
(2011) 08 MAD CK 0367

In the Madras High Court

Case No : Writ Petition (MD) No. 6185 of 2008

M/s. Niranjan Industries

APPELLANT

Vs

The Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0367

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : J. Barathan, for the Appellant;

Final Decision : Allowed

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. The Petitioner has approached this Court, with a prayer for issuance of a Writ, in the nature of Certiorari, to quash the order of the second Respondent dated 28.06.2007, with consequential relief of Mandamus, directing the Respondent Nos. 2 and 3, to refund the Earnest Money Deposit of Rs. 36,400/- (Rupees Thirty Six Thousand and Four Hundred only).

2. The Tamil Nadu Electricity Board floated a tender, for sale of Ferrous and Non Ferrous Scrap items, condemned Transformers etc., which were available at Central Stores/TEDC/Thanjavur, by a sealed Tender.

3. The Petitioner participated for Lot Nos. 3 and 4 of the tender, and quoted a sum of Rs. 46,52,000/- (Rupees Forty Six Lakhs and Fifty Two Thousand only) for Lot No. 3, and Rs. 7,28,000/- (Rupees Seven Lakhs Twenty Eight Thousand only) for Lot No. 4, and deposited 5% of the amount i.e., Rs. 2,70,000/- (Rupees Two Lakhs and Seventy Thousand only) towards earnest money.

4. The tender of the Petitioner was not accepted as other tenderers quoted higher rate.

5. As per the terms of the tender, the Earnest Money Deposit was liable to be refunded to the tenderer, in case, the tender was not accepted.

6. The Respondents refunded the Earnest Money Deposit for Lot No. 3, but, the Earnest Money Deposit of Rs. 36,400/- (Rupees Thirty Six Thousand and Four Hundred only) for Lot No. 4 has been ordered to be forfeited by way of the impugned order.

7. The Impugned Order reads as under:

Tamil Nadu Electricity Board

From Er.S. Mohan, B.E., Chief Engineer, Distribution, Tiruchy Region.

To M/s. Niranjani Industries, T.S. No. 216, 217, New Ramnad Road, Madurai-625009.

Lr. No. CE/D/TRY/RSO/Specn. No. 57/06-07/D.467/2007 Dt. 28.06.2007

Dear Sir,

Sub:CE/D/Ty"s Specifiction No. 57/06-07 -Sale of Scrap Materials at Central Stores/Thanjavur -E.M.D for failed intimation of. Ref:(1) CE/Distn./Trichy Specn. 57/06-07.

You are informed that the E.M.D. paid by you for Rs. 36,400/- (Rupees Thirty Six Thousand and Four Hundred only) for Lot No. 4 against Chief Engineer/ Distribution/Trichy Specn. No. 57/06-07 is forfeited as per Tender Specification Clause 7(h).

Yours faithfully,

(G.M.RAVINDRANATHAN) Executive Engineer/Elecl For Chief Engineer Distn/Trichy

8. Clause 7(h) of the Tender Document, which has been invoked to forfeit the Earnest Money Deposit reads as under:

7(h) If there are any discrepancies in the rates quoted by the tenderer, the rates advantageous to the Board only will be taken. No correction in rates and in other terms and conditions will be admitted after submission of tenders, and during opening of tenders and any time subsequently and if requested so it will be assumed that the tenderer has backed out and EMD paid by him will be forfeited to Board without further reference to him.

9. It is not understood, how this clause could entitle forfeiture of earnest money. That the amount was mentioned in words, which was to be taken as tender amount and not the numerical.

10. Secondly, in order to see whether the numerical amount was right or the amount mentioned in word, then the Earnest Money Deposit of 5% was to be

taken into consideration.

11. From any angle, it is seen that the offer of the Petitioner was for Rs. 7,28,000/- (Rupees Seven Lakhs Twenty Eight Thousand only), which could be taken to be the tender amount, which was rightly not accepted.

12. It is not a case where the Tamil Nadu Electricity Board accepted the tender of the Petitioner, by taking numerical amount to be the tender amount, nor there is anything on record, to show that after acceptance of the tender, the Petitioner backed out from the contract, which could entitle the Respondent Board to forfeit the Earnest Money Deposit, by invoking Clause 7(h) of the tender document.

13. The impugned order, on the face of it, is arbitrary, and cannot be sustained in law. The statutory authorities are bound to act fairly, and cannot be allowed to harass the public, by withholding the EMD of a tenderer whose tender was not accepted.

14. The impugned order does not show whether any request for variation of the rate was made, to attract Clause 7(h) of the tender, which has been invoked to forfeit the EMD.

15. This writ petition is allowed, the impugned order is set aside, and writ in the nature of mandamus is issued, directing the Respondent to return the EMD amount of Rs. 36,400/- (Rupees Thirty Six Thousand and Four Hundred only) to the Petitioner, within one month of the receipt of certified copy of this order.

16. The Petitioner shall also entitled to costs of this petition, which is assessed at Rs. 5,000/- (Rupees Five Thousand only).