



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.01.2020

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
W.P(MD)Nos.26893 OF 2019 and 347 of 2020

and

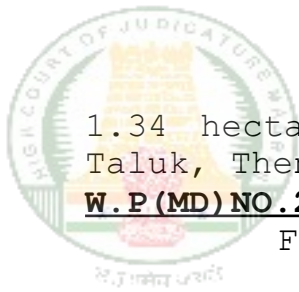
W.M.P(MD)Nos.23251 of 2019 and 267 and 268 of 2020

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- 1.Kannan :Petitioner in W.P(MD)No.26893 of 2019
2.P.Rokkam :Petitioner in W.P(MD)No.347 of 2020
.vs.
1.The District Collector,
Theni District.
2.The Assistant Director,
Geology and Mining,
Theni. : Respondents in W.P(MD)No.26893 of 2019
3.The Director of Mines and Minerals,
Department of Geology and Mining,
Guindy,
Chennai - 600 002.
2.The District Collector,
Office of the District Collector,
Theni District.
3.The Additional Director of Mines and Minerals,
Office of the District Collectorate,
Theni,
Theni District. :Respondents in W.P(MD)NO.347 of 2020

PRAYER IN W.P(MD)NO.26893 OF 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the first respondent dated 28.11.2019 in Na.Ka.No.281/Mineral/2019 and quash the same and consequently to direct the first respondent to receive the 90% of the bid amount from the Petitioner and to execute the lease deed in favour of the Petitioner in respect of the stone quarry in S.No.1290(Part-II), Kovilpatti Village, Andipatti Taluk, Theni District.

PRAYER IN W.P(MD)NO.347 OF 2020: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records by the second respondent in Na.Ka.No.284 Mines/2019, dated 28.11.2019 and quash the same and consequently to direct the respondents herein to receive the balance bid amount of Rs.24.25 lakhs from the Petitioner and execute the lease agreement in favour of the Petitioner in respect of Government Poramboke lands in S.No.741, ad-measuring



1.34 hectares situated at Shanmugasundarapuram Village, Andipatti Taluk, Theni District within the time stipulated by this Court.

W.P(MD) NO.26893 OF 2019:

For Petitioner

:Mr.V.Meenakshisundaram
for Mr.J.Anandkumar

For Respondents

:Mrs.J.Padmavathi Devi
Special Govt.Pleader

W.P(MD) NO.347 OF 2020:

For Petitioner

:Mr.Veerakathiravan
Senior Counsel for Mr.C.Jeganathan

For Respondents

:MrM.Rajarajan
Govt.Advocate.

COMMON ORDER

W.P(MD)No.26893 of 2019 has been filed seeking issuance of a Writ of Certiorarified Mandamus to quash the impugned order of the first respondent, dated 28.11.2019 in Na.Ka.No.281/Mineral/2019 and consequently to direct the first respondent to receive the 90% of the bid amount from the Petitioner and to execute the lease deed in favour of the Petitioner in respect of the stone quarry in S.No.1290(Part-II), Kovilpatti Village, Andipatti Taluk, Theni District.

2.W.P(MD)No.347 of 2020 has been filed seeking for issuance of a Writ of Ceritiorarified Mandamus to quash the proceedings of the second respondent in Na.Ka.No.284 Mines/2019, dated 28.11.2019 and consequently to direct the respondents herein to receive the balance bid amount of Rs.24.25 lakhs from the Petitioner and execute the lease agreement in favour of the Petitioner in respect of Government Poramboke lands in S.No.741, ad-measuring 1.34 hectares situated at Shanmugasundarapuram Village, Andipatti Taluk, Theni District within the time stipulated by this Court.

