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W.P(MD)No.6846 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.02.2026
Pronounced on	11.03.2026

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.6846 of 2025
& W.M.P.(MD)Nos.13635 & 5127 of 2025

M/s.SD Infra Private Limited,
No.48/5B2, Sri Shwetha Complex
Thanjai Main Road
Thiruverumbur, Tiruchirappalli - 620 013
Through its Authorized Signatory.

... Petitioner

Vs.

1. The Ministry of Road Transport and Highways
(Zone South-1), 1, Parliament Street
Transport Bhawan, New Delhi - 110 001
Through its Director General.

2. The Regional Officer (RO)
Office of the Regional Officer
Regional Office, Vijayawada
Door No. 41-29-45A, 3rd and 4th Floor
Rajmarg Bhavan, Ranigarhota
Near Kanakadurga Varadhi
Krishnalanka, Vijayawada - 520 013.



W.P(MD)No.6846 of 2025

WEB COPY

3. The Engineer in Chief
National Highways and CRF
State New HODs Building
MG Road, Vijayawada - 520 010.

4. Indian Bank
Bharath Arcade
I Floor, Navalpattu Road
Thiruverumbur
Through its Branch Manager.

5. HDFC Bank Ltd
Harish Arcade
Plot No. 2111, Vignesh Nagar
Kattur PO-Thiruverumbur
Trichy, Tamilnadu - 620 019
Through its Branch Manager.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned communication vide Ref.No. NH-12027/18/2024/AP/South-I (C.No.246243) dated 03.03.2025 on the file of 2nd respondent, quash the same and further direct the respondents 1 to 3 not to en cash the bank guarantee provided by the petitioner through Respondents 4 and 5 to Respondents 1 to 3 or punish him.

For Petitioner : Mr.T.S.R.Venkataraman, Sr.counsel
for Ms.Janaki Devi

For Respondents : Mr.Mr.K.Govindarajan,



WEB COPY



W.P(MD)No.6846 of 2025

DSGI for R1 to R3
Mr.C.Karthik for R4
Mr.Chevanan Mohan,
for M/s.King & Patridge for R5

ORDER

This writ petition has been filed challenging the impugned communication dated 03.03.2025 passed by the 2nd respondent.

2. Petitioner's submission:

2.1 The learned Senior counsel appearing for the petitioner would submit that initially, the tenders were invited by way of Request for Proposal (RFP) for the development of National Highways, viz., (i) Gorantala – Hindupur & (ii) Mudanur to B.Kothapalli. The petitioner had participated in the said tender and submitted documents to support their eligibility criteria. Further, it made an offer for those bids with a Bank Guarantee of Rs.13.9 Crores.

2.2 Thereafter, the opening of the bid for the tender was originally scheduled on 05.09.2023 and 19.12.2023. However, the respondent could not adhere to these dates and extended the tender validity for 3/20



W.P(MD)No.6846 of 2025

almost 7 times. In the meantime, a letter of clarification dated 13.11.2024 was received by the petitioner, wherein it has been stated that a complaint was received against the petitioner from a local MLA on the ground of fabrication of documents. At this juncture, the petitioner realised that due to the inadvertant error made by the petitioner's staff, some mistakes had occurred in the tender document. Under these circumstances, the petitioner withdrew his offer even before the opening of technical bid.

2.3 It is a well settled law that a bid offer can be withdrawn before the opening of bid. Inspite of such withdrawal, based on the complaint, filed against the petitioner, with regard to the alleged fabrication of documents, a show cause notice was issued by the respondent on 13.11.2024. Subsequently, the petitioner filed his submission in the form of reply dated 19.11.2024 to the said show cause notice. Thereafter, the impugned order came to be passed by the 2nd respondent on 03.03.2025 and the petitioner's bid offer security was also confiscated by the respondents 1 to 3. Hence, this petition.



W.P(MD)No.6846 of 2025

WEB COPY

2.4 During the earlier occasion, an objection was raised by the respondents on the aspect of jurisdiction. According to the petitioner, even if a fraction of cause of action arose here, this Court has jurisdiction to decide the matter. When such being the case, the show cause notice was issued and the impugned order was passed within the jurisdiction of this Court and hence, certainly, this Court has jurisdiction to entertain the present petition. To substantiate the said aspect, he referred to the judgement in *Kusum Ingots & Alloys Ltd., vz. UOI and others* reported in *2004 Supp 1 SCR 842 & 843*.

