



IN THE HIGH COURT OF JUDICATURE AT MADRAS

|             |               |
|-------------|---------------|
| RESERVED ON | PRONOUNCED ON |
| 25.11.2021  | 09.12.2021    |

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. NOS.3762 & 17429 OF 2021

AND

W.M.P. NO. 4286, 4608, 18503 & 18504 OF 2021

Bismillah Industrial Steel Suppliers  
rep. By its Managing Partner  
Mr. S.Kaleelullah  
No.7, Quaid-E-Milleth Street  
TMP Nagar, Padi, Chennai 600 050.

.. Petitioner in both WPs

- Vs -

1. Deputy Chief Material Manager  
Stores Department, Shell Depot  
Integral Coach Factory  
Perambur, Chennai - 38.
2. Deputy Chief Material Manager  
Furnishing Depot  
Integral Coach Factory  
Perambur, Chennai - 38.
3. Assistant Material Manager  
MRVC/Shell Depot  
Integral Coach Factory  
Perambur, Chennai - 38.

.. Respondents in both Wps

W.P. No.3762 of 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 1<sup>st</sup> respondent to extend the delivery period to 180 days for the e-auction sale held on 15.07.2020 for ICF SHELL DEPOT vide Bidsheet No.31848647 dated 15.7.2020 to the petitioner and issue delivery points for completing the delivery order.

W.P. No.17429 of 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1<sup>st</sup>



respondent Order in ICF/SD/Vig/Stores 21-22 dated 9.8.2021 and quash the same and direct the respondents to allow entry of the petitioner firm into the Integral Coach Factory to remove the balance scrap of 358.57 metric tonnes of scrap under the Bidsheet No.31848647 dated 15.7.2020 under e-auction held on 15.7.2020 by providing delivery points to the petitioner.

For Petitioner : Ms.Narmadha Sampath in WP 17429/21  
Mr.Edwin Prabhakar in WP 3762/21

For Respondent : Mr.P.T.Ramkumar, Std. Counsel  
(both cases)

#### COMMON ORDER

The petitioner, doing business in Iron, Steel and non-ferrous items and procurement and supplies of the above materials, participated in the e-auction conducted by the 1<sup>st</sup> respondent for MS Scrap, Plastic Scrap/zero value waste unusable to ICF mixed with Aluminum, stainless steel and copper for a total quantity of 450 Metric Tonnes and came out successful in the e-auction held on 15.7.20 for a value of Rs.22,82,235/-. After paying the initial deposit and also subsequently the total value, delivery order was issued by the 1<sup>st</sup> respondent on 24.7.20 with certain terms and conditions of which one of the condition included delivery of scrap to be made in the presence of designated officials of Executive Department, Accounts Department and RPF.

2. It is the further case of the petitioner that the petitioner was not provided with delivery point on regular basis citing the pandemic situation and also non-availability of lesser number of officials to oversee/supervise the delivery. Due to the pandemic situation, the petitioner could not perform the complete lifting of the scrap during the allotted period, resulting in granting of one extension upto 17.10.21 vide communication of the 3<sup>rd</sup> respondent dated 10.10.20. In spite of the said extension, due to non-availability of stock verifiers and non-mentioning of delivery points, the petitioner was not able to lift the scrap. Therefore, the petitioner made a representation dated 15.1.2021 requesting to extend the free delivery period of 180 days to lift the balance quantity of 358.70 Metric Tonnes as the petitioner, upto the said point, had lifted only 91.43 Metric Tonnes by a further period of 180 days.

3. However, without acceding to the said representation, communication dated 24.2.2021 emanated from the respondents seeking the NEFT details of the petitioner for refunding the amount towards the undelivered quantity. Pending the petitioner



furnishing the aforesaid details, all of a sudden, the impugned order dated 9.8.2021 was passed banning business dealings with the petitioner for a period of 24 months from the date of issue of the said letter and the petitioner was also not allowed to enter the ICF Factory in connection with the delivery of scrap for a period of 24 months except for taking deliveries of already purchased lots.

4. Initially, the petitioner's representation dated 15.1.2021 not having been considered, W.P. No.3762/2021 was filed seeking a direction to the 1<sup>st</sup> respondent to extend the delivery period, in which notice was issued by this Court. However, pending the said writ petition, the impugned order came to be passed by the 1<sup>st</sup> respondent, which has been assailed in W.P. No.17429/2021 and as both the writ petitions are interconnected with one other and relating to the same issue, which is the subject matter before this Court, both the matters are taken up together for hearing.