3.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

4.The Writ Petitioners were the successful bidders who had paid 10% of the bid amount but failed to pay the balance 90% of the bid amount, resulting in forfeiture of their 10% bid amount. The said forfeiture order is under challenge before this Court . In W.P(MD) No.26893 of 2019, by Government Notification, dated 6.11.2019 tender for stone quarry operation was called for in respect of S.No.1290(part-II) Kovilpatti Village, Andipatti Taluk, Theni District. In W.P(MD)No.347 of 2020 by Government notification, dated 5.11.2019 tender for stone quarrying operations was called for in respect of land comprised in S.No.741, ad-measuring an extent of 1.34 hectares situated at Shanmugasundarapuram Village, Andipatti Taluk, Theni District.



5. In W.P(MD)No.26893 of 2019, the Writ Petitioner was the highest bidder having quoted Rs.77,85,000/-. As per the tender notification, he was directed to pay the 10% of the amount immediately and the Petitioner had also paid a sum of Rs.77,85,000/- towards 10% of the bid amount. The said payment was made on 20.11.2019.

6. In W.P(MD)No.347 of 2020, the Petitioner is the highest bidder having quoted Rs.27 lakhs. As per the tender notification, the Petitioner was directed to pay 10% of the bid amount and the Petitioner has also paid a sum of Rs.2,50,000/- being the 10% of the bid amount. The said payment was made on 20.11.2019.

7. Being the highest bidders, as per rules, remaining 90% of the bid amount ought to have been paid by the Petitioners within seven days which would be on 26.11.2019. However, the Petitioner in W.P(MD)No.26893 of 2019 could not mobilise the 90% of the bid amount within the time mentioned by the second respondent and made a request, dated 26.11.2019 seeking 45 days time to pay the balance of the bid amount. It is stated by the Petitioner that though he had sought for 45 days time, he could not make ready the amount immediately. However, by then, the impugned orders were passed by the District Collector forfeiting the 10% of the respective bid amounts. The said orders are under challenge and now the Petitioners are willing to pay the remaining 90% of the bid amount immediately.

8. Perusal of the rules and tender conditions are otherwise.

9. The learned counsel for the respondents was directed to ascertain whether as per the rules fresh auction has to be called for or the second highest bidder has to be given the lease. The first and second respondents have filed their counter which states that because of the pendency of the Writ Petitions, second auction could not be notified. Now the question remains to be decided is as to whether the Petitioners are entitled for refund of 10% of the bid amount which was forfeited by the authorities.

10. In this regard, it is worthwhile to advert to Rule 8(5)(vi) and(vii) of the Tamil Nadu Minor and Minerals Concession Rules, 1959, which reads as follows:

'8(5)(vi) After the name of the successful bidder or tenderer, as the case may be, is declared by the District Collector, such person shall pay 10% of the bid amount or tender amount, as the case may be, immediately. If he fails to pay the 10% of such amount immediately, he shall lose his bid or tender, as the case may be and his earnest money deposit shall be forfeited to the Government. In such case, the next below highest bidder

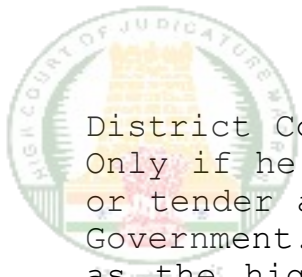


or tenderer, as the case may be, the offer of whom is greater, shall be declared bidder or tenderer, as the case may be, the person eligible to obtain the lease provided such amount is considered reasonable by the District Collector such person shall be called upon to make the 10 percent initial payment immediately. Until the District Collector considers the next below bid or tender amount, as the case may be, as reasonable in the circumstances of the case, the District Collector shall have the option to continue the above process of application of the "next below Rule" and on the contrary, he shall bring the quarry for re-auction and re-tender. Excepting the forfeited earnest money deposit, the earnest money deposit of the bidders and tenderers other than the successful bidder or tenderer, as the case may be, shall be returned after the entire process of auction, tender is over and after obtaining acknowledgement for receipt of the demand draft. It shall be sent by registered post in due course to those persons who are not present. A tenderer who may be present in the place of auction, he may enclose a demand draft for the amount equal to 10% of the amount quoted by him in the tender along with the earnest money deposit amount in the same sealed cover."