2.5 Further, he would submit that as stated above, the petitioner had withdrawn his bid offer as early as on 19.11.2024, after which, the technical bid evaluation was published on 07.12.2024. In such case, there is no doubt that the petitioner's bid offer was not alive at the time of opening the tender. However, prior to the official opening date, the respondents 1 to 3, in collusion with the politicians, had illegally opened the petitioner's bid offer without any authority and leaked the confidential information with regard to the petitioner's bid offer to an

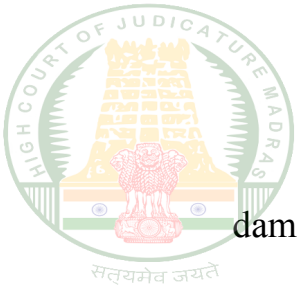


W.P(MD)No.6846 of 2025

alleged whistle blower and an MLA, who filed a complaint against the petitioner on the ground of fabrication of documents.

2.6 He would also contend that no Law or Statute empowers the respondents 1 to 3 to confiscate the petitioner's bid offer security. In terms of the provisions of Section 73 & 74 of the Indian Contract Act, 1872, if there is any breach of contract, there can be a claim for damages. The said aspect would arise only if there is a concluded contract. However, in this case, the bid offer was withdrawn by the petitioner. Neither a bid nor the withdrawn bid offer can be equated to a concluded contract. In such case, since there is no contract between parties, no damages can be imposed on a bid offer, which was already withdrawn. In this regard, he referred to a judgement rendered by the Hon'ble Apex Court in *Maula Bux vs. Union of India* reported in *AIR 1970 SC 1955* and *Union of India vs. Rampur Distillery and Chemical co.* reported in *AIR 1973 SC 1098*.

2.7 Hence, he would contend that the aforesaid act of the respondents in rejecting the bid and forfeiting the bid amount towards



damages is not proper. However, he had not pressed against the rejection of bid. He had restricted his prayer and requested this Court to set aside the order of forfeiture of the bid amount and direct the respondents to refund the same.

3. Respondents' submission:

3.1 Per contra, the learned counsel appearing for the respondent had denied all the averments made by the petitioner and would submit that in this case, the decision relating to tender process was taken at Vijayawada and the works are also related to the territorial limits of Andhra Pradesh. In such case, this Court has no jurisdiction on territorial aspect to hear and decide the present writ petition. In this regard, he referred to the judgement of the Hon'ble Supreme Court in *State of Rajasthan vs. Swayika Properties and Others* reported in *AIR 1985 Supreme Court 1289*, wherein it has been categorically held that mere serving of notice to a party will not give cause of action and a writ petition cannot be entertained on this aspect.



W.P(MD)No.6846 of 2025

3.2 He would also submit that in this case, the show cause notice was issued against the petitioner on the ground of fabrication of documents. In reply, the petitioner had not denied the said allegation but he had admitted the same by stating that due to inadvertent error, some mistakes had occurred while submitting the tender. In such case, there is no fault on the part of the respondents in initiating the proceedings against the petitioner.

3.3 By referring Clause 4.1 of Request for Proposal (RFP) issued by the respondent, he would submit that the 2nd respondent shall be entitled to forfeit and appropriate the bid security as damages without prejudice to any other right. Further, by referring Section 74 of the Indian Contract Act, 1872, he would submit that the 2nd respondent need not prove the actual damage or loss. That apart, as per the agreed condition upon which the petitioner had participated in the tender process, now, he cannot claim against the conditions of RFP or claim immunity from any other law.



W.P(MD)No.6846 of 2025

WEB COPY

3.4 Therefore, he would submit that the impugned order passed by the 2nd respondent needs no interference of this Court. Hence, he prays for dismissal of this petition.

4. I have given due consideration to the submissions made by the learned Senior counsel for the petitioner and all the learned counsel for the respondents and also perused the entire materials available on record.

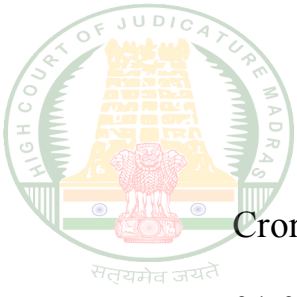
5. In the case on hand, the respondents 1 to 3 had issued the following two tender notices, in which the petitioner had participated:

i) Widening and strengthening of four lanes in Gorantla to Hindupur NH 716G Section for Rs.540 Crores;

ii) Rehabilitation and upgradation from 2 lanes to 4 lanes of Muddanur to Kothapalli Section of NH 716 for Rs. 850 Crores;

6. As per the tender conditions, the persons, who are participating in the tender, have to remit 1% of the tender value towards bid security.

Accordingly, for the 1st tender the petitioner had remitted a sum of Rs.5.49/20



W.P(MD)No.6846 of 2025

Crore through Bank Guarantee in BG.No.0019423IFG000005 dated 01.09.2023 and for the 2nd tender, he had remitted, a sum of Rs.8.5 Crore vide Bank Guarantee in BG No.123GT02242650001 dated 21.09.2024. Both the bank guarantees were extended from time to time till 19.08.2024.

