

W.P.No.6223 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders reserved on : 12.03.2025

Orders pronounced on : **25.03.2025**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.6223 of 2025

Hyderabad Agricultural Co-Operative Association
Limited,

Rep. by its authorized representative,

Gujjete Narsing Rao

.. Petitioner

Versus

Tamil Nadu Civil Supplies Corporation,
(TNCSC) Rep. by its Managing Director,
Having its head office at Poonamalee High Road,
Chennai Metro Rail Limited (CMRL) Admin Building,
Koyambedu, Chennai - 600 107.

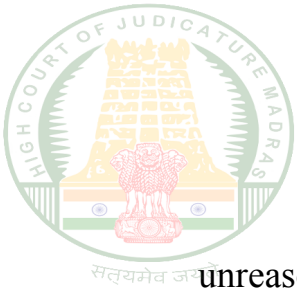
.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India

praying for a Writ of Certiorarified Mandamus to call for the records

relating to the impugned order, dated 10.01.2025 in

Proc.No.BS6/028829/2024 passed by respondent as being arbitrary,



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unreasonable, excessive, quash the same and consequently direct the respondent to refund the amount of Rs.5,11,50,000/- (Rupees Five Crores Eleven Lakhs and Fifty Thousand only) to the petitioner.

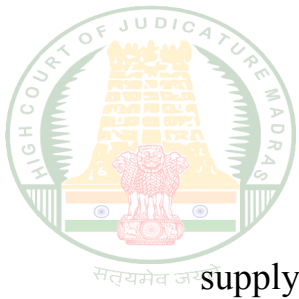
For Petitioner : Mr.Srinath Sridevan,
Senior Counsel,
Asstd. by Ms.Chandini Pradeep Kumar

For Respondent : Mr.P.S.Raman,
Advocate General,
Asstd. by Mr.D.Ravi Chander,
Special Government Pleader

ORDER

This Writ Petition is filed to quash the impugned order dated 10.01.2025 and consequently, direct the respondents to refund Rs.5,11,50,000/- to the petitioner.

2. The factual matrix, in which, the Writ Petition arises is that the petitioner is a Multi-State Cooperative Society controlled by the Government of Telangana. This society engages in the business of



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supplying various edible and non-edible items to all Government departments and their associated institutions and agencies under various schemes. In this context, the respondent, the Tamil Nadu Civil Supplies Corporation, issued a tender on 23.08.2024 for the supply of 60,000 metric tonnes of any one type of *dhal*: namely, *toor dhal* (split, husked, and fatka), indigenous *toor dhal* (split, husked, and imported), lentil commonly referred to as Canadian yellow lentil (split, husked, and laired no.2), or lentil known as Canadian yellow lentil (whole, husked, and laired no.2) according to Agmark specifications.

3. According to Clause 6 of the tender documents, the tenderer must remit an Earnest Money Deposit of Rs.5,11,50,000/-. The entire Clause - 6, which pertains to the Earnest Money Deposit, is extracted below:-

"6. EARNEST MONEY DEPOSIT

The tenderers should remit Earnest Money Deposit of Rs.5,11,50,000/-(Rupees five crore eleven lakh and fifty thousand only) through Online.

The EMD of the unsuccessful Bidders will be auto refunded to their bank account within a reasonable time consistent with the rules and regulations in this behalf. The



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EMD amount held by TNCSC till it is refunded to the unsuccessful Bidders will not earn any interest thereof.

The EMD amount of the Successful Bidder shall be converted as part of the Security Deposit (SD) for successful execution of the work and will be returned only after the successful fulfilment of the Contract.

The EMD amount will be forfeited by purchaser, if the Bidder withdraws the bid during the period of its validity specified in the tender or if the Successful Bidder fails to sign the contract or the Successful Bidder fails to remit Security Deposit within the respective due dates.

The Bidders are requested to upload the Transaction reference number and E-tender number and a certificate in Bank's letter head mentioning Name of the tenderer and EMD Amount.

The E.M.D will not be received in cash or currency notes or cheques or in the shape of TNCSC or Government bonds and the e-tender shall be rejected if EMD is no paid in the prescribed manner.

(i) Short E-tenders received without the Earnest Money Deposit will summarily be rejected.

