.2018, well before the period of 30 days, had addressed the 2nd respondent to allow them to withdraw from the tender. The terms of the tender were very clear. The petitioner knew it and had participated with knowledge.

30. The Clause 7 relates to Earnest Money Deposit and clause 7.e is as follows:

"7.e. The Earnest Money Deposit amount shall be forfeited to the CSW, if a tenderer withdraws the tender during the validity period specified in the tender or fails to sign the Tender or to remit Security Deposit within the respective due dates."

31. The petitioner had been called upon for supply of 20,000 Numbers of gold coins. The petitioner had not submitted even one gold coin. The petitioner must also realize that the 2nd respondent had equally suffered huge amount of loss by the delay of the petitioner in coming forward to accept the tender to the terms agreed by them. Even thereafter, the petitioner was granted more than sufficient opportunity. It is seen that within 13 working days after the opening of the tender, the petitioner was requested to submit Bank Guarantee and sample of blister card but the petitioner were failed to submit Bank Guarantee and failed to submit sample of blister card. Since the petitioner quoted the price for only 20,000 Numbers of gold coins, a second round of tender was made with other participants and M/s.Titan Company Limited, Bangalore was selected as L1 tenderer for the balance 91,000 Numbers of gold coins. A firm order was issued on 27.09.2018, to both the petitioner and M/s.Titan Company Limited on 27.09.2018, that is on the 19th working day after the opening of the tender. In the counter affidavit, it has been stated that M/s.Titan Company Limited, Bangalore, completed the supply of 91,000 Numbers of gold coin at the same rate. It was only therefore, that the 2nd respondent by letter dated 04.10.2018, had put the petitioner on notice that the EMD would be forfeited and the petitioner Company would be blacklisted. The petitioner sought an opportunity of personal hearing. An opportunity was granted, but the petitioner sought one further week of time. The petitioner was further informed to give a written representation and time was given.

32. Rule 30(5) of the Tamil Nadu Transparency in Tenders Rules 2000, is as follows:

" 30.(5) In case the successful tenderer fails to execute necessary agreements as prescribed within the period specified, then his Earnest Money Deposit (EMD) shall be forfeited and his tender held as non-responsive."

33. After giving more than sufficient opportunity, the impugned orders has been passed by the 2nd respondent. As a matter of fact, Clause 7(e) of the Tender Documents also provides for forfeiture of the EMD amount. When the petitioner had accepted to hold the price for 30 days, I hold that they, being experts in the market cannot turn around and withdraw from the tender, owing to the fact that they could not hold the price for 30 days.

34. With respect to the clause for Arbitration, it is seen that arbitration can be resorted to only with respect to disputes regarding aspects not covered under the tender documents. Forfeiture of the EMD amount has been provided under the tender documents. Therefore, I find no infirmity in the impugned orders forfeiting the EMD amount of Rs.53,00,000/-.

35. With respect to blacklisting, the 2nd respondent had originally stated that the petitioner would be recommended for blacklisting and since, the petitioner had not replied for the same, the 2nd respondent, had blacklisted the petitioner Company from the Government tenders.

36. In view of the above reasons, I hold that the petitioner has not made any case to interfere with the impugned orders. Therefore, the Writ Petition stands dismissed. No order as to costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.S.III)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary
Government of Tamil Nadu,
Social Welfare Department,
Fort St.George,
Chennai - 600 009.

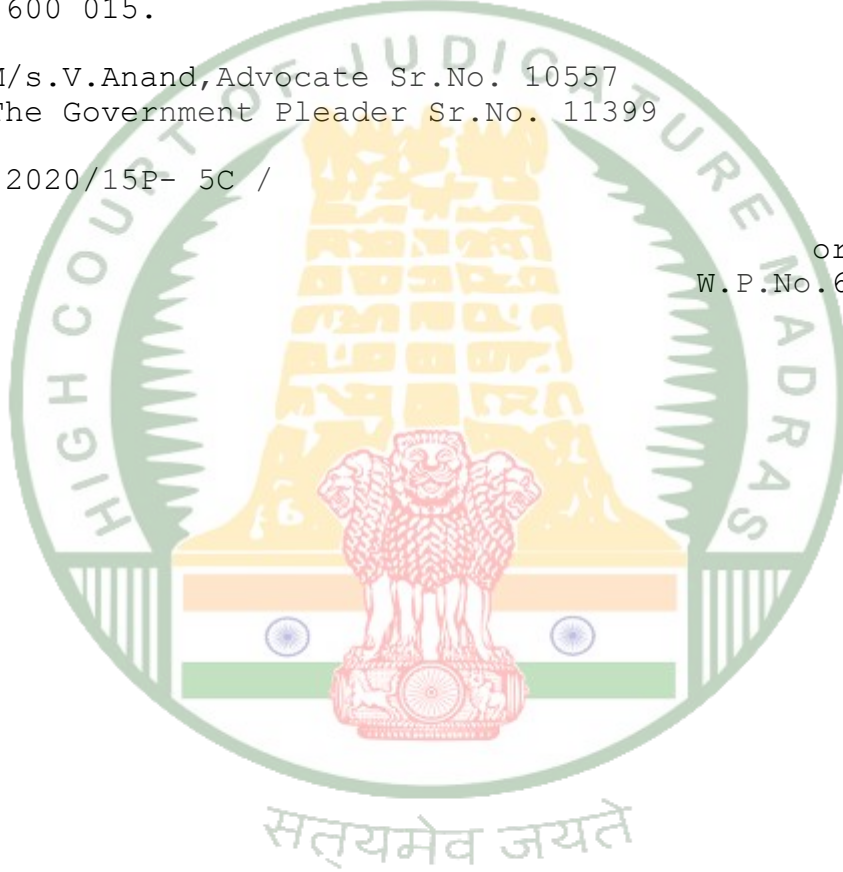
2.The Commissioner,
Panagal Maaligai, 2nd Floor,
Saidapet,
Chennai - 600 015.

+1 cc to M/s.V.Anand,Advocate Sr.No. 10557

+1 cc to The Government Pleader Sr.No. 11399

AKM/12.02.2020/15P- 5C /

order made in
W.P.No.6064 of 2019



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