



W.P.(MD)No.10304 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.11.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.10304 of 2021

D.Anbarasan

... Petitioner

vs.

1.The Chief Engineer,
Tamil Nadu General and Distribution Corporation Limited,
Erode Region, Door No.948,
E.V.N.Rd, Erode- 638009.

2.The Superintending Engineer,
Tamil Nadu General and Distribution Corporation Limited,
Salem Electricity Distribution Circle,
K.N.Colony, Salem- 636014

3.M/s.MSTC Limited,
Third Floor, ISPAT Bhavan,
Door No.5, Kodambakkam High Road,
Chennai- 600034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records pertaining the impugned order dated 16.12.2019 in LR.No.CE/D/ER/ED/EE/EL/RCSO/F.Specn.No.08/17-18/D.215/19 and the consequential impugned order dated 11.12.2020 in Lr.No.CE/D/ER/ED/EE/EL/RCSO/F.Speen.No.08/17-18/D.138/20



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passed by the first respondent and quash the same and consequentially directing him to refund the sum of Rs.33,600/- (Rupees Thirty Three Thousand and Six Hundred Only) deposited by the petitioner as Earnest Money Deposit for Lot No.7 with reasonable interest within a time frame that may be fixed by this Court.

For Petitioner	:Mr.T.R.Jeyapalam
For R1 and R2	:Mr.S.Deenadhayalan
For R3	:No Appearance

ORDER

This Writ Petition has been filed challenging the impugned proceedings dated 16.12.2019 and the consequential proceedings dated 11.12.2020 issued by the first respondent and for a direction to the respondents to refund a sum of Rs.33,600/-, which was deposited by the petitioner as Earned Money Deposit (EMD) for Lot No.7.

2.The case of the petitioner is that the first respondent had issued an online tender notification, dated 15.12.2018 for selling 11 different lots of miscellaneous scrap materials. The petitioner participated for Lot Nos.7, 10 and 11. He also paid the Earned Money Deposit (EMD) for the three lots. A sum of Rs.33,600/- pertains to the Earned Money



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Deposit (EMD), that was paid for Lot No.7. The bid that was submitted by the petitioner for Lot Nos.10 and 11 was accepted and the petitioner also lifted the scrap and completed the work. The dispute confines itself to Lot No.7, wherein, the bid, that was submitted by the petitioner, was not accepted.

3.Insofar as the Lot No.7 is concerned, the bid, that was submitted by the petitioner, was not accepted, since the petitioner had quoted the rate for the entire 55235 kilograms instead of quoting the rate per kilogram. The petitioner was called to give an explanation and accordingly, the petitioner also gave his written explanation on 02.03.2018. The petitioner explained that he had quoted Rs.11.42 per kilogram and accordingly, the total amount worked out to a sum of Rs. 6,31,000/- (55235x11.42). When this amount was quoted, the system was not able to take the decimal (.42) and therefore, the petitioner was forced to quote the total amount of Rs.6,31,000/-, for lifting the total scrap of 55235 kilograms. The explanation given by the petitioner was not accepted and the petitioner was not selected for the bid insofar as Lot No.7 is concerned.



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4.The petitioner, thereafter, sent a representation, dated 02.05.2019 seeking for refund of the Earned Money Deposit (EMD) of a sum of Rs.33,600/-, that was paid by the petitioner towards Lot No.7. On receipt of the same, the first respondent issued the impugned proceedings, dated 16.12.2019 followed by the consequential notice dated 11.12.2020 and the petitioner was informed that the sum of Rs.33,600/- that was paid by the petitioner towards Earned Money Deposit (EMD), is forfeited and the petitioner was further directed to remit a sum of Rs.6,048/- towards 18% GST on the Earned Money Deposit (EMD) amount. Aggrieved by the same, the present Writ Petition has been filed before this Court.

5.Heard Mr.T.R.Jeyapalam, learned Counsel appearing on behalf of the petitioner and Mr.S.Deenadhayalan, learned Counsel appearing on behalf of the respondents 1 and 2.