Any amount pending with T.N.C.S.C will **NOT** be taken into account as Earnest Money Deposit for this E-tender if so requested. In the case of successful tenderers, the Earnest Money Deposit will be adjusted towards the Security Deposit to be payable on request.

(ii) The amount remitted towards Earnest Money Deposit is liable to be forfeited in case if the:

- (a) tenderer withdraws his e-tender or back out after acceptance.
- (b) tenderer withdraws his e-tender before the expiry of validity of the offer, the period specified in the specifications or fails to remit the security deposit.
- (c) Tenderer violates any of the provisions of these regulations contained herein.
- (d) Tenderer revises the terms quoted during the validity period.



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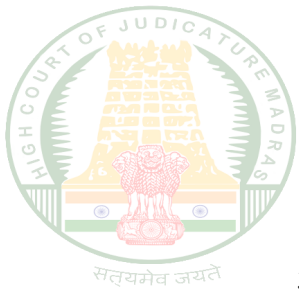
(e) tenderer fails to participate in the e-tender after remitting EMD into TNCSC account without any proper reason and TNCSC construed that the tenderer has not participated in the e-tender with ulterior motive to cause hindrance to Special Public Distribution System.

(f) the tenderer fails to sign the contract.

(g) offered quantity is less than the 20% of the tendered quantity.

(iii) The Earnest Money Deposit remitted will not carry any interest."

4. The deadline to submit the bid for the tender was on 09.09.2024 before 11:00 A.M. The petitioner claims to qualify to participate in the tender fully and submitted the bid on the online portal on 09.09.2024 at approximately 10:55 A.M. According to the petitioner, the quoted sum was Rs.1,47,000/- per metric ton for imported *toor dhal* and Rs.1,52,000/- per metric ton for indigenous *toor dhal* for the supply of 12,000 metric tons each. Although the original schedule indicated that the bids would be opened on 10.09.2024, they were opened on 14.09.2024.



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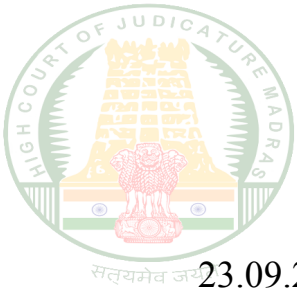
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5. On 14.092024, at 11:00 A.M, the respondent opened the bids.

When the prices were uploaded to the website, the petitioner was surprised to see the quoted prices, which indicated that the petitioner had quoted Rs.66,000/- per metric ton for both the imported and indigenous *toor dhal* varieties rather than the separate quotes made by the petitioner when submitting the bid.

6. On the same day, at approximately 12:26 P.M and 12:40 P.M, the petitioner wrote to the respondent regarding the price discrepancies, informing them that the actual quoted prices were only Rs.1,47,000/- and Rs.1,52,000/-. The petitioner also attached a screen shot reflecting the correct amounts that were uploaded. Subsequently, a letter was addressed on the same day stating that the discrepancy might have occurred due to a technical error and requesting that the bid figures be corrected.

7. Thereafter, the petitioner received a show-cause notice, dated



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23.09.2024 from the respondent, seeking to understand why the petitioner
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firm should not be blacklisted and why the Earnest Money Deposit should not be forfeited according to tender condition No.6(ii)(a). The respondent requested an explanation regarding this matter within a period of 7 days.

8. In response, the petitioner, via an email dated 28.09.2024, informed the respondent that the stated amount of Rs.66,000/- per metric ton for both imported and indigenous varieties could not possibly have been quoted by anyone, especially given the prevailing market prices. Such figures must be an error and cannot represent a conscious, informed quote. It pointed out that no one has quoted such a price in any tender. Therefore, it requested the cessation of all further actions and the refund of the Earnest Money Deposit. However, the impugned order was issued, forfeiting the Earnest Money Deposit. Challenging this, the present Writ Petition has been filed.

9. Heard *Mr.Srinath Sridevan*, learned Senior Counsel for the



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petitioner and *Mr.P.S.Raman*, learned Advocate General for the respondent.
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10. *Mr.Srinath Sridevan*, learned Senior Counsel for the petitioner, would argue that it is impossible to supply imported or indigenous *toor dhal* at Rs.66,000/- per metric ton. The prices quoted by others range from Rs.1,33,000/- to Rs.1,74,000/-, indicating that Rs.66,000/- quote is an error.