5. Learned counsel appearing for the petitioner submitted that out of blue, the petitioner was visited with the impugned order, which barred business dealings with the petitioner for a period of 24 months and prohibiting the petitioner from entering into the ICF Factory in connection with delivery of scrap for a period of 24 months. It is the specific submission of the learned counsel for the petitioner that there is total violation of principles of natural justice as no opportunity was given to the petitioner before passing the impugned order. It is the further submission of the learned counsel for the petitioner that the order passed by the 1<sup>st</sup> respondent is bereft of any details and it is a non-speaking order, which also vitiates the order.

6. It is the further submission of the learned counsel for the petitioner that when the petitioner was adjudged the successful bidder and he has paid the bid amount, passing of the impugned order barring the petitioner from lifting the scraps for which payment has already been made by the petitioner is wholly arbitrary, unjustified and bereft of any legality.

7. It is the further submission of the learned counsel for the petitioner that the petitioner has not violated nor indulged in any illegality and in the absence of any assertion by the respondents relating to violation or illegality committed by the petitioner in the impugned order, the order banning entry of the petitioner into the factory of the respondents is wholly illegal and affects the business standing of the petitioner among the trading community.



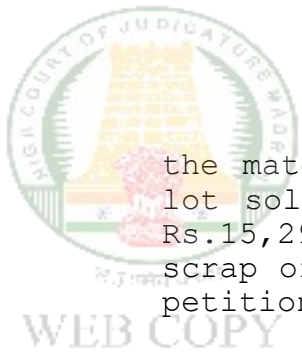
8. It is the further submission of the petitioner that the impugned order passed by the respondents is nothing but committing of double jeopardy, in that not only the petitioner has been banned from participating in any tender activities relating to ICF, but also barred entry into ICF, thereby precluding the petitioner from taking part in other commercial activities, which takes place inside the respondents Factor. In the above circumstances, learned counsel for the petitioner prays that the order passed by the respondents is wholly unjust, unsustainable, arbitrary and illegal and deserves to be quashed.

9. Per contra, learned standing counsel appearing for the respondents, on the basis of the counter affidavit filed, submitted that as per the terms of e-auction, 50 free days was given to the petitioner to take delivery of the materials, i.e., upto 2.9.20, after which ground rent would be imposed for the balance quantity of lot. It is the submission of the learned standing counsel for the respondents that the contention of the petitioner that due to shortage of stock verifiers and delivery points, the scrap could not be lifted is wholly false as no steps were taken by the petitioner to clear the materials within the stipulated time.

10. It is the further submission of the learned standing counsel for the respondents that due to the pandemic situation and in view of the constraint in point booking and the work involved, the administration, on its own accord, had extended the free delivery period upto 17.01.2021 without collecting any ground rent and in the said order, it was made clear that no extension would be granted. In addition to the extended time, the total time of 187 free days was given to the petitioner to clear the materials of 450 Metric Tonnes of which upto 17.1.2021, the petitioner had cleared only 91.43 Metric Tonnes and balance lying is 358.57 Metric Tonnes.

11. It is the further submission of the learned standing counsel for the petitioner that during one of the delivery point on 3.11.20, the Vigilance Officials of ICF carried out an internal check in which the labourers of the petitioner were caught red handed for concealing excluded items, copper cables, Aluminum off cuts in empty paint drums and other excluded items, brass value was found loaded in Lorry No.TN-18-AC-8022, which was used by the petitioner for taking delivery and the representative of the firm, who was given power of attorney for taking the delivery has admitted the fraudulent act of their labourers.

12. It is the further submission of the learned standing counsel for the respondents that due to the delay in clearing



the materials, inspite of grant of 187 days upto 17.1.2021, the lot sold to the petitioner was cancelled and the sale value of Rs.15,29,660/-, being the value for the undelivered quantity of scrap of 358.57 Metric Tonnes as on 4.5.2021 was refunded to the petitioner as per the terms and conditions of the contract.

13. It is the further submission of the learned standing counsel for the respondents that based on the report of the Vigilance Department relating to moving of excluded items by the petitioner, the illegal activities perpetrated by the petitioner while taking delivery of the scrap resulted in the passing of the impugned order by the respondents banning business dealings with the petitioner which is only for the purpose of safeguarding the governmental property.

