



W.P.(MD)No.2926 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **28.11.2024**

CORAM:

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

W.P.(MD)No.2926 of 2019

and

W.M.P.(MD)No.2206 of 2019

M/s.Bhavadharani Builders,
Rep. by its Managing Partner,
Palanikumar

... Petitioner

-Vs-

The Collector and Chairman,
District Rural Development Agency,
Madurai-20.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in Na.Ka.No.D6/988/2016, dated 18.12.2018 on the file of the respondent and quash the same and further, to direct the respondent to return the Earnest Money Deposit(EMD) amount of the petitioner amounting to Rs.4,77,000/- and Rs.4,84,000/- and the security deposit amount of Rs.1,63,000/- and Rs. 1,54,000/-.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.D.Gandhiraj,

Special Government Pleader



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ORDER

This Writ Petition has been filed, challenging the order passed by the respondent dated 18.12.2018, where the earnest money deposit and security deposit made by the petitioner have been forfeited.

2.It is the case of the petitioner that he is the registered contractor. While being so, the respondent called for tender for upgradation and 5 years maintenance of roads under PMGSY II 2017-2018 Scheme. The petitioner applied for the same and since he was the highest bidder, he was allotted two works ie., (i)MRL24-Kottakudi-Valladaiyarkoil road of Melur Block package No.TN-08-91 at an amount of Rs.2,58,53,144/-; and (ii)MRL17-Melur Poovanthi Road-Attukulam Sivagangai road of Melur Block package No.TN-08-912 at an amount of Rs.2,52,31,814/-. Subsequent to the acceptance of the petitioner's bid, the petitioner was served with a Letter of Acceptance dated 16.03.2018, informing the petitioner to furnish 5% of the contract value as performance security and to deposit 2.5% of the contract value within a period of 10 days.

3.It is the further case of the petitioner that in compliance of the said direction, he had deposited earnest money deposit to the tune of Rs.4,77,000/-



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and Rs.4,84,000/- for the two works and he also paid security deposit to the tune of Rs.1,63,000/- and Rs.1,54,000/- for both works. Thereafter, the respondent failed to execute any agreement and also failed to issue any work order. That apart, the respondent failed to hand over the road for commencing the work. While being so, the respondent issued notice on 25.10.2018, stating that even after the period of six months from the tender, no work has been initiated by the petitioner and the petitioner ought to have completed the work upto 70% by then and also directing the petitioner to initiate work within a period of ten days, failing which earnest money deposit and security deposit will be forfeited.

4.It is the further case of the petitioner that immediately, on 03.11.2018, he had replied, stating that no work order was issued and no agreement was executed by the respondent for commencing the work, in fact, the road was also not handed over to commence the work. However, without considering the same, the respondent passed an order dated 18.12.2018, terminating the contract and also forfeiting the earnest money deposit and security deposit made by the petitioner. Challenging the same, the petitioner has filed this Writ Petition.



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WEB COPY 5. Heard the learned counsel on either side and perused the materials available on record carefully.

6. On perusal of the status report and also submissions made on either side, it is seen that there is no quarrel over the amount deposited by the petitioner. Clause 30.3 of Instructions to Bidders (ITB) states that failure of successful bidder to comply with the requirement of delivery of performance security of two and half percent of contract price plus additional security for unbalanced bids as per provisions of Clause 30.1 shall constitute sufficient ground for cancellation of award and forfeiture of the bid security. Such successful bidder, who fails to comply with the above requirement, is liable to be debarred from participating in bids under PMGSY for a period of one year.

7. Further, a perusal of the notice issued by the respondent dated 25.10.2018, informing the petitioner that already work order was issued and agreement was also executed, shows that admittedly, no work order was issued to the petitioner and no agreement was executed by the respondent to commence the work. Further, the road was also not handed over to the petitioner. It was categorically replied by the petitioner vide reply dated



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03.11.2018. Without even considering the reply submitted by the petitioner, the respondent passed the impugned order dated 18.12.2018, stating that even after execution of the agreement and issuance of the work order, the petitioner failed to commence the work and therefore, the agreement was terminated and also the earnest money deposit and security deposit made by the petitioner were forfeited.

8.In such view of the matter, this Court is of the view that the respondent, without application of mind, mechanically, passed the impugned order. However, now, the work order cannot be issued as per the contract, since the work was subsequently allotted to some other persons and maintenance of the road work has been completed. However, the petitioner is entitled for refund of the earnest money deposit and security deposit made by him, since there is no fault on him.

9.In view of the above, the respondent is directed to refund earnest money deposit of Rs.4,77,000/- and Rs.4,84,000/- and the security deposit amount of Rs.1,63,000/- and Rs.1,54,000/- to the petitioner forthwith.



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10. With the above direction, this Writ Petition is partly allowed and the impugned order is set aside, insofar as the forfeiture of earnest money deposit and security deposit alone is concerned. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
NCC : Yes / No

Yuva

To

The Collector and Chairman,
District Rural Development Agency,
Madurai-20.



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G.K.ILANTHIRAIYAN, J.

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