11. The learned Senior Counsel argues that the mistake is not attributable to the petitioner. It has submitted the screen shots, which demonstrate that it quoted only Rs.1,47,000/- and Rs.1,52,000/-. The petitioner is a Multi-State Cooperative Society managed by an officer in the Indian Administrative Service, appointed by the Government of Telangana. Its aim is to supply essential commodities with minimal profit to its members, providing valuable service in the sector. There is no reason it



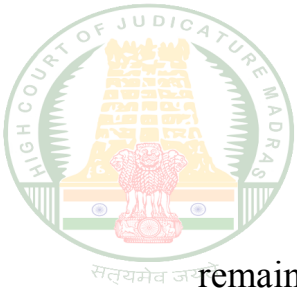
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could have quoted such a low amount. Therefore, this is not a case in which the forfeiture of the Earnest Money Deposit should be considered.

12. In this case, when the respondent opened the tender within 1 hour and 20 minutes after noticing the discrepancy at the earliest possible moment, the petitioner sent an email indicating that it was an error. The respondent Corporation should have either allowed the bidder to correct the amounts in light of the technical error that occurred in this case or, alternatively, released the Earnest Money Deposit. The learned Senior Counsel relies on the judgment of the Hon'ble Supreme Court of India in *ABCI Infrastructures Pvt. Ltd. Vs. Union of India and Ors.*¹, where the Hon'ble Supreme Court of India considered an identical situation. When an innocuous mistake is apparent, based on the principles of proportionality, it was held that the entire Earnest Money Deposit need not be forfeited, even if such a clause exists in the tender documents. In cases of a genuine mistake coupled with swift action, a token amount may be deducted while the

¹ 2025 SCC OnLine SC 327
<https://www.mhc.tn.gov.in/judis>



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remainder of the Earnest Money Deposit is ordered to be returned. In that case, against the Earnest Money Deposit of Rs.16.04 crores, the Hon'ble Supreme Court of India permitted a deduction of Rs.1 crore and ordered the payment of the balance sum.

13. Per *contra*, the learned Advocate General for the respondent Corporation submits that because the petitioner is a Multi-State Cooperative Society and that they are claiming a mistake on their part, the respondent Corporation will not blacklist them or seek recovery of the differential prices from the petitioner. However, according to the tender conditions, since the petitioner has withdrawn the offer even during the validity period, it is liable to lose the Earnest Money Deposit. This is automatic, as the purpose is to ensure that the parties honour their commitments. In response to a query from this Court, the learned Advocate General acknowledges that no person can quote a sum of Rs.66,000/- per metric ton for the supply of imported or indigenous varieties of *toor dhal*.



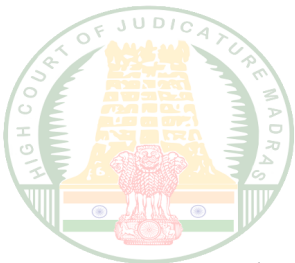
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14. I have considered the opposing submissions from both sides and examined the material records of the case.

15. The respondent now states that they will not blacklist the petitioner or claim any difference in amount. The only question to be determined is whether the Earnest Money Deposit is liable to be forfeited. According to Clause - 6(ii), which is referred to above, if the tenderer withdraws their e-tender before the validity of the offer expires, the Earnest Money Deposit is liable to be forfeited. However, this is not a case of withdrawal of the 'offer'; it is claimed to be a 'mistake'. It is even acknowledged by the learned Advocate General for the respondent Corporation that no person could have reasonably made such an offer of Rs.66,000/- per metric ton.