14. Learned counsel appearing for the respondents submits that in view of the interim order granted by this Court, the entire administration has come to a stand still and it is unable to function smoothly as the scrap keeps accumulating inside the premises. Therefore, it is prayed that this Court, taking into account the conduct of the petitioner, may dismiss the petitions.

15. This Court paid its careful consideration to the submissions advanced by the learned counsel for the parties and perused the materials available on record.

16. It is not in dispute that the petitioner, as the successful bidder in the e-auction, was given the bid for removing 450 Metric Tonnes of scrap on certain terms and conditions. It is also not in dispute that a free period of 187 days has already been given to the petitioner to remove the scrap of 450 Metric Tonnes of which the petitioner has moved only 91.43 Metric Tonnes of scrap as on 17.01.2021, the day on which the time given for moving the entire quantity of 450 Metric Tonnes of scrap lapsed. It is the case of the petitioner that though representation was given by the petitioner for extension of time by 180 days for removing the scrap, however, the said time period was not granted, but the petitioner was granted time till 17.1.2021 to remove the scrap and that the respondents have not taken the pandemic period into consideration and also the fact that delivery points were not provided properly by the respondents and that there was shortage of officers to oversee/supervise the delivery as per the terms and conditions.

17. Though such a stand is taken by the petitioner, a perusal of the records reveal that atleast four letters, purporting seeking extension of time pinpointing that delivery points are not being given by the DMS stating non-availability of stock verifiers, have been filed in the typed set of



documents. But curiously, except for the letter dated 18.11.2020, in which request is made for providing delivery points on daily basis, seal of the respondents is affixed, in none of the other letters, such a seal is affixed and in the absence of the same the said letters having found its way to the respondents cannot be assumed. True it is that by letter dated 18.11.2020, the petitioner had asked the respondents to provide delivery points on daily basis to remove the scrap, however, thereafter, there is no material, which could be the basis on which this Court could assume that delivery points were not provided to the petitioner.

18. Further, the letter of extension dated 10.10.2020, the respondents, on their own accord, taking into consideration the pandemic situation, had extended the period of time for removing the scrap to 17.1.2021. However, except for citing that delivery points were not given, no other materials have been placed before this Court to show the efforts taken by the petitioner to remove the scrap.

19. Be that as it may. It is to be pointed out that once a contract is entered into between two parties, both the parties have to honour the contract in line with the terms and conditions agreed therein. However, the respondents, due to the pandemic situation, on their own accord, had thought it fit to extend the time upto 17.1.2021, for removing the scrap. However, by the said time, the petitioner had removed only about 25% of the scrap, which was contracted and the balance 75% was lying within the premises of the respondents. When the respondents have categorically stated that no extension of time beyond 17.1.2021 would be provided to the petitioner for removing the scrap, the petitioner cannot come and claim that it is entitled to another 180 days time for removing the scrap as per the contract entered into between the petitioner and the respondents. Further, it is to be pointed out that no right vests with the petitioner to claim that it should be granted 180 days to remove the scrap, as per the terms and conditions of the contract, as the contract between the parties is for a particular period and non-removal of the scrap by the petitioner within the period accepted between the parties would render the respondents to take action according to the terms of the contract. From the above, it is crystal clear that there is total non-fulfilment of the contract by the petitioner.

20. Once there is non-fulfillment of contract on the part of the petitioner, the respondents, inspite of granting extension of time due to the prevailing pandemic situation, still the petitioner having not fulfilled the contractual obligation, had cancelled the contract awarded in favour of the petitioner.



21. In addition to the above, the respondents were faced with a very quirk situation. In that, on an internal check conducted by the Vigilance Officials of the respondent, materials, which does not form part of the contract were sought to be moved clandestinely without the knowledge and approval of the respondents leading to the filing of an internal memorandum by the Vigilance Department calling upon action against the petitioner. It is the categorical stand of the respondents that the check was conducted in the presence of the authorised representative of the petitioner and what was unearthed from the lorry of the petitioner, did not have the sanction of the respondents to be removed from the premises. All the items, which were kept concealed in empty paint drums were materials, which were not within the scope of the contract and, therefore, the removal of those items definitely warrant action against the petitioner. It is further to be pointed out that it is not that the check was conducted without the presence of any person of the petitioner. The authorised representative of the petitioner was very much present and he had countersigned the report prepared pursuant to the vigilance check conducted on 3.11.20, wherein certain items of materials, were recovered. When the authorised representative of the petitioner himself was present and had witnessed the seizure of items, which did not form part of the contract, the petitioner cannot come before this Court and claim that before passing any order, a notice of hearing should be given to the petitioner in order to fulfil the principles of natural justice.

