



W.P.No.27631 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.27631 of 2022
and W.M.P.No.26908 of 2022

M/s. M.R.Greentech
Rep. by Proprietor Manickaraj A,
G-16, SIDCO Industrial Estate,
Kakkalur, Thiruvallur – 602 003.

... Petitioner

Vs.

Southern Railway
Rep. by its Deputy Chief Materials Manager,
New Joint Office Portuese Road,
Ayanavaram, Chennai – 23.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to refund the Earnest Money Deposit from the respondent culminated in the auction bid participated by the petitioner dated 12.08.2022 and further to return the EMD amount of Rs.8,01,050/- along with simple interest at the rate of 36% per annum paid by the petitioner within a time stipulated by this Court.

For Petitioner : Ms.Narmada Sampath

For Respondent : Mrs.ME.Saraswathy
Senior Panel Counsel



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ORDER

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This writ petition has been filed for direction, directing the respondent to refund the Earnest Money Deposit which was culminated in the auction bid participated by the petitioner on 12.08.2022, with interest.

2. The petitioner is a company registered under Tamil Nadu General Sales Tax Act, 1959. It had engaged in the business of scrap ferrous, non ferrous, electrical and electronic scraps for the past several years. While being so, the respondent called for E-auction on 12.08.2022 for Gsd Perambur. The petitioner had participated in the E-auction conducted by the respondent for selling of scrap AC EMU trailer coaches with all available ferrous, non ferrous, wooden fittings there on. The petitioner had remitted an Earnest Money Deposit (hereinafter referred to as “EMD”) to the tune of Rs.8,01,050/-. However, by mistake he made bid to the tune of Rs.80,10,500/- and he was declared as highest bidder. On the very same day, he realized the mistake committed by him and submitted representation, thereby informed about the error in the bid amount that the amount of Rs.80,10,500/- was a manual error, since the scrap items being auctioned off, was not worth of the same. The



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petitioner had also raised query through E-mail on the very same day.

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3. It is also seen that the next highest bid amount is only Rs.7,95,500/-. Therefore, the second highest bidder was awarded contract, to sell the scrap. Hence, the petitioner submitted representation for refund of EMD amount which was deposited by the petitioner to the tune of Rs.8,01,050/-. Since the same was not considered, the petitioner filed this present writ petition.

4. The respondent filed reply affidavit and the learned Senior Panel Counsel appearing for the respondent submitted that the petitioner quoted bid for a sum of Rs.80,10,500/- and deposited the EMD of Rs.8,01,050/-. However, the petitioner failed to credit the balance amount of Rs.72,09,450/- within the prescribed period. Therefore, the EMD amount of Rs.8,01,050/- has been forfeited as per the conditions. There is absolutely no chance to commit such a mistake by the petitioner, since the petitioner has 20 years of experience and he is the main person to award contract.

4.1. She further submitted that in the E-auction, there is an input



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box for submission of bid rate and after submitting the rate, confirmation box comes. After selecting the 'OK' button only, the bid amount will be accepted by the system, if it is a valid bid. The system also has the feature of protection to give proper warning alert, if the bid rate is 1.5 time i.e., 50% higher than the previous bid. If the petitioner wrongly bid the amount as Rs.80,10,500/-, definitely the system would cause alert and the petitioner can easily have corrected the mistake. Therefore, the petitioner voluntarily quoted the bid amount to the tune of Rs.80,10,500/- and paid EMD amount of Rs.8,01,050/-. Therefore, as per the conditions, he is not eligible for refund of EMD amount.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. Admittedly, second highest bid amount is Rs.7,99,500/-. Therefore, instead of entering the bid amount as Rs.8,01,050/-, the petitioner added one zero extra and it was entered as Rs.80,10,500/- and paid a sum of Rs.8,01,050/- as EMD amount. Though the learned Senior Panel Counsel contended that, if the petitioner failed to deposit the balance sale value within the stipulated time, the petitioner has to forfeit



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the EMD made by him, on perusal of the sale conditions for E-auction floated by the respondent, it doesn't say so. Clause No.4 says about the EMD and lien facility for online payment of EMD. Clause No.6 says payment and delivery time. If the highest bidder failed to pay the remaining amount within the stipulated time, next highest bidder will be awarded contract. Therefore, the conditions had not forfeited the EMD amount deposited by the petitioner.

7. In similar circumstances, this Court passed order in W.P.No.19309 of 2015 dated 21.02.2022, in which this Court held as follows :-

“4. The petitioner relied on the judgment of the Hon'ble Supreme Court in the case of Mohammed Gazi Vs. State of Madhya Pradesh [2000 (4) SCC 1806], wherein the Hon'ble Apex Court observed as under:

"The other maxim is, lex non cogit ad impossibilia - the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The



applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey & Ors.vs. Tarapada Dey & Ors.[1987 (4) SCC 398] and Gursharan Singh & Ors vs. NDMC & Ors. [1996 (2) SCC 459].”

5. It is contended that the impugned order is directly in violation of the ratio laid down by the Hon'ble Division Bench of this Court in the case of Registrar, Indian Institute of Technology Vs. Hameed Enterprises [2015 (1) CTC 696 (DB)], wherein, in paragraph 15, the Division Bench has observed as follows:

"15. The action of the appellant in accepting the bid amount of the writ petitioner was also not proper. When the figure quoted was astronomical and certainly much more than the value of the scraps comparing with the amount quoted by other bidders, the appellant ought to have examined the fact as to whether it was a mistake or genuine. In such a situation, the appellant ought not to have acted in haste in accepting the offer and conveying immediately in the late night to the writ petitioner requiring him to deposit the security money. In this background, it can safely be held that there was a typographical mistake in the amount quoted by the writ petitioner. Thus, both parties were at fault. What is good for the goose is good for the gander. In that event, the appellant cannot be permitted to take advantage of



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technicality. Thus, the direction to refund the EMD amount was rational and proper."

6. In view of the fact that the narration of facts are not disputed by the parties, the ratio laid down by the Hon'ble Division Bench is applied in the present case. Accordingly, the impugned order passed by the second respondent in Proceeding No.ICF/A/S/48399/14-15 dated 24.12.2014 is quashed and the second respondent is directed to refund the EMD amount along with interest at the rate of 5% per annum within a period of three months from the date of receipt of a copy of this order."

Thus the above case squarely applicable to the case on hand.

8. In the above case, the EMD amount was made manually and the same was received. Whereas in the case on hand, it was an E-auction and the petitioner deposited the EMD amount through E-payment. Therefore, the amount quoted by the petitioner to be construed as Rs.8,01,050/- instead of Rs.80,10,500/-. However, the petitioner made deposit through E-payment of Rs.8,01,050/- as EMD and thereafter, he failed to remit the remaining amount within the time as fixed by the respondent. Therefore, if the amount of Rs.8,01,050/- has been taken as quoted amount made by the petitioner, the EMD would come around



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Rs.8,010.50 and thereafter, the petitioner failed to pay the remaining amount.

9. Considering the above facts and circumstances, the respondent is directed to deduct the EMD amount to the tune of Rs.8,010.50 and refund the balance amount of Rs.7,93,039.50 to the petitioner with interest at the rate of 6% (six percentage) per annum within a period of four weeks from the date of receipt of a copy of this Order. It is made clear that this Order cannot be cited as precedent for the similarly placed persons.

10. With the above directions, the Writ Petition stands disposed of. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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The Deputy Chief Materials Manager,
Southern Railway,
New Joint Office Portuese Road,
Ayanavaram, Chennai – 23.



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G.K.ILANTHIRAIYAN. J.

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