



W.P.Nos.17396 & 17397 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.17396 & 17397 of 2010

and

M.P.No.1 of 2010

Marg Ltd.,
Rep. by its Company Secretary,
Mr.S.Sivaraman,
No.4/318, Rajiv Gandhi Salai,
Kottivakam, Chennai – 600 041. ... Petitioner in both WPs

Vs.

1.National Highways Authority of India,
G-5 & 6, Sector – 10, Dwarka,
New Delhi – 110 075.

2.Indian Overseas Bank,
C & I C Branch – 1046,
98 – A, Dr Radhakrishnan Salai,
Mylapore, Chennai – 600 004. ... Respondents in both WPs

Prayer in W.P.No.17396 of 2010 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letters in NHA/NHDP-V/MC-II/BOT/BD/S22 dated 21.06.2010 and in NHA/NHDP-V/MC-II/BOT/BD/12700 dated 15.07.2010 issued by the



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first respondent, quash the same and consequently restrain the 1st and 2nd respondents from invoking, encashing or making / receiving payment under Bank Guarantee No.237/2009 dated 24.12.2009 or receiving any benefits under the said Bank guarantee.

*[amended vide order dt. 01.10.2010 made in M.P.No.2 of 2010
in W.P.No.17396 of 2010]*

Prayer in W.P.No.17397 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring that Clause 2.20.7 (a) of the Request for Proposal (REP) issued by first respondent dated November 2009 is unconstitutional, arbitrary, ex facie illegal.

For Petitioner : Mr.Gokulakrishnan
(in both WPs)

For Respondents : Mr.Su.Srinivasan
(in both WPs) Standing Counsel [R1]
Mr.F.B.Benjamin George [R2]

COMMON ORDER

Seeking return of the bank guarantee submitted by the petitioner, and also to declare the amendment made by the respondents to one of its conditions for bidding, these two writ petitions have been filed.



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2. If only the respondents, which is an organization/arm of the Central Government, not acted as private agency, whose sole aim is to make profit, these two writ petitions would not have come up.

3. The short facts are that the petitioner entered into an Memorandum of Understanding dated 30.06.2009 with one M/s.IVRCL Infrastructure and formed M/s.Marg Limited – IVRCL Infrastrucutre & Projects Consortium to participate in a tender floated by the 1st respondent for International Competitive Bidding under 2 stage bidding process for 6 laning of Belgaum – Dharwad Section of NH – 4 from 433Km to 515 Km in the State of Karnataka to be executed as BOT (TOLL) on DBFO pattern under NHDP Phase – V. As per condition of the 1st respondent, the petitioner company furnished a bank guarantee for a sum of Rs.9,60,00,000/- with the 2nd respondent. The said bank guarantee was valid upto 30.09.2010 and the period was subsequently extended till 26.12.2010. The petitioner was selected among nine other eligible bidders. The bids were open on the 1st respondent's office on 27.04.2010. The petitioner was not a successful bidder and one M/s.Ashok Buildcon was awarded tender.



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4. Since the petitioner was not successful, the petitioner requested the 1st respondent to release the bank guarantee issued by the 2nd respondent. The 1st respondent replied that petitioner's bid was non-responsive as per clause 3.2.1(e) as per RPF – Volume I and therefore, the petitioner would be liable to forfeit 5% of the bank guarantee, which comes to around Rs.48,00,000/-. Only upon the petitioner submitting a demand draft for a sum of Rs.48 lakhs, the petitioner was informed that they would get the remaining amount towards bank guarantee. Challenging the said response of the 1st respondent, directing the petitioner to produce demand draft for a sum of Rs.48 lakhs and also to declare the amendment made to clause 2.20.7 (a) of the Request for Proposal as unconstitutional, the present two writ petitions have been filed.

5. The 1st respondent has filed a counter affidavit, wherein they have raised a issue jurisdiction claiming the only Courts at New Delhi shall have jurisdiction to have all disputes arising in connection with the



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bidding process. The 1st respondent has also stated that the petitioner's bid was considered non-responsive as there was no authorization to the person who has executed the Power of Attorney for signing of Bid of Marg and also, no board resolution has been found to authorize Mr.S.Ramachandran who has signed the Power of Attorney for Lead Member of the consortium. Therefore, the petitioner's Request for Proposal was treated as non-responsive and as per clause 2.20.7, the 1st respondent would be entitled to deduct 5% of the bank guarantee. Further, the 1st respondent stated that having accepted to all the terms and conditions of the tender notification, it is not open to the petitioner to now turn around and complain about the same.

