



W.P.Nos.29135 & 29136 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.04.2023

C O R A M

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

W.P.Nos.29135 & 29136 of 2022

and W.M.P.Nos.28423, 28424 & 28425 of 2022

Metlonics Industries Private Limited
D-105, Industrial Area,
Phase VII, Sahibzada Ajit Singh Nagar,
Mohali-160 055, Punjab,
Represented by its Vice President, Sales &
Marketing.

... Petitioner
(in both petitions)

Vs

1. The General Manager
Integral Coach Factory
Administrative Building
Lakshmipuram, Perambhur
Chennai 600 038.
2. Principal Chief Materials Manager,
Integral Coach Factory,
Stores Department
Administrative Building
Lakshmipuram, Perambhur
Chennai 600 038.



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3. The Chairman
Ministry of Railways
and CEO of Railway Board
No.1, Rail Bhawan
Rasina Road
New Delhi 110 001.

4. The Chairman,
Railway Board,
and CEO
No.1, Rail Bhawan,
Raisina Road,
New Delhi 110 001.

... Respondents
(in both petitions)

PRAYER in W.P.No.29135 of 2022: Petition filed under Article 226 of the Constitution of India praying to issue a Writ, Order or direction in the nature of Writ of Certiorarified Mandamus calling for the records of First Resopondent pertaining to its Techno-Commercial Bid Status published on its website on 06/10/2022 with regard to Tender No.03221006A, stating the petitioner to be “Not eligible for Any Order” as “EMD not remitted” and quash the same and consequently direct the First and Second Respondents to consider the price bid of the Petitioner and permit the petitioner to participate in the Auction Process.

PRAYER in W.P.No.29136 of 2022: Petition filed under Article 226 of the Constitution of India praying to issue Writ, Order or direction in the nature of a Writ of Mandamus directing the first respondent to dispose the representation dated 14.10.2022 bearing reference no.MIPL/ICF/VB/03221006A that was issued by the petitioner to the First Respondent.



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For Petitioner
(in both petitions) ... M/s. S.Arjun Suresh

For Respondents
(in both petitions) ... Mr.Sankara Narayanan,
Additional Solicitor General
assisted by Mr.C.Kulanthaivel,
Senior Panel Counsel

COMMON ORDER

Since, the issue involved in both Writ Petitions is one and the same, both the petitions are taken up for final disposal by way of a common order.

2. This Writ Petition in W.P.No.29135 of 2022 has been filed for quashment of the impugned order 06/10/2022 which was published by the First respondent and for a direction to the First and Second Respondents to consider the price bid of the Petitioner and permit the petitioner to participate in the Auction Process.

3. This Writ Petition in W.P.No.29136 of 2022 has been filed for a direction to the first respondent to dispose the representation dated 14.10.2022 made by the petitioner to the 1st respondent.



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4. Mr.Sankara Narayanan, learned Additional Solicitor General takes notice for the respondents.

5. The petitioner is engaged in the business of manufacturing and sale of high safety engineering machined fabrications and assemblies, including fully assembled bogies for rolling stock applications which are used in trains, metros and other locomotives. It is the case of the petitioner that the petitioner participated in the tender floated by the 1st respondent on 04.03.2022 inviting e-bids or e-tenders for the procurement of one rake set of fully assembled bogies for the Vande Bharat train. As per the terms and conditions of the tender, the techno and commercial bids were submitted within the prescribed time limits. In view of Clause 6.1 or Section I of the bid conditions, the tenderers who are registered or approved as vendor with the Zonal railways or the Production units such as the 1st respondent were exempted from remitting the earnest money deposit. The petitioner being one among such tenderers being exempted from furnishing the earnest money deposit of Rs.50,00,000/-, has not remitted the same. Such being the case, however, the petitioner was disqualified from further participating in bid process vide the impugned order dated 06.10.2022



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on the ground that the petitioner has not remitted the earnest money deposit.

Challenging the same, the Writ Petition in W.P.No.29135 of 2022 has been filed.

6. On coming to know of the disqualification, the petitioner has made a representation as early as on 14.10.2022 to the 1st respondent informing the petitioner's eligibility for being exempted from furnishing the earnest money deposit and therefore the petitioner shall not be prevented from the participating in the tender. Since, the same was not considered, the Writ Petition in W.P.No.29136 of 2022 has been filed.

7. Learned counsel for the petitioner submits that as per clause 6.1 of the bid conditions, the petitioner is an approved or registered vendor as per sub-clause (vi) of Clause 6 and therefore, it is not mandatory for the petitioner to furnish the earnest money deposit. However, without considering the aforesaid clause, disqualifying the petitioner from participating in any tender for non-remittance of earnest money deposit is wholly unsustainable. Hence, the impugned order passed by the 1st respondent is liable to be quashed.



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8. It is the further submission of the learned counsel for the petitioner that this Court had granted interim direction directing the respondents to open the technical bid of the petitioner upon payment of EMD, which the petitioner has duly complied and, therefore, the claim of the respondents that the petitioner has not paid the EMD cannot be the basis to reject his case.

