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W.P.(MD)NO.11013 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11013 of 2015

M/s.Sri.Paulthai Lorry Booking Office,
Through its Proprietor G.Jeyasing,
No.290-A/3, Sivanthakulam Road,
Tuticorin – 628 003.

... Petitioner

Vs.

1. The General Manager,
Central Railside Warehouse Company Ltd.,
CRWC, Corporate Office,
Ground Floor,
Pragati Maidan Metro Station Building,
New Delhi – 110 001.

2. The Manager(Marketing),
Central Railside Warehouse Company Ltd.,
CRWC, Corporate Office,
Ground Floor,
Pragati Maidan Metro Station Building,
New Delhi – 110 001.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to call for the records pertaining to the impugned order passed by the second respondent vide No.CRWC-II/RWC-Koodal Nagar/SP/2015-16/1077 dated 11.06.2015, quash the same and consequently direct the respondents to return a sum of



Rs.2 lakhs which was paid by the petitioner as earnest money deposit along with interest within the time frame fixed by this Court.

For Petitioner : Mr.Niranjana S.Kumar

For Respondents : Mr.R.Thirunavukkarasu

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the respondents.

2. The first respondent invited online tenders vide notification dated 31.10.2014 for appointment of Service Provider at Railyard Warehouse at Koodalnagar. The petitioner was one of the applicants who responded to the notification. The petitioner was disqualified on the ground that he failed to disclose the fact that he was disqualified by Tamil Nadu Civil Supplies Corporation and that in that regard, a court case was pending. The petitioner was blacklisted for five years and



EMD amount of Rs.2 Lakhs paid by the petitioner was also forfeited vide communication dated 11.06.2015. Challenging the same, the present writ petition came to be filed.

3. Even before commencing his arguments, the learned counsel appearing for the petitioner informed the Court that irrespective of the outcome of the writ petition, the petitioner would be satisfied if the respondents are directed to refund a sum of Rs.1,50,000/- in respect of EMD amount of Rs.2 Lakhs. The learned counsel appearing for the petitioner conceded that the petitioner was blacklisted vide order dated 05.07.2011 passed by the Regional Manager, Tamil Nadu Civil Supplies Corporation, Tuticorin. The petitioner filed W.P. (MD)No.8063 of 2011 and interim order was granted and also it was extended from time to time. The writ petition was eventually disposed of on 10.12.2015 by permitting the petitioner to pursue the appeal remedy. The interim order earlier granted was directed to be continued till the disposal of the appeal. Since the petitioner was enjoying the interim order, he was under the impression that the order dated 05.07.2011 can be treated as nonexistent. In fact the



petitioner would also state that he was not conversant with English language and that the person who had assisted him had inadvertently failed to make necessary disclosure. According to the learned counsel, the explanation given by the petitioner on 08.05.2015 ought to have been accepted. He also submitted that forfeiture of the EMD is not in consonance with the settled legal principles as well as the terms and conditions set out in the notification issued by the first respondent. The learned counsel relied on the following case laws:-

a) (2014) 7 MLJ 840 (Hameed Enterprises V. Registrar, Indian Institute of Technology)

b) (2003) 7 SCC 410 (National Highways Authority of India V. Ganga Enterprises)

c) AIR 2011 SC 3574 (State of Haryana V. M/s.Malik Traders)

He reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Standing counsel took me through its contents. My attention was drawn to the relevant clauses in the tender



notification. The learned Standing counsel pointed out that the petitioner had been blacklisted and that the self-certificate issued by the petitioner was false. The submission of false certificate would lead to not only cancellation of the tender but also forfeiture. My attention was drawn to Clause H-(I)(i) and Note: 6. The learned counsel also relied on the decision of the Hon'ble Apex Court reported in ***AIR 1970 SC 1986 (Shree Hanuman Cotton Mills & Ors. Vs. Tata Air-Craft Ltd.,)***. The core argument of the learned Standing counsel is that the rights of the parties must be governed by the terms of the tender notification and that it is not open to the writ Court to modify the same. If the petitioner fails to comply with the conditions set out in the relevant clause of the tender notification and in Note: 6, consequence has to follow. The respondents would argue that they acted strictly in terms of the tender notification. The learned Standing counsel called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.



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Sir,

Sub : Tender application – Reg.

Ref. No.SP/RWC-DOODALNAGAR/2014-15/3837.

I JEYASINGH S/o.Ganesan Nadar, Own lorry booking office in the name of SRI PAULTHAI LORRY BOOKING OFFICE at 290 A/3, Sivanthakulam Road, Tuticorin has no blacklist at anytime. I assure you that Non blacklisted person in any of my contract.