6. Heard both sides and perused the materials available on record.

7. It would be useful to extract the following clauses from the tender notification to decide the dispute between the parties :-

7.1. Clauses 2.1.9, 2.1.10 and 2.1.11 of the Instructions to Bidders are as follows :-

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2.1.9. The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorising the signatory of the Bid to commit the Bidder.

2.1.10. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix-IV.

2.1.11. Any condition or qualification or any other stipulation pertained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

7.2. Clause 2.20.7 (a) under Bid Security is as follows :-

2.20.7. The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and or the Concession, Agreement, or otherwise, under the following conditions :

(a) If a Bidder submits a non-responsive Bid.

7.3. Modified clause 2.20.7 under Bid Security is as follows :-

2.20.7. The Bid Security shall be forfeited and appropriated by the Authority as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effect of the Authority without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise, under the following conditions :



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- a) If a Bidder submits a non-responsive Bid;*
b)
c)
d)
e) In case the selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security

Subject however that in the event of encashment of bid security occurring due to operation of para 2.20.7 (a), the damage so claimed by the Authority shall be restricted to 5% of the value of the Bid security.

8. As regards the jurisdiction aspect is concerned, this Court has jurisdiction to adjudicate the dispute between the parties, since the bank guarantee has been issued in Chennai and the issuing bank is also in Chennai. Moreover, in writ jurisdiction, it is not open for a government organization like the 1st respondent to contend that there would be ouster of jurisdiction. Even the counter affidavit is filed only by the Project Manager of the 1st respondent based on Chennai. Therefore, this Court has every jurisdiction to decided the lis between the parties.



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9. As rightly pointed out by the learned counsel for the petitioner that the attempt of 1st respondent is only to unjustly enrich itself. There is absolutely no justification for bringing a amendment to the bid security. The petitioner has not challenged the award of tender to another firm. Likewise, the petitioner has not even agreed with the quantum of bank guarantee demanded by the 1st respondent. The petitioner's only request is to return the bank guarantee after the entire tender proess/bidding process is over. It is surprising that the 1st respondent is withholding a very huge sum of Rs.48 lakhs on filmsy ground. The reason attributed to treat the petitioner's bid as non-responsive is also unacceptable. The petitioner has enterted into an MOU with another firm to enter into the bid. The other firm, namely IVRCL has not raised any objection or dispute with regard to bid process. That being the case, the reason given by the 1st respondent to hold the bid of the petitioner as non-responsive namely that there is no authorization to the person who has executed the Power of Attorney for signing of bid of Marg is unacceptable. If that is the case, the 1st respondent ought not to have accepted bid of the petitioner and shortlist the petitioner's name along with nine other



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bidders. Likewise, the other reason that no board resolution has been found to authorize Mr.S.Ramachandran who has signed the Power of Attorney for Lead member of the consortium is also unacceptable one. The attempt of the 1st respondent clearly is only to collect the money from the innocent bidders, which is highly condemnable. No avornment has been made in the counter affidavit as to what permitted the 1st respondent to bring him the modifications to the bid security clause. Being a model agency, it would only be fair on the part of the 1st respondent to have returned the bank guarantee to the unsuccessful bidders. The arguments of the 1st respondent would hold if there was any mis-representation or false declaration by the petitioner. This is a case where the petitioner was an unsuccessful bidder. As mentioned earlier, the petitioner has not challenged the tender process. What all the petitioner request is only return of its bank guarantee.

10. This Court finds every justification in the request made by the petitioner. Therefore, the impugned orders passed by the 1st respondent are hereby quashed and the 1st respondent is directed to release the bank guarantee without any deduction to the petitioner



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forthwith with an interest at the rate of 6% per annum from the date of impugned order till the date of payment. Likewise, the clause 2.20.7(a) of the Request for Proposal (RFP) issued by the 1st respondent is declared as unconstitutional and the same is quashed.

11. In the result, the Writ Petitions are allowed. No costs.
Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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