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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-01-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.19309 of 2015

And

MP No.1 of 2015

M/s.Bismillah Steels,
Dealers in Iron and Steel,
Represented by its Proprietor S.Abdul Hameed,
No.658, 1st Floor, M.T.H.Road,
Mannurpet,
Chennai - 600 050.

...Petitioner

vs.

1. Union of India,
Owning Southern Railway,
Represented by its Regional Manager,
Chennai - 600 003.
2. The Deputy Chief Materials Manager (SD),
Integral Coach Factory,
Chennai - 600 038.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, after calling for the records from the second respondent pertaining to his proceedings in ICF/A/S/48399/14-15 quash the order dated 24.12.2014 and consequently, direct the second respondent to refund the EMD amount of Rs.3,78,368/- together with interest @ 18% from 19.11.2014 to till date of payment and award costs.

For Petitioner	:	Ms.Narmadha Sampath
For Respondents	:	Mr.P.T.Ramkumar, Standing Counsel for Railways.

O R D E R

The order dated 24.12.2014 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.3,78,368/- along with the interest.



2. The petitioner is a Proprietary Concern 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 company decided to bid for the materials mentioned in lot No.048399. The auction took place on 19.11.2014 and a sum of Rs.3,78,368/- was collected as EMD from the petitioner. The petitioner intended to quote a sum of Rs.23,501/- for the said lot. However, while typing the bid amount, it was wrongly typed as Rs.2,35,011/-. Since the e-auctions concluded at a high speed making such typographical mistakes were common. Immediately, the petitioner wrote a letter to the second respondent on 19.11.2014 informing him about the mistake and requested the second respondent to cancel the bid offered by the writ petitioner and to refund the EMD. However, the second respondent, by order dated 09.12.2014, rejected the request and passed the following order:-

"With reference to the above, it is brought to your attention that the request for cancellation of E-Auction scrap sale claimed in your favour Lot No.048399 dated 19.11.2014 for 16.1 MT has been denied by this administration. Therefore, you are hereby advised to remit the BSV value of the above lot and clear the material within the stipulated delivery period. On failing which the EMD remitted by your in this regard will be forfeited without any further intimation as per E-Auction terms and conditions."

3. The petitioner submitted a representation in this regard elaborating the mistake committed by them and further informing the Railways that the said mistake was informed to the authorities competent immediately on 19.11.2014. Without even considering the said information, they have forfeited the bid. Under these circumstances, the petitioner is constrained to move the present writ petition.

4. The petitioner relied on the judgment of the Hon'ble Supreme Court in the case of Mohammed Gazi Vs. State of Madhya Pradesh [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



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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]."

5. 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 [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."

6. 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.ICF/A/S/48399/14-15 dated 24.12.2014 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.



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7. Accordingly, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Regional Manager,
Union of India,
Owning Southern Railway,
Chennai - 600 003.
2. The Deputy Chief Materials Manager (SD),
Integral Coach Factory,
Chennai - 600 038.

+1cc to Ms.Narmadha, Advocate, S.R.No.3829

WP 19309 of 2015

KKV/03/02/2022