9. Learned Addl. Solicitor General appearing for the respondents submit that though the petitioner claims to be a registered vendor with the Zonal Railways, placing reliance on a registration directory issued by the respondents, however, no material whatsoever has been placed to show that the petitioner is currently registered with the Railways. It is the further submission of the learned Addl. Solicitor General that unless there is material to show that the petitioner is registered with the Zonal Railways/Production Units for the Trade Group/Trade Groups, exemption from payment of EMD cannot be granted.



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10. There is no quarrel with the fact that the petitioner, while submitting the tender, has not deposited the EMD, which is required to be accompanied with the tender document. However, the petitioner takes shelter u/s sub-clause (vi) of clause 6.1 to submit that the petitioner being an approved/registered contractor under the Railways, the petitioner is exempted from paying the EMD.

11. To appreciate the aforesaid contention, a holistic clause 6.1 is relevant to determine the issue. For better clarity, clause 6.1 is quoted hereunder:-

“6.1 There shall be no exemption from submission of EMD for any tender or by any tenderer subject to provisions under clause 6.1.1 below except following:

i) Limited tenders with estimated upto Rs.25 lakh (including single tenders, global limited tenders) except cases where competent authority incorporates the condition to call for EMD.

ii) Public Sector Undertakings (PSUs)
a. PSUs owned by Ministry of Railways and
b PSUs for the group of items that are manufactured by them.

iii) MSEs registered under Udyam Registration for the group of the tendered item (NIC code) shall be eligible for exemption from payment of EMD. However, traders/distributors/sole agent/works contract are not



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exempted from payment of EMD as they are excluded from the purview of the policy.

iv) Other Railways, Indian Ordnance factories and Govt. Departments.

v) In exceptional cases, where EMD exemption is specifically incorporated in tender conditions.

vi) Vendors registered with Zonal Railways/Production Units for the trade Group/trade groups of the tendered item.

vii) Regular and development vendors appearing on the approved vendor lists of RDSO/PUs/CORE for those specific item for which they are on the approved list, subject to approval status being valid on the date of tender closing.

viii) Vendors registered with Railways for supply of medicine, medical equipments and consumables shall be exempted from submission of EMD for these items.

ix) In tenders issued against PAC, OEM in whose favour PAC has been issued shall be exempted from submitting EMD, KVIC and ACASH shall be exempted from EMD for items supplied by them.

12. A perusal of sub-clause (vi) of clause 6.1, it is evident that only insofar as vendors, who are registered with the Zonal Railways/Production Units for the Trade Group/Trade Groups are exempted from payment of EMD. Even a bare perusal of the entire petition, it is evident that nowhere the petitioner has categorically stated that it is a registered vendor under the Zonal Railways/Production Units. In fact, the terminology used by the petitioner is ‘approved/registered’. If the petitioner is an approved vendor, the petitioner



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cannot take the benefit provided under sub-clause (vi) of Clause 6.1, as there is a clear mandate under the said clause that only vendors registered are entitled for exemption from EMD. When the tender document, in clear and unequivocal terms spells out through sub-clause (vi) of clause 6.1 that only registered vendors with Zonal Railways/Production Units are entitled for exemption, without establishing that the petitioner is a registered vendor with Zonal Railways/Production Units, the petitioner cannot derive the said benefit. Further, as pointed out above, all along, in the affidavit, it is the case of the petitioner that it is an approved or registered vendor.

13. It is the categorical stand of the respondents that the petitioner is not a registered vendor and the mere fact that the petitioner has filed a directory which shows the petitioner as a registered vendor cannot be taken in aid to hold that the petitioner is a registered vendor at the relevant point of time. When it is the clear stand of the respondents that the petitioner is not a registered vendor with the Zonal Railways/Production Units, it is for the petitioner to prove the same. Further, when the Tender Inviting Authority has consciously granted exemption only for the registered vendors, this Court, exercising its powers under Article 226 of the Constitution cannot step into the shoes of the Tender



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Inviting Authority and modify the terms of the tender.

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14. Further, merely because the petitioner was permitted to pay the EMD later in point of time for the purpose of entertaining the bid of the petitioner cannot be a ground to hold that the petitioner's tender should also be taken into consideration. In fact, the order of this Court permitting the petitioner to deposit the EMD is a clear case of non-compliance of the tender conditions by the petitioner. Further, there is no material placed before this Court to show that the petitioner has paid the EMD. Such being the case, when the petitioner has not complied with the conditions imposed in the tender document, it is within the domain of the tender inviting authority to pass order rejecting the tender of the petitioner and this Court cannot exercise its inherent jurisdiction to interfere with the terms imposed by the tender inviting authority, so long as the said terms are not perverse.

15. For the reasons aforesaid, the Writ Petitions fails and accordingly,



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the same is dismissed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

20.04.2023

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