

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 11th September, 2015

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W.P.(C) 8754/2015 & CM No.19330/2015 (for stay)

M/S ROHTAK WIRE AND HARDWARE STORE..... Petitioner

Through: Mr. S.D. Singh & Ms. Surabhi
Shukla, Advs.

Versus

**THE SECRETARY, MINISTRY
OF DEFENCE & ORS**

..... Respondents

Through: Mr. Rakesh Kumar & Mr. Shraddha
Bhargava, Advs. for R-1 to 4.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.19329/2015 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 8754/2015

3. The petition impugns the decision dated 18th August, 2015 of the respondents No.1 to 6 Union of India (UOI) through the Ministry of Defence and its various officials (respondent No.7 is MSTC Ltd. which had done the e-auction herein below mentioned) taken in pursuance to the order dated 5th August, 2015 of this Court in W.P.(C) No.7432/2015 earlier filed by the

petitioner. Axiomatically, a direction is also sought to the respondents No.1 to 6 UOI to permit the petitioner to take delivery of the goods.

4. It is the case of the petitioner that:

- (i) It had participated in an e-auction held on 24th July, 2015 by the respondent No.7 MSTC Ltd. of the goods of the ordinance factory, Katni , Madhya Pradesh of the respondents No.1 to 6 UOI and its bid upon being found to be the highest was accepted and the balance price, after adjusting the earnest money deposited, was demanded from it and though it deposited / tendered the balance price but the respondents No.1 to 6 UOI arbitrarily, illegally and without any reason did not deliver the goods and cancelled the auction inspite of a binding contract having come into existence between the petitioner on the one hand and the respondents No.1 to 6 UOI on the other hand.
- (ii) The petition earlier filed by the petitioner in this regard came up before this Court on 5th August, 2015, when the counsel for the respondents No.1 to 6 UOI appearing on advance notice stated that representations made by the petitioner will be considered

by the respondents No.1 to 6 UOI and decided within two weeks thereof. Recording the said statement, the earlier petition was disposed of directing the respondents No.1 to 6 UOI to decide the representation within two weeks.

(iii) In pursuance thereto, the representations of the petitioner have been rejected vide impugned order dated 18th August, 2015.

5. It has *inter alia* been reasoned in the impugned order:

- (a) That as per the auction process, on conclusion of the e-auction, the highest bidder was to be notified by the system at the e-mail address through which the bid was made through system generated "Sale Intimation Letter".
- (b) That the auction process also required an acceptance letter / dismantling and disposal order to be issued by e-mail and post confirmation copy within 7 days from closure of the bid.
- (c) That while auctioning, the right to accept or reject the highest offer without any reason was reserved.

- (d) That owing to a technical error, a defect crept in in feeding the reserve price and of which the respondent No.7 MSTC was subsequently informed and auction was cancelled.
- (e) That the auction was cancelled owing to the reserve price having been fed as Rs.22/- only instead of Rs.22,50,000/-.
- (f) That thus the bid of the petitioner of Rs.12,51,001/- could not be accepted.
- (g) That no acceptance letter / delivery order, only upon issuance of which a binding contract was to come into being, was issued and thus no binding contract has come into existence.
- (h) That the earnest money deposit of the petitioner as also of the other bidders was returned and the balance sale consideration tendered by the petitioner also was not accepted.

6. Needless to state, the counsel for the petitioner finds error with the aforesaid reasoning of the respondents No.1 to 6 UOI.

7. I have at the outset enquired from the counsel for the petitioner as to how the petitioner is entitled to the relief in the nature of specific performance of the contract, even if any had come into existence. It is pointed out to the counsel for the petitioner that the contract, even if had

come into existence, was not and has not been pleaded to be such which can be specifically enforced or is on the parameters laid down in the Specific Relief Act, 1963 of contracts which are specifically enforceable. Attention of the counsel for the petitioner has also been invited to the Sale of Goods Act, 1930 whereunder also the remedy of the petitioner, even if claims to be a purchaser who has been denied delivery of goods inspite of having tendered the sale price, is of recovery of damages only, of course, after mitigating the loss if any.

8. It has further been enquired, as to how the petitioner, even if entitled to the relief claimed, is entitled to maintain a petition under Article 226 of the Constitution of India therefor, the relationship of the petitioner with the respondents being purely contractual.

9. The counsel for the petitioner only contends that since the seller in the present case is respondents No.1 to 6 UOI and which ought to act reasonably and since the respondents No.1 to 6 UOI in the present case has acted unreasonably, this writ petition as well as relief of specific performance would be maintainable.

10. In my opinion, the applicability of substantive law of specific performance in Specific Relief Act and sale of goods, is not to be different qua UOI from that qua a private seller. If the contract, under the substantive law is not specifically enforceable, specific performance thereof cannot be granted merely because the seller is UOI or the State. There are no allegations of *mala fide* or ulterior motives for the action of the respondents, in which case the Court may hold the State to its contract even if were to be not specifically enforceable under the Specific Relief Act.