7. After the receipt of tender, the respondent had opened it for the purpose of technical process, where a doubt had arise with regard to experience certificate issued, in favour of petitioner, by Thanjavur Municipality. In this regard, a communication was sent by the respondent, for which, they received an information to the extent that Thanjavur Municipality have not issued the said certificate as produced by the petitioner at the time of tender notification. The same was communicated to the petitioner on 13.11.2024 and subsequently, the petitioner had furnished his reply dated 19.11.2024 stating that there was a mistake in submission of documents. On the very same day, i.e., on 19.11.2024, the petitioner had also withdrew his bid. Thereafter, by virtue of impugned communication, the respondent had proposed to forfeit the bid security furnished by the petitioner. Immediately upon

10/20



W.P(MD)No.6846 of 2025

receipt of the said impugned communication, the petitioner had approached this Court and obtained an order of interim stay.

8. According to the petitioner, once the bid is withdrawn, the question of sustaining losses by the respondents in terms of Section 73 and 74 of the Contracts Act would not arise. Further, to forfeit the bid amount by invoking Section 73 & 74 of the Contracts Act, the respondent is supposed to have established the losses sustained by them in the manner known to law, otherwise, even if there is any clause for damages and even if any amount is quantified, the respondent is not entitled for the same.

9. Further, the petitioner submits that in the present case, no such quantification is available and also the bid was already withdrawn by the petitioner. Thus, the respondent had not established their losses and allegation of fabrication of document by the petitioner in the manner known to law. In such case, the respondent cannot forfeit the bid security amount paid by the petitioner.



W.P(MD)No.6846 of 2025

10. Yet another issue, pertaining to jurisdiction, was raised by the respondents. According to the respondents, since the tender was conducted at Vijayawada and the work place is also situated in the State of Andhra Pradesh, no cause of action would arise within the jurisdiction of this Court. However, according to the petitioner, the petitioner's registered office is situated at Trichy and they had furnished the bank guarantees from HDFC Bank, which is situated at Thiruvembur, Trichy and also the certificate, based on which the allegation was made against the petitioner, was issued by Thanjavur Municipality. That apart, withdrawal of bid was also occurred through online at the petitioner's registered office at Trichy. Therefore, a bundle of cause of action arose within the jurisdiction of this Court and thus, this Court can very well entertain the present petition.

11. Considering the above submissions, the following issues are arises for the consideration of this Court:

- i) Whether this Court will have jurisdiction to entertain this petition?
- ii) Whether the respondent is entitled to forfeit the bank guarantees furnished by the petitioner for the



WEB COPY



W.P(MD)No.6846 of 2025

damages, which are said to have sustained as per the terms and conditions of the tender document?

12. Issue No.1- Whether this Court will have jurisdiction to entertain this petition?

12.1 As far as the 1st issue is concerned, as rightly contended by the petitioner, in this case, it is not only a single cause of action but a bundle of cause of actions had arose within the jurisdiction of this Court, i.e., the petitioner's registered office is situated at Trichy and the bank guarantee was furnished to the tune of Rs.13.90 Crore from the HDFC Bank, which is situated at Thiruvembur, Trichy; Apart from that, the petitioner had participated in the tender process and thereafter, withdrew his bid through online from his registered office situated at Trichy; Further, the experience certificate, based on which the respondent raised allegations against the petitioner, was also said to have been issued by Thanjavur Municipality. Therefore, if any proceedings have to be lodged to ascertain as to whether the aforesaid certificate issued by Thanjavur Municipality is fabricated document or not, necessary suit is required to be filed only in and around Thanjavur District, which falls within the jurisdiction of this Court. That apart, all other correspondences were

13/20



W.P(MD)No.6846 of 2025

made from the petitioner's Trichy office alone. When such being the case, it is not a single cause of action but a bundle of cause of action arose within the jurisdiction of this Court.

12.2 To substantiate their submission, the case law in *State of Rajasthan vs. Swayika Properties and Others* reported in *AIR 1985 Supreme Court 1289* was referred by the respondents, wherein it has been categorically held that mere serving of notice within the jurisdiction of a Court cannot be considered as a cause of action to entertain the petition.

12.3 However, in this case, as stated above, it is not only serving of notice, but the participation in tender and withdrawal of bid had occurred through online from the said registered office of the petitioner at Trichy. That apart, the location of bank, from where the bank guarantee was furnished and the location of Municipality, which is said to have issued the experience certificate is also situated within the jurisdiction of this Court. When such being the case, the said case law will not be applicable for the present case.

