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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.22500 of 2018
and
W.M.P.No.26359 of 2018

M/s.Anandha Construction Corporation,
Rep. by its Partner Dev Anand,
Plot No.74A, Jasraj Nagar,
Pudupakkam, Kanniamman Koil Street (via),
Chennai - 603 103. .. Petitioner
Vs.

1. The Director,
Central Leather Research Institute,
Sardar Patel Road,
Adayar, Chennai - 600 020.
2. Senior Controller of Administration,
Central Leather Research Institute,
Sardar Patel Road, Adayar,
Chennai - 600 020.
3. Executive Engineer (Civil)
Central Leather Research Institute,
Sardar Patel Road, Adayar,
Chennai - 600 020.
4. Section Officer (Works)
Central Leather Research Institute,
Sardar Patel Road, Adayar,
Chennai - 600 020. .. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records relating to proceedings No.2(24)/2016-17/WKS, dated 29.5.2017 of the 4th respondent and quash the same and consequentially directing the respondents to return the 50% EMD to the petitioner.

For Petitioner : Mr.P.Ravi Shankar Rao
For Respondents : Mr.T.Ravikumar
Standing Counsel



O R D E R

This writ petition has been filed challenging the impugned order of forfeiture of 50% EMD deposited by the petitioner.

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2. The respondent Central Leather Research Institute called for tender for the work of "Renovation of PPBD in Main Building First Floor at CLRI, Adyar, Chennai - 20" vide notice dated 15.11.2016. Pursuant to the same, the petitioner submitted his tender papers, however the tender came to be rejected as defective on the ground that the petitioner has affixed rubber stamp of two different firms viz., M/s.Anandha Constructions Corporation and M/s.Devvanand Group, which makes the tender invalid and it resulted in rejection of the tender. Thereafter, the impugned order came to be passed by the respondent forfeiting 50% of the EMD. Challenging the same the present writ petition has been filed. It is contended by the petitioner that the tender has been rejected on the ground that it was defective and therefore the respondents have no power to forfeit the EMD.

3. The respondents have filed counter affidavit stating that, pursuant to the tender notification, tender documents were purchased by the petitioner and while submitting the tender form the petitioner has affixed rubber stamp of two firms viz., M/s.Anandha Constructions Corporation and M/s.Devvanand Group, in the tender form and the petitioner was the lowest bidder in view of the omission committed on the part of the petitioner, CLRI rejected the tender and forced to re-tender the work in terms of Section 19.8(1) and 19.8.(3) of CPWD Works Manual, 2014. 50% of the EMD was forfeited and the tender was also not issued to the petitioner. The anomaly in the tender document was also communicated to the petitioner and thereafter a show cause notice was also issued on 15.02.2017, for which, the petitioner sent his reply on 22.02.2017, stating that two companies are sister concerns and that a mistake was committed inadvertently due to paucity of time and oversight and the response submitted by the petitioner was found not satisfactory and the competent authority has taken a decision to forfeit the EMD amount by an order dated 24.03.2017.

4. Thereafter, the petitioner made a representation dated 06.04.2017, against forfeiture. Based on that the competent authority constituted a Committee to look into the issue and the Committee found that the petitioner did not complied with the guidelines of the tender and the Committee recommended forfeiture of 50% EMD under Section 19.8(1) of CPWD Works Manual, 2014, and also barred him from participating in re-tender process as per 19.8(3).



5. The learned counsel appearing for the petitioner submitted that the petitioner inadvertently affixed the rubber stamp of two companies, it is only the sister concern of the petitioner and for that reason the tender was rejected and that apart the petitioner alone participated in the tender and submitted his tender papers. Even assuming that the tender is defective, on that ground the respondent cannot forfeit the EMD and at any rate after rejected the tender as defective one, they cannot forfeit the EMD, for which, they have no power.

6. Mr.T.Ravikumar, learned standing counsel appearing for the respondents submitted that as per Section 19.8 of the CPWD Works Manual, 2014, the respondents have power to forfeit the EMD at the rate of 50%. Admittedly, the tender filed by the petitioner is defective and the entire EMD was forfeited and subsequently at the request made by the petitioner a Committee has been constituted to look into the issue and based on the recommendations of the Committee 50% EMD was forfeited.

7. I have considered the rival submissions and also perused the records.

8. The case of the respondents is that the petitioner filed tender form affixing rubber stamp of two companies, hence tender become defective and on that ground the respondents have rejected the tender, for which, the petitioner has no serious objections. However after rejecting the tender, the respondents have forfeited 50% EMD and against which the present writ petition has been filed. For forfeiting of EMD, the respondents have invoked Section 19.8 of the CPWD Works Manual, 2014. A Reading of Section 19.8 shows that forfeiture can be made if any tenderer has withdrawn his tender before the expiry of the validity period or before the issuance of letter of acceptance, whichever is earlier or makes any modification in the terms and conditions of the tender which are not acceptable to the department. The relevant portion is extracted hereunder:

"19.8 Forfeiture of earnest money

(1) If any tenderer withdraws his tender before the expiry of the validity period, or before the issue of letter of acceptance, whichever is earlier, or makes any modification in the terms and conditions of the tender which are not acceptable to the department, then the Government shall, without prejudice to any other right or remedy, be at liberty to forfeit 50% of the earnest money absolutely. This provision would naturally apply only to the lowest tenderer once the earnest money of all the



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tenderers except those of the lowest is refunded as per provisions under para 19.5 (1).

(2) If contractor fails to furnish the prescribed performance guarantee within the prescribed period, the earnest money is absolutely forfeited to the President automatically without any notice. (Modified as per OM/MAN/164)

(3) In case of forfeiture of earnest money as prescribed in 1 and 2 above, the tenderer shall not be allowed to participate in the re-tendering process of the work."

9. It is not the case of the respondents that the petitioner has withdrawn his tender, his tender has been rejected at the threshold on the ground that it is a defective tender and the respondents have not referred to any provision which deals with forfeiture of EMD on the ground that the tender is defective. Therefore, the respondents cannot invoke Section 19.8 of the Manual for forfeiture of EMD.

10. In the above circumstances, this Court is of the considered view that the respondents have no power to forfeit the EMD of the petitioner and hence the impugned order is liable to be set aside and accordingly set aside and the respondents are directed to refund the EMD forthwith. The writ petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
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Sardar Patel Road, Adayar,
Chennai - 600 020.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.23782

+1cc to Mr.V.Gangatharan, Advocate, S.R.No.23578 [09/06/2022]

W.P.No.22500 of 2018
and
W.M.P.No.26359 of 2018

SKM(CO)
GN(24/05/2022)