22. Principles of natural justice is only to ensure that the affected party has a right to present its case before any adverse order is passed. However, in the case on hand, when the seizure is made in the presence of the authorised representative of the petitioner, who has counter signed the report prepared in this regard, claiming that non-giving of opportunity to the petitioner to defend itself before the impugned order is passed is nothing but an attempt on the part of the petitioner to clutch the last straw to extricate itself from the predicament which it has got itself in. The issuance of notice and hearing of the petitioner, pursuant to the report of the vigilance check would only arise if the petitioner had not been represented in any manner even during the time of such a check. However, in the case on hand, the petitioner was very much represented by its authorised representative in whose presence, materials, which did not form part of the contract was seized from the vehicle belonging to the petitioner. In fact, the authorised representative of the petitioner had merely countersigned the report and had not raised any objections. That being the case,



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once the seizure is accepted by the petitioner, through his authorised representative, issuing of a notice, merely to satisfy the question of principles of natural justice, would be nothing but an empty formality and in such a backdrop, non-issuance of notice, which is alleged to be violation of principles of natural justice, cannot be countenanced.

23. Further, as evident from the record, pursuant to the petitioner not performing the removal of scrap as per the contract within the time extended, the respondents, vide intimation dated 24.2.2021 had called upon the petitioner to share its NEFT details for the purpose of refunding the amount due to the petitioner being the value of the undelivered quantity of scrap and by communications dated 1.3.21 and 4.5.2021, had also initiated refund process for the amounts of Rs.4.62.631/- and Rs.15,29,660/- being the value of the undelivered scrap by cancelling the contract entered into between the petitioner and the respondents.

24. Pursuant to the refund order, the respondents, considering the report of the vigilance department relating to seizure of materials from the vehicle of the petitioner had banned business dealings with the petitioner and stopped the petitioner from entering into the Factory premises. When the fraudulent activity has been accepted by the authorised representative of the petitioner by signing the seizure report of the vigilance without any demur, the respondents were well within their right to cancel the contract and that no right stands vested with the petitioner to claim equity and the act of the respondents could in no way be termed to be violation of principles of natural justice and in the above backdrop, any affirmative order in favour of the petitioner from this Court would be nothing but giving a clean chit to the petitioner, when on his own, the petitioner, through its authorised representative had accepted the commission of fraudulent act.

25. For all the reasons aforesaid, this Court is of the considered view that non-grant of opportunity to the petitioner by putting it on notice would in no way be a violation of the rights of the petitioner and non-following of principles of natural justice and further, the petitioner having not performed his part of the contract by removing the scrap, as undertaken in the tender conditions, no vested right accrues to the petitioner to claim extension of time and the respondents are not required to grant any extension at the behest of the petitioner.

26. Accordingly, these writ petitions, being bereft of merits are liable to be dismissed and, accordingly, the writ petitions are dismissed. In view of the dismissal of the writ petitions, the interim stay granted by this Court in W.M.P.



No.18503 of 2021 stands vacated. Consequently, other connected miscellaneous petitions are closed.

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Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Deputy Chief Material Manager  
Stores Department, Shell Depot  
Integral Coach Factory  
Perambur, Chennai - 38.
2. The Deputy Chief Material Manager  
Furnishing Depot  
Integral Coach Factory  
Perambur, Chennai - 38.
3. The Assistant Material Manager  
MRVC/Shell Depot  
Integral Coach Factory  
Perambur, Chennai - 38.

+1cc to Mr.A.Edwin Prabhakar, Advocate, S.R.No.65205  
+1cc to M/s.Narmadha Sampath, Advocate, S.R.No.65102  
+1cc to Mr.M.Vijay Anand, Advocate, S.R.No.65896  
+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.65435

W.P. NO. 3762 & 17429 OF 2021

RSV(CO)  
RLP(17/12/2021)