6.The main issue that arises for consideration in the present Writ Petition is as to whether the petitioner had violated the terms and conditions of the tender notification by wrongly quoting the rate while



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submitting the bid for Lot No.7, thereby, there is justification to forfeit the Earned Money Deposit (EMD) paid by the petitioner.

7.The relevant terms and conditions in the tender notification is extracted hereunder:

“SECTION – I

.....

3.0)FORFEITURE OF EMD:

.....

(h)If the Bidder wrongly quoted price for Lot/Ton/No etc instead of called in Specification.

SECTION -II

.....

12.The Tender is liable to be rejected if it is

.....

(i)If the Bider Wrongly quoted price for Lot/Ton/No etc instead of called in Specification.”

8.A careful reading of the above clauses makes it clear that a bidder should be careful while submitting his bid and he has to quote the correct price in terms of number. If the bidder quotes a wrong price in terms of mentioning the number, it will result in the tender being rejected and also the Earned Money Deposit (EMD) being forfeited. Therefore, it has to be seen as to whether the petitioner had quoted a wrong price and thereby, the Earned Money Deposit (EMD) paid by the petitioner for Lot



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No.7 is liable to be forfeited. This Court wants to confine this order only insofar as forfeiture of the Earned Money Deposit (EMD) amount is concerned, since Lot No.7 has already been allotted to someone else and the work is also completed.

9.The petitioner has quoted the rate at Rs.11.42 per kilogram and thereby, for the total scrap of 55235 kilograms, the total value will come to Rs.6,31,000/-. When the petitioner quoted Rs.11.42 in the system, the system was not able to recognise or take the decimal value (.42). Therefore, the petitioner had quoted the total value of Rs.6,31,000/-. Unfortunately, the system construed this amount as the amount quoted per kilogram. This mistake has now been put against the petitioner for quoting wrong price for the bid in Lot No.7.

10.The justification that is given by the respondents is that the petitioner should have either quoted Rs.11 or 12, without mentioning the decimal value. This stand taken by the respondents is unsustainable. The terms and conditions of the tender does not anywhere state that wherever, there is a decimal value involved while quoting the price, the bidder must



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quote the rounded off figure. Therefore, the petitioner cannot be faulted for not quoting the rounded off figure, while submitting the bid. That apart, there is a fundamental flaw in the respondents insisting the petitioner to quote the bid amount as Rs.11 or 12. This is in view of the fact that if the petitioner had quoted the amount as Rs.11 or as Rs.12, the total value that is quoted by the petitioner for the entire scrap material of 55235 kilograms will differ. If the petitioner had quoted the value per kilogram as Rs.11, the total value will workout to Rs.6,07,585/- ($55235 \times \text{Rs.11}$). If the petitioner had quoted the price as Rs.12 per kilogram, the total value will workout to Rs.6,62,825/- ($55235 \times \text{Rs.12}$). It makes it clear that if the petitioner had quoted the price at Rs.11 or Rs.12, there will be a major discrepancy in the total value that was quoted by the petitioner. Therefore, there is absolutely no logic in expecting the petitioner to quote a round off figure, while submitting the bid. This foundational fact was not taken note of by the respondents, when they expected the petitioner to quote the bid amount as Rs.11 or Rs.12 and not in terms of decimal value.



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11.In the light of the above discussion, this Court finds that the impugned proceedings of the first respondent forfeiting Earned Money Deposit (EMD) amount paid by the petitioner is unsustainable and the same requires the interference of this Court. Consequently, there is no question of directing the petitioner to pay GST at 18% on the Earned Money Deposit (EMD), that was sought to be forfeited. In the result, the impugned proceedings dated 16.12.2019 and the consequential notice dated 11.12.2019 issued by the first respondent is hereby quashed and there shall be a direction to the first respondent to refund the Earned Money Deposit (EMD) of Rs.33,600/- to the petitioner within a period of two weeks from the date of receipt of a copy of this order. If the amount is not refunded within the time stipulated by this Court, it will carry an interest of 7.5% per annum till the date of payment of the amount.

12.This Writ Petition is allowed with the above directions. No costs.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
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