16. In this regard, the following are the rates quoted by all the other



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tenderers concerning the said tender:-
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Itemwise Comparative Statement
Tender Title: FOR THE PURCHASE OF 50,000 METRIC TONNES OF ANY ONE OF TUR DAL (IMPORTED), TUR DAL INDIGENOUS, CANADIAN YELLOW LENTIL
Tender ID: 2024_TCSC_477163_1

Sl.No	Sheet Name	Description of Work / Item(s)	Item Code	Units	No. of Qty	Estimated Rate	Bidder Name	Rate without Tax	Tax/Duties (INR)	Rate with Tax	Bid Rank	Prop/PUP
1	Bo01	TUR DAL (SHLT - HUSKED & FATTA - INDIGENOUS) AS PER AGMARK SPECIFICATIONS	Item1	Per MTs	1.00		THE HYDERABAD AGRICULTURAL CO-OPERATIVE ASSOCIATION LIMITED (BD D -1130208)	65000.00	0.00	65000.00	L1	NI
							AGRIGO TRADING PVT LTD (BD D -1128885)	133000.00	0.00	133000.00	L2	NI
							ARUNNACHALA IMPEX PRIVATE LIMITED (BD D -1130789)	144959.00	0.00	144959.00	L3	NI
							vimbood (BD D -1130940)	151888.88	0.00	151888.88	L4	NI
							INTEGRATED SERVICE POINT PVT LIMITED (BD D -1130166)	159000.00	0.00	159000.00	L5	NI
							LAKSHMI/VEKAT/ESVARADALL INDUSTRIES (BD D -1127734)	174999.00	0.00	174999.00	L6	NI
							THE HYDERABAD AGRICULTURAL CO-OPERATIVE ASSOCIATION LIMITED (BD D -1130208)	65000.00	0.00	65000.00	L1	NI
							Rain Exports & Imports (BD D -1130651)	137889.00	0.00	137889.00	L2	NI
							National Federation of Farmers Procurement Processing and Retailing Cooperatives of India Ltd (NACOF) (BD D -1129990)	138000.00	0.00	138000.00	L3	NI
							ARUNNACHALA IMPEX PRIVATE LIMITED (BD D -1130789)	138849.00	0.00	138849.00	L4	NI
2	Bo01	TUR DAL (SHLT - HUSKED - IMPORTED) AS PER AGMARK SPECIFICATIONS	Item2	Per MTs	1.00		TATA INTERNATIONAL LIMITED (BD D -1130677)	139301.00	0.00	139301.00	L5	NI
							INTEGRATED SERVICE POINT PVT LIMITED (BD D -1130166)	139400.00	0.00	139400.00	L6	NI
							KENDRIYA BHANDAR (BD D -1128559)	142500.00	0.00	142500.00	L7	NI
							Best Pulses and Foods LLP (BD D -1130004)	143339.00	0.00	143339.00	L8	NI
							STARSHINE LOGISTICS (BD D -1130183)	145000.00	0.00	145000.00	L9	NI
							MOORTHYTRADERS (BD D -1130811)	148455.00	0.00	148455.00	L10	NI
							vimbood (BD D -1130940)	151444.44	0.00	151444.44	L11	NI
							LAKSHMI/VEKAT/ESVARADALL INDUSTRIES (BD D -1127734)	158999.00	0.00	158999.00	L12	NI
							C.P EXPORTS (BD D -1128980)	169000.00	0.00	169000.00	L13	NI
							C.P FOODS (BD D -1129539)	170000.00	0.00	170000.00	L14	NI
3	Bo01	CANADIAN YELLOW LENTIL (WHOLE-HUSKED & LARDED NO 2) AS PER AGMARK SPECIFICATIONS.	Item4	Per MTs	1.00		VASUMATHY TRADERS (BD D -1128775)	171000.00	0.00	171000.00	L15	NI
							C.P FOODS (BD D -1129539)	138400.00	0.00	138400.00	L1	NI
							INTEGRATED SERVICE POINT PVT LIMITED (BD D -1130166)	138500.00	0.00	138500.00	L2	NI
							TATA INTERNATIONAL LIMITED (BD D -1130677)	139301.00	0.00	139301.00	L3	NI
							VASUMATHY TRADERS (BD D -1128775)	140000.00	0.00	140000.00	L4	NI
							C.P EXPORTS (BD D -1128980)	140005.00	0.00	140005.00	L5	NI
							MOORTHYTRADERS (BD D -1130811)	140985.00	0.00	140985.00	L6	NI
							STARSHINE LOGISTICS (BD D -1130183)	145000.00	0.00	145000.00	L7	NI

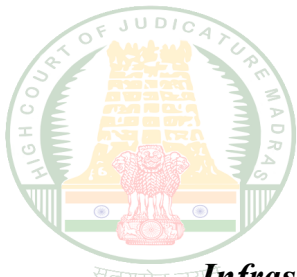


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Thus, only the petitioner quoted Rs.66,000/-. Everyone else quoted starting from Rs.1,33,000/- and above. Therefore, it can be safely concluded that the quoted price is a genuine mistake.