(vii) The remaining 90 percent of the tendered amount or bid amount, deducting the earnest money deposit already made, shall be paid within a week's time thereafter. If this balance amount is not paid within the above stipulated time, 10 percent amount already paid immediately after the auction or tender opening along with the earnest money deposit shall be forfeited to the Government.)

11.The tender conditions are also in consonance with the above said rules. The condition No.12 of the Government Gazette issued with respect to the impugned auction, dated 5.11.2019 has categorically stated that the highest bidder has to deposit 10% of the bid amount once he has been declared as the highest bidder by the Collector or his delegates. On receipt of 10% from the highest bidder, his tender has automatically stands confirmed and he has to pay the balance 90% of the bid amount within seven days thereafter.

12.The learned counsel for the Petitioners would submit that there was no confirmation of their bid and therefore without the confirmation, they could not have deposited the 90% of the bid amount. A reading of Rule 8(5) (VI) of the above Act quoted above would go to show that the successful bidder declared by the



District Collector shall pay the 10 of the bid amount immediately. Only if he fails to pay 10% of the bid amount, he will lose his bid or tender as the case may be and the EMD shall be forfeited to the Government. Then the next below highest bidder will be considered as the highest bidder subject to the satisfaction of the District Collector.

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13.The next question that involves in this case is the refund of 10% of the bid amount paid by the Petitioners. Rule 8(5)(7) of the above Act specifically states that the remaining 90% of the tender amount or bid amount deducting the EMD already made shall be made within a weeks time thereafter. Only on failure to pay the said balance amount within the time stipulated, 10% of the bid amount already paid shall be forfeited by the Government. It is not in dispute that in both Writ Petitions, the highest bidders could not mobilise the 90% of the bid amount and pay it within the time stipulated. In W.P(MD)No.26893 of 2019,it is more evident by the request letter sent by the Petitioner seeking extension of time. Though the Petitioners are ready with the balance portion of the bid amount today, the discretion cannot be exercised as one has to go by the rules and procedures strictly, in these matters. It is also stated that the second highest bidder has already withdrawn his EMD and the question of calling upon the second highest bidder and awarding lease also does not arise. When the 10% of the bid amount already deposited by the Petitioners has rightly been forfeited by the respondents, the next course of action would be only to go for re-auction.

14.The learned Special Government Pleader appearing for the respondents would submit that in view of the pendency of the Writ Petitions and as they have to wait for the outcome of the same, the re-auction could not be conducted immediately. As the forfeiture of 10% of the bid amount by the Petitioners is rightly done by the respondents as per law, there is no infirmity or irregularity in the impugned orders. Therefore, it is open to the Petitioners to take part in the tender that may be announced by the respondents in future, if they so desire.

15.In the light of the above discussions, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

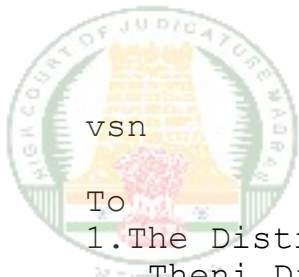
Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar(CS)



To

1.The District Collector,
Theni District.

2.The Assistant Director,
Geology and Mining,
Theni.

3.The Director of Mines and Minerals,
Department of Geology and Mining,
Guindy,
Chennai - 600 002.

4.The Additional Director of Mines and Minerals,
Office of the District Collectorate,
Theni,Theni District.

+1CC TO Mr.C.Jeganathan, Advocate, Sr.No.3672/20

+1cc to Mr.J.Anandkumar, Advocate, Sr.No.3649

+1cc to Spl.Govt.Pleader, Sr.No.3891

COMMON ORDER MADE IN
W.P(MD)NOS.26893 OF 2019
and 347 of 2020
and
W.M.P(MD)Nos.23251 of 2019
and 267 and 268 of 2020
29.01.2020

SMA/11/02/2020/6P/8C