



W.P.No.16360 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.03.2023

C O R A M

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.16360 of 2018

and W.M.P.Nos.19527, 19528 & 24513 of 2018

M/s.RPP-Infra Projects Ltd,
Rep by its managing director Mr.R.P.Arul Sundaram,
Having registered office at 3rd Floor,
P&C Towers, No.140 Perundurai Road,
Erode-638 011.

... Petitioner

Vs

The Transport Department,
Represented by its Transport Commissioner,
Ezhilagam Complex, Chepauk,
Chennai-600 005

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other Writ or direction or order to quash the impugned order of the Respondent bearing no.R.3064/NB2/2007 dated 04.12.2017 and consequently direct the 1st respondent to refund the Earnest Money Deposit collected from the petitioner for a sum of Rs.60,00,000/- (Rupees Sixty Lakhs Only).



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W.P.No.16360 of 2018

For Petitioner ... M/s.P.J.Rishikesh

For Respondents ... Mr.U.Baranidharan,
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the impugned order dated 04.12.2017 of the Respondent and for a consequential direction to the 1st respondent to refund the Earnest Money Deposit to the tune of Rs.60,00,000/- which was collected from the petitioner.

2. The petitioner is a construction company and a manufacturer of software products in the Information Technology sector. It is the case of the petitioner that the petitioner had participated in the Tender called for by the respondent inviting applications for Design, manufacture, supply and fixing of HSRP (High Security Registration Plate) in vehicles in Tamil Nadu and was declared as a successful bidder, pursuant to which, a letter of acceptance was issued on 23.05.2012. The petitioner entered into an agreement with the 1st respondent on 28.05.2012 and deposited Earnest Money Deposit to the tune of Rs.60,00,000/-. Subsequently, the petitioner was disqualified and the tender award was terminated by the respondent on the ground that the Joint Venture



W.P.No.16360 of 2018

Firm Certificate, which was produced by the petitioner at the time submitting the tender application was found to be bogus vide the present impugned order dated 04.12.2017. Challenging the same, this Writ Petition has been filed.

3. Learned counsel for the petitioner submits that though it is the claim of the respondent that the Joint Venture Firm Certificate produced by the petitioner was alleged to be the bogus one, however, no explanation has been given by the respondent to substantiate the same. Despite the requests made by the petitioner, till date, no steps have been taken by the respondent to return the Earnest Money Deposit to the tune of Rs.60,00,000/- which was deposited by the petitioner.

4. Learned Additional Government pleader appearing for the respondent submits that the tender was awarded to the petitioner only on the basis of the documents produced by the petitioner at the time of submitting the tender application. On verification, having found the documents produced by the petitioner to be bogus one which is in violation of the tender conditions, the tender award has been terminated and the petitioner has been disqualified. Subsequent to the disqualification, the petitioner has requested to return the



W.P.No.16360 of 2018

Earnest Money Deposit deposited by the petitioner, which is forfeited under rule 61(2) of Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules 2012 which clearly states that:

“In the event of a change of a member of a consortium or an Associate whose technical capacity or financial capacity or both was taken into consideration for the purposes of pre-qualifying the tenderer, prior to the signing of the consortium Agreement, the tenderer shall inform the authority forthwith along with all relevant particulars about the same and the procuring Entity may at its sole discretion, disqualify the tenderer or terminate the Letter of Award (LOA), as the case may be and forfeit the Earnest Money Deposit (EMD) or the performance security”.

In view of the above rule, the Earnest Money Deposit paid by the petitioner cannot be returned. Since, the award has been terminated after a careful perusal of the records, the order impugned in this Writ Petition cannot be found fault with.

5. This Court heard the learned counsel appearing on either side and perused the materials available on record.

6. The fact in the present case is not in dispute. Admittedly the petitioner has participated in the tender called for by the respondent and the petitioner was



W.P.No.16360 of 2018

declared as the successful bidder and tender was awarded to the petitioner.

However, the petitioner has been disqualified and the tender awarded to the petitioner has been terminated on the premise that the documents furnished by the petitioner is the bogus one. However, it is the claim of the petitioner that till date, the EMD has not been returned to the petitioner.

7. Though it is the claim of the respondents that Rule 61(2) of the Rules, 2012, provides for forfeiture of the earnest money deposit, however, a careful perusal of the said Rules reveals that it pertains to changing the member of the consortium, which permission, is within the domain of the respondents and in the event of the respondents are not incline, the respondents may disqualify the tenderer and forfeit the earnest money deposit, Further, the fact remains that it is prior to the signing of the agreement between the parties.

8. However, in the case on hand, the fact remains that the petitioner was the successful tenderer and was awarded the contract and agreement was also entered into. However, subsequent to the entering into the agreement, when the respondents found the documents submitted to be bogus, the agreement has been terminated. However, the fact remains that the agreement has been



W.P.No.16360 of 2018

terminated by the respondents and the petitioner was not in the thick of things with regard to the termination of the agreement. When the petitioner was not put on notice with regard to the termination of the agreement, the stand of the respondents not to refund the earnest money deposit, citing the aforesaid rule, is not only erroneous but is also not unjustified and not sustainable. The aforesaid Rule is in no way applicable to the case on hand and therefore, the stand of the respondents with regard to refund of earnest money deposit is wholly erroneous and deserves to be reconsidered affirmatively in the favour of the petitioner.

9. This Writ Petition stands disposed of directing the 1st respondent to return the Earnest Money Deposit to the petitioner within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

29.03.2023

Index:Yes/No

Internet:Yes

NHS

Page No:6/8



W.P.No.16360 of 2018

To
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The Transport Department,
Represented by its Transport Commissioner,
Ezhilagam Complex, Chempauk,
Chennai-600 005



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W.P.No.16360 of 2018

M.DHANDAPANI, J

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W.P.No.16360 of 2018

29.03.2023