17. Whether the mistake occurred due to technical fault in the e-portal or whether the amount has been inaccurately keyed in, or whether any error occurred in the computer system of the petitioner is a disputed fact that cannot be resolved by this Court in its writ jurisdiction. Therefore, the mistake can only be attributed to the petitioner. Thus, attributing the mistake to the petitioner society, it can be observed that in an identical circumstance regarding an infrastructure project worth crores, when a quote was made as Rs.1,569 instead of Rs.1,569 crores, the Hon'ble Supreme Court of India considered the matter. It is essential to quote paragraph Nos.5 to 11 of the judgment of the Hon'ble Supreme Court of India in *ABCI*



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सत्यमेव जयते **Infrastructures Pvt. Ltd.** (cited *supra*), which read as follows:-
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"5. A mistake may be unilateral or mutual, but it is always unintentional. If it is intentional, it ceases to be a mistake. Mistakes or errors, though avoidable, are committed inadvertently. They have varied consequences in law. As per Section 20 of the Indian Contract Act, 1872 whereby both parties to an agreement are under a mistake as to matter of fact essential to an agreement, the agreement is void. The explanation to Section 20 says that an erroneous opinion as to the value of the thing which forms the subject matter of an agreement is not deemed to be a mistake as a matter of fact. This will not be a case covered by Section 20 of the Contract Act. However, this is not the first time that this question has arisen either before this Court or Courts outside of India. In **West Bengal State Electricity Board v. Patel Engineering Company Limited [(2001) 2 SCC 451]**, this Court referred to paragraph 84 of American Jurisprudence (2nd Edition, Volume 64 at page 944), which reads:

"As a general rule, equitable relief will be granted to a bidder for a public contract where he has made a material mistake of fact in the bid which he submitted, and where, upon the discovery of that mistake, he acts promptly in informing the public authorities and requesting withdrawal of his bid or opportunity to rectify his mistake particularly when he does so before any formal contract is entered into."

6. Thereafter, reference was made to two decisions of the Supreme Court of the United States in **Moffett, H. and C. Co. v. Rochester [178 US 373 (1900)]** and **Hearne v. New England Marine Ins. Co. [22 L.Ed. 395]** wherein it is observed that where the mistake is apparent and the party promptly informs the other as soon as it is discovered but before entering into a contract, equitable orders may be passed. However, the mistake should be



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clear, explicit, and undisputed. Further, a mistake on one side may be a ground for rescinding but not for reforming a contract where the minds of the parties have not met, yet there is no contract and hence none to be rectified. Relief may not be granted where it is inequitable. While accepting this legal position, this Court in West Bengal State Electricity Board (supra) has propounded the following exceptions to the general principle on a person seeking relief in equity on account of mistake:

"27.

(1) Where the mistake might have been avoided by the exercise of ordinary care and diligence on the part of the bidder; but where the offeree of the bid has or is deemed to have knowledge of the mistake, he cannot be permitted to take advantage of such a mistake.

(2) Where the bidder on discovery of the mistake fails to act promptly in informing to the authority concerned and request for rectification, withdrawal or cancellation of bid on the ground of clerical mistake is not made before opening of all the bids.

(3) Where the bidder fails to follow the rules and regulations set forth in the advertisement for bids as to the time when bidders may withdraw their offer; however where the mistake is discovered after opening of bids, the bidder may be permitted to withdraw the bid."

7. This judgment also refers to a decision of the Superior Court of New Jersey in **Spina Asphalt Paving Excavating Contractors, Inc. v. Borough of Fairview** [304 NJ Super 425]. The said case is related to the rectification of mistakes in the bid specifications. Relief granted in the said case was upheld by the Superior Court with the caution that generally an error in the statement of a price would not be treated as immaterial and it is only when the case of error was patent and the true intent of the



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bidder obvious that such an error might be disregarded.

