



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17860 of 2015

and

W.M.P.No.1 of 2015

M/s. Gupta & Sons,
Rep. by its Partner,
Chirag Bansal, Partner
61, Cross Road,
New Washermenpet,
Chennai - 600 003.

... Petitioner

Vs

1.Union of India,
Owning Southern Railway,
Rep. by its Regional Manager,
Chennai-600 003.

2.The Deputy Chief Materials Manager,
Combined Scrap Stores,
Ponmalai, Tiruchirappalli - 620 004.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified Mandamus calling for the records from the 2nd respondent pertaining to his proceedings in No.05/CSSD/SALES/2185, quash the order dated 10.11.2014 and consequently direct the 2nd respondent to refund the EMD amount of Rs.6,36,808/- together with interest @ 18% from 05.03.2014 to till the date of payment.

For Petitioner : No appearance

For Respondents : Mr.P.T.Ramkumar,
Standing Counsel Southern Railways



O R D E R

The order dated 10.11.2014 forfeiting the EMD amount is sought to be quashed in the present writ petition and a direction is sought to refund the EMD amount of Rs.6,36,808/- along with the interest.

2. The petitioner is a Partnership Firm and dealing with the business of iron and steel scrap. The second respondent conducted an e-auction in respect of certain steel scrap material and published the said auction. The petitioner firm decided to bid for the materials mentioned in lot No.058013112185. The auction took place on 05.03.2014 and a sum of Rs.6,36,808/- was collected as EMD from the petitioner. Further, while bidding for lot No.058013112185 on 05.03.2014 of 25.812 Mts. Quantity, instead of Rs.24710/- PMT, the petitioner entered Rs.246710/- PMT and an amount of Rs.6,36,808 was deducted through transaction I.D.No.380309 on the same day. While attending the auction, in bidding page, there was a message reflecting as "Fetching Error" and "Contract Administrator" and at the same time, a message came as "Your Entering more than 50% of your BID". So while clicking OK it has been done for both messages. However, the second respondent, by order dated 07.03.2014, confirmed the bid in favour of the petitioner at an exorbitant rate and directed to make the balance payment of Rs.61,20,267/- (including VAT and IT) after adjusting the EMD. Thereafter, the petitioner wrote a letter to the respondents informing them about the mistake and requested to cancel the bid offered by the writ petitioner and to refund the EMD. However, the second respondent, by order dated 10.11.2014, rejected the request and passed the following order:

"The subject lot has been sold to you during the auction held on 05-MARCH-14 at GOC duly collecting the EMD amount of Rs.6,36,808/- vide SBI TXN ID No:IGR6642726 DT 05.03.2014.

Since you have failed to remit the Balance Sale Value within the admissible time limit (24.03.14), the sale has been cancelled duly forfeit the EMD of Rs.6,36,808/-."

Challenging the aforesaid order, the petitioner is constrained to move the present writ petition.



3. The petitioner relied on the judgment of the Hon'ble Supreme Court in the case of Mohammed Gazi Vs. State of M.P. reported in 2000 (4) SCC 1806 wherein the Hon'ble Apex Court observed as under:

"The other maxim is, *lex non cogit ad impossibilia* - the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in *Raj Kumar Dey & Ors. vs. Tarapada Dey & Ors.* [1987 (4) SCC 398] and *Gursharan Singh & Ors vs. NDMC & Ors.* [1996 (2) SCC 459].

4. It is contended that the impugned order is directly in violation of the ratio laid down by the Hon'ble Division Bench of this Court in the case of *Registrar, Indian Institute of Technology Vs. Hameed Enterprises* reported in 2015 (1) CTC 696 (DB), wherein, in paragraph 15, the Division Bench has observed as follows:

"15. The action of the appellant in accepting the bid amount of the writ petitioner was also not proper. When the figure quoted was astronomical and certainly much more than the value of the scraps comparing with the amount quoted by other bidders, the appellant ought to have examined the fact as to whether it was a mistake or genuine. In such a situation, the appellant ought not to have acted in haste in accepting the offer and conveying immediately in the late night to the writ petitioner requiring him to deposit the security money. In this background, it can safely be held that there was a typographical mistake in the amount quoted by the writ petitioner. Thus, both parties were at fault. What is good for the goose is good for the gander. In that event, the appellant cannot be permitted to take advantage of technicality. Thus, the direction to refund the EMD amount was rational and proper."



5. In view of the fact that the narration of facts are not disputed by the parties, the ratio laid down by the Hon'ble Division Bench is applied in the present case. Accordingly, the impugned order passed by the second respondent in Proceeding No.05/CSSD/SALES/2185 dated 10.11.2014 is quashed and the second respondent is directed to refund the EMD amount along with interest at the rate of 5% per annum within a period of three months from the date of receipt of a copy of this order.

6. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

Sgl

To

1.The Regional Manager,
Union of India,
Owning Southern Railway,
Chennai-600 003.

2.The Deputy Chief Materials Manager,
Combined Scrap Stores,
Ponmalai, Tiruchirappalli - 620 004.

+1CC to M/s.Narmatha Sampath, Advocate, SR.No. 48950

+1CC to Mr.P.T.Ramkumar, Advocate, SR.No. 48921

W.P.No.17860 of 2015

SS(CO)
B.VC (18/10/2021)