11. The counsel for the petitioner refers to para 170 of the ***Natural Resources Allocation, In Re, Special Reference No.1 of 2012*** (2012) 10 SCC 1, where, relying on ***Shrilekha Vidyarthi Vs. State of U.P.*** (1991) 1 SCC 212, it was reiterated that, i) the State actions in the contractual field are meant for public good and public interest and are expected to be fair and just; ii) that Article 14 of the Constitution of India governs the State actions in contractual field also; iii) the state action must be informed of reasons and must not be arbitrary; and, iv) where no plausible reason or principle is indicated or where the impugned action is *ex facie* arbitrary, the onus is on the State to justify the same.

12. However the aforesaid judgment does not deal with the question of granting the relief of specific performance of a contract not otherwise specifically enforceable under the Specific Relief Act, merely because the respondent / defendant is a 'State'.

13. Faced therewith, the counsel for the petitioner states that he is not pressing for the relief of delivery of goods but the unfairness of the action of the respondents may be adjudicated in this writ petition.

14. Adjudication cannot be piecemeal i.e. on the aforesaid limited aspect, in this writ petition and vis-a-vis the claim for damages, in an ordinary civil proceeding. Such piecemeal adjudication has always been deprecated. Reference in this regard may be made to *Moolchand Khairati Ram Hospital & Ayurvedic Research Institute Vs. Secretary (Labour), GNCTD* MANU/DE/1135/2001, *Al-Qahtani Pipe Coating Terminal Vs. Minerals Sales (P) Ltd.* MANU/MH/1278/2008, *Claridges Hotel Pvt. Ltd. Vs. M.M. Bhagat & Co.* 92 (2001) DLT 61 and also to *D.P. Maheshwari Vs. Delhi Administration* (1983) 4 SCC 293.

15. Moreover, once the petitioner has given up the only relief claimed in this petition, the petition in any case would not be maintainable on the

reasoning given by the Supreme Court in *Arnit Das Vs. State of Bihar* (2001) 7 SCC 657 followed by this Court in *Association for Development Vs. Union of India* 167 (2010) DLT 481 (DB), *Gurugobind Singh Indraprastha University Vs. Dr. Amit Rajput* 2015 SCC Online Delhi 9130 and recently in order dated 9th September, 2015 in W.P.(C) No.6555/2013 titled *Neelam Kapur Vs. Director of Education* that the jurisdiction under Article 226 is not to be exercised academically and only in relation to the facts and claims of a particular case.

16. I may also mention that the action of the respondents No.1 to 6 UOI in the present case, of cancelling the e-auction, even if inspite of a contract having come into existence, cannot by any stretch of imagination be said to be falling within the parameters laid down by the Supreme Court in *Shrilekha Vidyarthi* supra. If indeed it is true that the reserve price, owing to a technical glitch, was mentioned as Rs.22/- instead of Rs.22,50,000/, the same in my view was reason enough for the respondents No.1 to 6 UOI to take remedial action to ensure that there is no loss of public monies. None can be permitted to take advantage of such technical mistakes.

17. Once it is found that the relief in the nature of specific performance of a contract cannot be granted owing to the contract even if any being not specifically enforceable, no purpose would be served in this Court adjudicating the said aspect.

18. Though the counsel for the petitioner has taken me through the documents to contend that a contract has indeed come into being but in the light of the view taken aforesaid, no purpose would be served in rendering any decision thereon.

19. The counsel for the petitioner then draws attention to the Minutes of the Meeting held between the petitioner and the officials of the respondents on 7th August, 2015 to show that though the petitioner had given a proposal for price negotiation, being the highest bidder, and the respondents had also agreed to the same but no such negotiations were in fact held and no reference thereto is made in the speaking order also.

20. That, in my view would not change or affect the aforesaid view. I can only *prima facie* observe that once the reserve price had been wrongly mentioned, the same would vitiate the entire auction process and the negotiations if any held by the respondents with the petitioner as the highest

bidder in an auction which was vitiated may itself become subject matter of challenge by some other bidder, embroiling the respondents No.1 to 6 UOI in endless litigation.

21. Not only so, the invocation of writ remedy in a purely contractual matter is also not permissible as recently held by Supreme Court in *Joshi Technologies International Inc. Vs. Union of India* MANU/SC/0616/2015.

22. I may also notice that it is the plea of the counsel for the respondents No. 1 to 6 UOI appearing on advance notice that this Court does not have territorial jurisdiction, the entire cause of action if any having arisen at Katni.

23. The petition is therefore dismissed with liberty to the petitioner to avail of the civil remedies in accordance with law.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 11, 2015

‘gsr’..