8. In **West Bengal State Electricity Board** (supra), the private party, the bidder did not succeed for several reasons, including the factum that the error was not obvious and self-evident. Further, the correction of such mistakes after one and a half months after the opening of the bids would have violated the express clauses relating to the computation of the bid amount. Thus, waiver of the rule or conditions in favour of the one bidder would have created unjustifiable doubts in the minds of others impairing the rule of transparency and fairness and providing room for manipulation for awarding contracts.

9. The decision in **West Bengal State Electricity Board** (supra) was referred to and followed where a relief to the bidder was apparent before this Court in **Omsairam Steels & Alloys Pvt. Ltd. v. Director of Mines and Geology, BBSR [2024 INSC 520]**. This decision observes that while the Court must exercise a lot of restraint in exercising the power of judicial review in contractual commercial matters, the doctrine of proportionality nevertheless applies when the error or mistake is writ large and equity merits the grant of some relief. Reference was made to the decision in **Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association [(2007) 4 SCC 669]** where discussing the question of proportionality or punishment imposed on the striking workmen it is observed:

"18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature



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of exercise—the elaboration of a rule of permissible priorities.

19. de Smith states that “proportionality” involves “balancing test” and “necessity test”. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth : Administrative Law (2005), p. 366.]

20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."

Accordingly, in the said case the Appellant was



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directed to make a payment of Rs. 3 crores within the stipulated period and on the said payment the security deposit in the form of a bank guarantee of over Rs. 9 crores was directed to be refunded.

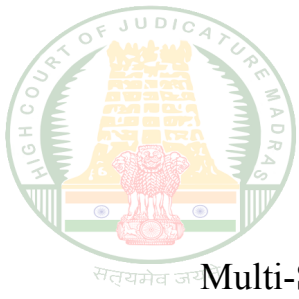
10. The present case does not fall under any exception, for the error or mistake in quoting a price of Rs. 1,569/-, does not require any argument and cannot be debated as it is self-evident. A contract of this nature for an estimated value of more than Rs. 1,500 crores spread over 48 months requiring construction of roads and tunnels of the length of more than 4 kilometres in a hilly terrain can never be executed for a mere Rs. 1,569/-.

11. At the same time, we agree with BRO, that the Appellant was at fault and had made the mistake, of having failed to add the required zeros in the financial bid. The plea of a system glitch should not be accepted, as others had successfully uploaded their bids without a problem."

(Emphasis supplied)

18. Finally, in paragraph No.16 of the judgment, a sum of Rs.1 crore was ordered to be deducted from the total Earnest Money Deposit of Rs. 15,04,64,000/-. This case also falls within an identical factual matrix.

19. The amount permitted to be deducted by the Hon'ble Supreme Court in the above case was roughly 6%. In this case, the petitioner is a



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Multi-State Cooperative Society administered by the State of Telangana.

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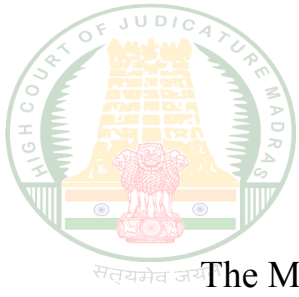
Based on the unique facts and circumstances of the case and applying the ratio of the judgment by the Hon'ble Supreme Court of India in ***ABCI Infrastructures Pvt. Ltd.*** (cited *supra*), I deem it fit that allowing the respondent Corporation to forfeit Rs.61,50,000/- (12.02%), would be fair and reasonable. The respondent Corporation shall refund the remaining sum of Rs.4,50,00,000 /-(87.98%) to the petitioner. This refund shall be made within eight weeks from the date of receipt/production of a web-copy of this order without waiting for a certified copy of this order.

20. In light of the above observations, this Writ Petition is disposed of. There shall be no order regarding costs.

25.03.2025

Neutral Citation : yes
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To



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The Managing Director,
Tamil Nadu Civil Supplies Corporation
(TNCSC),
Having its head office at Poonamalee High Road,
Chennai Metro Rail Limited (CMRL) Admin Building,
Koyambedu, Chennai - 600 107.



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D.BHARATHA CHAKRAVARTHY, J.

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