



**WP(MD)No.6358 of 2018**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

**WP (MD) No. 6358 of 2018**

M/s.Renaatus Projects Pvt Ltd,  
Represented by its Executive Director  
Manoj Poosapan,  
156,Mullamparappu,  
N.G.Palayam Post,  
Erode-638 115.

... Petitioner

Vs

1.The Chief Engineer,  
Central Public Works Department,  
Nirman Bhawan,  
Plot No.C.1, Tamil Nagar,  
Koodal Pudur,  
Anaiyur (PO),  
Madurai - 625 017.

2.The Executive Engineer,  
Trichy Central Division,  
Central Public Works Department,  
NIT Campus,Thuvakudi,  
Trichy - 620 015.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the 2<sup>nd</sup> respondent in his proceedings in F.No.23 (137)/TCD/2017-18/674, dated 12.12.2017 and quash the same as the said order was passed in contravention to



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the tender condition and on wrong implications of facts and law and consequently direct the 2<sup>nd</sup> respondent to refund the amount of Rs.40,77,725/- paid the petitioner vide demand drafts dated 14.12.2017 without prejudice to its rights and contention under protest.

For Petitioner : Mr.S.Venkatesh

For Respondents : Mr.Arjuna Rajan.

**ORDER**

The petitioner is a construction company participated in the tender conducted by the 1<sup>st</sup> respondent in the year 2017. As per the tender notification e-bids had to be submitted on or before 21.08.2017 and the technical bids had to be opened on the same day and the financial bids had to be opened on 20.10.2017. The petitioner was the lowest bidder and this petitioner was invited for negotiation by letter dated 10.11.2017. As per the tender conditions, the bidders have to quote the rate including the taxes, GST of Central and State Governments. During the relevant period GST for the



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work was 12% and therefore, the petitioner quoted 12% as GST. However, the GST was revised to 18% and therefore, the petitioner made a request to increase the GST from 12% to 18% in the meeting held between the petitioner and the 2<sup>nd</sup> respondent on 10.11.2017. The petitioner has requested to consider his case as per clause 38 of the Contract. This request of the petitioner was rejected by the 2<sup>nd</sup> respondent by order dated 08.12.2017. Further the 2<sup>nd</sup> respondent has also cancelled the petitioner's tender and forfeited 50% of the EMD amount of Rs.40,77,725/- deposited by him. The petitioner was also debarred from bidding. Challenging the same, this writ petition was filed in the year 2018 and taken up for final hearing in the year 2023.

2.The learned Counsel for the petitioner submits that as per the tender condition while submitting the tender, the petitioner has deposited an earnest money deposit of Rs.40,77,725/- and has given bank guarantee of Rs.81,55,415/- towards the contract. As per the decision taken in the 20<sup>th</sup> GST Council



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Meeting held on 05.08.2017 the applicable rate for works is 12%. However it was revised on 21.09.2017 as 18%. The petitioner was also prepared to pay the revised 18% GST as per Clause 38 of the contract, but without considering the same the 2<sup>nd</sup> respondent rejected the request of the petitioner and also forfeited the EMD amount paid by the petitioner.

3.The learned Counsel for the petitioner mainly contented that before passing such an order rejecting the tender of the petitioner and forfeiting the EMD amount, the petitioner was not provided with any opportunity of hearing

4.Though this writ petition was entertained in the year 2018 by this Court, the respondents have not filed their counter affidavit so far.

5.Perusal of the impugned order shows that there is no reference of any show cause notice or opportunity of hearing provided to the petitioner prior to the impugned order. The averment raised in



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this writ petition is not denied by any counter affidavit. Hence on the sole ground of violation of principles of natural justice, the impugned order is set aside. The matter is remanded back to the respondents for fresh consideration. The respondents shall consider the case of the petitioner and take a decision afresh after affording an opportunity of hearing to the petitioner.

6.The writ petition is allowed in the above terms. No costs.

04.12.2023

Internet : Yes / No

DSK



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To

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