

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.15543 OF 2014

ORDER:

The present writ petition is filed by the petitioner seeking to declare the action of the 4th respondent in issuing letter, dated 03.06.2014, as illegal and arbitrary, and consequently, direct the respondents to return the bank guarantee, dated 12.01.2013, issued by the Indian Overseas Bank for an amount of Rs.38,46,213/-.

Heard and perused the material available on record.

The case of the petitioner is that the petitioner was awarded the contract of commercial advertisements at Lakdikapool and Necklace Road Stations of the 2nd respondent and the 4th respondent vide letter, dated 10.10.2011, awarded the contract in favour of the petitioner for a period of five years. The petitioner also furnished bank guarantee of an amount of 38,46,213/- and paid licence fee for displaying the advertisements till 31.05.2013 and thereafter, due to some obstruction of the visibility of hoarding structures, the petitioner submitted letter, dated 28.02.2013, intending to withdraw the contract and the 4th respondent also communicated the same to the competent authority for approval and as per the conditions of the contract, the 4th respondent demanded the petitioner to pay an amount of Rs.9,49,315/- with penal charges of Rs.1,00,000/-. The petitioner agreed to pay the licence amount but, requested for waiver of penal charges. Thereafter, though the 3rd respondent invited tenders for the said locations, no Agency came forward for taking the above contract.

While so, to the utter surprise of the petitioner, the 3rd respondent demanded the petitioner to pay an amount of Rs.44,61,781/-

towards proportionate licence fee for the contract, which was terminated in the month of March, 2014 and the said letter was received by the petitioner on 23.04.2014. Immediately, the petitioner submitted an explanation on 24.04.2014, but without considering the same, the 4th respondent issued letter, dated 03.06.2014, demanding the petitioner to pay the above said amount within a period of seven days from the date of issue of that letter otherwise, they would invoke the bank guarantee submitted by the petitioner. Hence, the present writ petition.

Learned counsel for the petitioner submitted that though the petitioner submitted his explanation on 24.04.2014, without considering the same, the 4th respondent insisted him to pay the total due amount i.e. Rs.44,61,781/- within seven days from the date of receipt of letter, dated 03.06.2014, otherwise intended to invoke the bank guarantee submitted by the petitioner. He further submitted that in the explanation submitted by the petitioner, the petitioner intends to go for arbitration proceedings, in case of refusal of his request by the respondents, and hence, he requested to issue a direction for settlement of the issue through an arbitrator.

Considering the facts and circumstances of the case and also taking into consideration the submissions of the learned counsel for the petitioner, this Court is of the view that the disputed facts are necessarily to be decided by an arbitrator. Hence, the petitioner is at liberty to approach the arbitrator for settlement of the issue. Till then, the respondents are directed not to proceed against the petitioner in pursuance of the letter of the 4th respondent, dated 03.06.2014.

Accordingly, the Writ Petition is disposed of. No order as to costs.
Consequently, miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

November 15, 2016
KTL

