

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2452 OF 2014

M/s. R.K.Traders through its Proprietor

-vs-

State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. M.K.Kulkarni, counsel for the petitioner.
Mr. A.M.Deshpande, A.G.P for the respondent Nos.1 to 3.

CORAM : SMT.VASANTI A. NAIK &
A.M.BADAR, JJ.

DATE : 13.08.2015.

By this petition, the petitioner seeks a direction to the respondent Nos.2 and 3 to refund the amount of Rs.56,520/- deposited by the petitioner as upset price along with interest at the rate of 18% per annum from the date of deposit till the date of its realization. The petitioner impugns the show cause notice, dated 10/02/2014 as being bad-in-law.

In pursuance of the e-auction notice for auction of sand ghat at Mouza Rakhi, Potphodi River, dated 19/11/2013, the petitioner participated in the tender and offered the bid. According to the petitioner, though the petitioner had given an offer of Rs.6,05,000/-, due to the some mistake in the computer, same was wrongly recorded as Rs.60,50,000/-. It is stated that after the bids were opened, the petitioner realized that instead of the bid of Rs.6,05,000/-, the computer operator had mistakenly shown the bid as Rs.60,50,000/-. Upset price for the auction being Rs.2,82,600/- only the other highest bid received at the auction was Rs.5,11,000/-. As soon as the petitioner realized that instead of his bid of Rs.6,05,000/-, the bid was wrongly recorded as

Rs.60,50,000/-, the petitioner wrote to the authorities that the bid amount was wrongly recorded. It is the case of the petitioner that the petitioner could not have deposited 1/4th of the bid amount i.e. Rs.60,50,000/-, as nobody could have ever offered a bid for the said amount when the upset price was Rs.2,82,600/- only. Since the petitioner did not deposit 1/4th of the bid amount on the date on which the tenders were opened, another e-tender notice was issued and the sand ghat was re-auctioned, after the sand ghat was auctioned to some other bidder in the re-auction, the impugned notice has been issued by the respondent Nos.2 and 3, asking the petitioner to show cause as to why the security amount of Rs.56,520/- should not be forfeited and why proceedings should not be initiated against the petitioner to recover the difference in the amount offered by the petitioner in the first bid and the amount for which the bid in the re-auction was accepted. The petitioner has challenged the said notice and has sought the refund of the security deposit.

Shri Kulkarni, the learned counsel for the petitioner, submitted that the respondents are liable to refund the security deposit, in view of the mistake committed by the petitioner, due to the mistake of the computer operator and the failure of the computer for some time at the time of bidding. It is submitted that the petitioner cannot be penalized for the mistake of the computer operator or the computer. It is submitted that the impugned notice is liable to be quashed and set aside and a direction is required to be issued to the respondent Nos.2 and 3 to refund the security deposit to the petitioner.

Shri Deshpande, the learned Assistant Government Pleader appearing on behalf of the respondent Nos.1 to 3, supported the notice on the basis of the Government Resolution. It is submitted that since the petitioner had failed to deposit 1/4th of the bid amount on the date of opening of the tenders in the first auction, the security deposit of the petitioner was liable to be

confiscated. It is submitted that in the re-auction the sand ghat was auctioned only for a sum of Rs.5,11,000/- and, therefore, the State Government desired to reimburse the difference in the amount between the highest bid in the first auction and the highest bid in the re-auction from the petitioner. It is submitted that the petitioner did not make a grievance about the mistake of the computer operator or the computer on the date of opening of the bids in the first auction and the grievance was made on the next day.

On hearing the learned counsel for the parties and on a consideration of the circumstances of the case, it appears that the respondent Nos.1 to 3 are not entitled to recover the difference in the amount in the highest bid in the first auction and the highest bid in the re-auction though the respondents would be entitled to forfeit the amount of security deposit. Admittedly, in the first auction, in which the petitioner participated, the upset price of the sand ghat was Rs.2,82,600/-. There is reason to believe that the petitioner had offered a bid of Rs.6,05,000/- in the auction and due to the mistake by the computer operator and due to failure of the computer for some time, there was some mistake in showing the figures of the bid. The case of the petitioner that instead of the bid of Rs.6,05,000/-, the bid of Rs.60,50,000/- was wrongly shown on the computer is believable. It is not possible that any reasonable person would offer a bid of Rs.60,50,000/- for a sand ghat with the upset price of Rs.2,82,600/-. The respondent Nos.2 and 3 would not be justified in claiming the difference in amount between the highest bid in the first auction and the highest bid in the second auction. Claiming an amount of more than rs.60,00,000/- from the petitioner would be unreasonable and would be unjust enrichment for the Government. We are, however, of the view that since the petitioner committed a mistake in offering the bid in the auction held in pursuance of the notice dated 19/11/2013, even assuming that the same was due to mistake of the computer operator, the

petitioner should lose the security deposit of Rs.56,520/-. The petitioner would not be entitled to recover the said amount from the respondent Nos.1 to 3, as the respondent Nos.1 to 3 had to re-auction the sand ghat after the petitioner did not deposit 1/4th amount of the bid in the auction. Though the mistake is *bona fide*, since the Government was put to a loss for holding a re-auction, the petitioner cannot seek the refund of the security deposit of Rs.56,520/-.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned notice is partly quashed and set aside. The respondent Nos.1 to 3 are entitled to forfeit the amount of security deposit i.e. Rs.56,520/-, however, they would not be entitled to seek the difference of the bid amount from the petitioner, in the peculiar circumstances of the case. The respondent No.2 is directed to return the amount of Rs.5,00,000/-, deposited by the petitioner with the respondent No.2 in terms of the impugned order, dated 03/06/2014 along with interest accrued on the said amount that is placed in the fixed deposit, within a period of ten days.

Order accordingly. No costs.

JUDGE

JUDGE