Thank You

Yours faithfully,

For Sri Paulthai Lorry Booking Office

Sole Proprietor.”

6. It is true that the petitioner had been blacklisted on 05.07.2011 by the Regional Manager, Tamil Nadu Civil Supplies Corporation, Tuticorin. The petitioner therefore could not have taken the stand that he was not blacklisted at



any time. It is true that the petitioner had filed W.P.(MD) No.8063 of 2011 questioning the blacklisting order and he was also enjoying interim order in his favour. When the letter dated 28.11.2014 was submitted, the interim order was very much in force. Of course as per the aforesaid tender clause, the tenderers must clearly disclose about the pendency of court case in respect of blacklisting orders if any passed. The failure on the part of the petitioner to disclose the pendency of W.P.(MD)No.8063 of 2011 rightly resulted in his disqualification and consequential blacklisting. I do not find any ground to interfere with the stand of the respondents in this regard.

7. The only question that calls for consideration is whether the respondents were also justified in forfeiting the EMD. The respondents have taken the stand that on account of the failure on the part of the petitioner to make a true disclosure, the entire tender was scrapped and that the respondents were put to loss as a result. I am not in a position to appreciate this stand. It is not as if, the respondents had already selected the petitioner and issued proceedings to that



effect. The petitioner's counsel would state that the petitioner was shown the door at the scrutiny stage itself. If the respondents have chosen to scrap the tender, the petitioner cannot be blamed. The learned counsel appearing for the petitioner relies Clause "F" which reads as follows:-

" EARNEST MONEY:

Each tender must be accompanied by an EARNEST MONEY of Rs.2,00,000/-(Rs.Two Lakh only) paid through e-payment system / mode only. Tenders not accompanied by Earnest Money shall summarily be rejected.

Earnest Money shall be forfeited, if the tenderer after submitting his tender resiles from or modifies his offer and / or the terms and conditions thereof, in any manner before its acceptance. The Earnest Money would be forfeited in the event of the Tenderers' failure, after the acceptance of his tender, to furnish the requisite security deposit by the due date and sign the agreement without prejudice to any other rights and remedies of the CRWC under the contract and law. The Earnest



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Money deposited in respect of those Tenderers who are not taken as qualified on the basis of “Technical Bids” shall be returned along with the envelope super scribed “PRICE BID” without opening of the same, immediately. The Earnest Money will be returned to all unsuccessful Tenderers immediately after the decision on tenders for award of contract to successful tenderer is taken. **No interest shall be payable on the amount of Earnest Money in any case.**

The successful tenderer, within the period as stipulated under clause 'N' will execute an agreement with the Authorities of CRWC in the form annexed at Appendix-III. The tenderer will bring two witnesses from his side at the time of signing the agreement and witnesses also shall sign the agreement at the appropriate column before the authorised signatory of CRWC. In the event of failure of successful tenderer to execute the agreement and to deposit the Security Deposit amount within the aforesaid period, the Earnest



Money shall be forfeited.”

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8. The learned counsel appearing for the petitioner would argue that EMD can be forfeited only after the petitioner resiles from his original offer after its acceptance. A tender notification must be read as a whole. It is true that Clause “F” deals with EMI. It envisages forfeiture in certain circumstances, Clause “F” was not exhaustive of all circumstances. I cannot ignore Note (6) which is also a part of the tender document. It reads as follows:-

“ Submission of false, dubious, forged or tampered documents by the bidder shall lead to the disqualification of the tender and action as deemed fit(including forfeiture of EMD) by the CRWC shall be taken against such erring bidder.”

9. The petitioner's case will not fall within the scope of Clause “F”. The only question that calls for consideration is whether it can fall within the scope of Note(6). The self certificate given by the petitioner is obviously not a forged or



tampered document. The next question is whether it can be called as a false document. Since the petitioner had obtained an interim order of stay in W.P.(MD)No.8063 of 2011, the petitioner was under the impression that the blacklisting order should be taken as non-existent.

10. In fact as rightly pointed out by the learned Standing counsel appearing for the respondents, the petitioner is speaking in two voices. The petitioner would claim on the one hand that it was an inadvertent mistake and on the other he would state that he was misled by the person who assisted him in uploading the document. Though I cannot appreciate the stand taken by the petitioner, since he was enjoying the order of interim stay during the relevant time, I am of the view that the respondents could have very well accepted the explanation given by the writ petitioner.

11. Since the petitioner states that he is willing to receive a sum of Rs.1,50,000/-, the impugned order is modified to that extent. The respondents are directed to refund a sum of Rs.1,50,000/-. This shall be done within a period of eight



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weeks from the date of receipt of a copy of this order. This writ
petition stands allowed. No costs.

22.09.2023

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