14/20



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12.4 In this regard, in *Kusum Ingots & Alloys Ltd., vz. UOI and others* reported in *2004 Supp 1 SCR 842 & 843*, at paragraph Nos.2.1 to 3, the Hon'ble Apex Court had rendered the findings, which reads as follows:

“2.1 Although in view of [Section 141](#) of the Code of Civil Procedure, 1908, the provisions thereof would not apply to a writ proceedings, the phraseology used in [Section 20\(c\)](#) of the CPC and [Article 226\(2\)](#), being in pari materia, the decisions of this Court rendered on interpretation of [Section 20\(c\)](#) of CPC shall apply to the writ proceedings also.

2.2 The entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

3. Keeping in view the expressions used is [Article 226\(2\)](#) of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.”

12.5 A perusal of the above case law would make it clear that even if a *small fraction of cause of action* arose within the jurisdiction of this Court, the Article 226 can be invoked. In this case, as stated above, it is



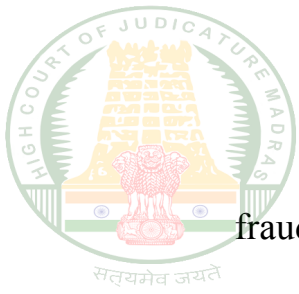
W.P(MD)No.6846 of 2025

not a single cause of action but a bundle of cause of action had arose within the jurisdiction of this Court. In such case, the question of lack of jurisdiction will not at all arise and certainly, this Court have jurisdiction to entertain the present petition. Accordingly, the 1st issue is answered.

13. Issue No.2 – Whether the respondent is entitled to forfeit the bank guarantees furnished by the petitioner for the damages, which are said to have sustained by them as per the terms and conditions of the tender document?

13.1 This issue is pertaining to the claim of damages by the respondent. There is no dispute on the aspect that in the event of playing the corrupt or fraudulent practices, the bid amount can be forfeited by the respondents. However, even for such forfeiture, the respondent is required to prove the real damages sustained by them in the manner known to law.

13.2 Even the provisions of Section 73 & 74 of the Contracts Act, mandates the requirement of proving the damages sustained by the respondents either due to the breach or violation of contract or due to



W.P(MD)No.6846 of 2025

fraudulent practices of the petitioner. Therefore, even if any amount is quantified, no damages will be awarded to the respondents unless it is proved in the manner known to law.

13.3 Further, in this case, though it has been stated by the petitioner that there was a mistake in the submission of tender documents due to the inadvertent error on the part of their staff, the said aspect has to be ultimately proved by the respondent before any Court of law, since the petitioner had not admitted with regard to the alleged fabrication of document. When such being the case, unless and otherwise it is proved, the question of making allegation against the petitioner on the ground of fraudulent and corrupt practice would not arise.

13.4 That apart, in this case, immediately upon the receipt of notice dated 13.11.2024, a reply was filed by the petitioner on 19.11.2024 and on the very same day, the bid was also withdrawn. The forfeiture notice was issued only on 03.03.2025, which is after the withdrawal of bid by the petitioner. In such case, as stated above, since the petitioner had withdrew the bid on 19.11.2024, which is much prior



W.P(MD)No.6846 of 2025

to the stage of opening the bid, the question of damages would not arise.

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13.5 Further, the respondent has not proved the damages sustained by them in terms of Section 73 & 74 of the Contracts Act. Under these circumstances, certainly, the respondent is not entitled to forfeit the bid security amount by invoking the bank guarantees furnished by the petitioner. Accordingly, the 2nd issue is answered.

14. Findings:

As discussed above, having allowed the petitioner to withdraw the bid and having failed to prove the damages sustained by them in the manner known to law, now, it is not proper for the respondents to forfeit the bid amount paid by the petitioner. In such case, this Court does not find any substances in the submissions made by the respondents. Therefore, this Court is inclined to quash the impugned communication. Accordingly, the impugned communication dated 03.03.2025 is hereby quashed.



W.P(MD)No.6846 of 2025

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In the result, this petition is allowed. While allowing this petition, this Court directs the respondent not to en cash the bank guarantee furnished by the petitioner. In the event, if the bank guarantee is en cashed, the respondent shall return the same to the petitioner within a period of two weeks from the date of receipt of a copy of this order. No cost. Consequently, the connected miscellaneous petitions are also closed.

11.03.2026

Speaking/Non-speaking order
Index: Yes / No
Neutral Citation: Yes / No
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W.P(MD)No.6846 of 2025

KRISHNAN RAMASAMY.J.,

nsa

W.P(MD)No.6846 of 2025
& W.M.P.(MD)Nos.13635 & 5127 of 2025

11.03.2026