

THE HON'BLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.34800 of 2016

ORDER:

The writ petition is filed by the petitioner seeking a writ of mandamus declaring the action of the respondents in auctioning off the third instalment goods for which the petitioner had made full payment in all respects as illegal, arbitrary, unfair and consequently to direct the respondents to (i) pay the amount of Rs.7,55,353/-, which is interest at the rate of 1% per week on the total amount of Rs.47,08,455/- (which includes material cost (covered by the Security Deposit as well)), which the respondent No.1 kept for 16 weeks i.e., from 20.04.2016 to 10.08.2016, on which date they made payment of Rs.35,30,730/- covering the bare material cost, ED, VAT, TCS and penalty for the third instalment; (ii) refund the amount of Rs.11,77,725/- which was paid as security deposit together with interest at the rate of 1% per week which works out of Rs.11,777/- per week from 10.08.2016 till the date of actual receipt of payment by the petitioner and also (iii) refund the amount of Rs.7,655/- which was wrongly charges as penalty towards late payment of ED, VAT and TCS of the first instalment.

Heard and perused the material.

Learned counsel for the petitioner submits that the petitioner herein is a successful bidder in the auction and as per the Schedule of Payment, it has paid the amount after the auction and goods were delivered to the petitioner herein on two occasions. On the third occasion, the petitioner paid the auction amount with delay of four weeks. Hence, the respondents herein refused to release the goods and also forfeited the security deposit. Aggrieved over the same, the present writ petition is filed seeking to refund the amounts.

Learned Standing Counsel for the first respondent/BHEL Sri P.Rajasekhar submits that the dispute is arising out of contractual obligations and that the writ petition is not maintainable in view of the arbitration clause mentioned in the tender conditions. He further submits that as per the arbitration clause, the petitioner has to approach the Arbitral Tribunal for resolving the disputes arising out of contractual obligations.

Considering the rival submissions made by both the counsel, this Court is not inclined to interfere with the disputes between the petitioner and the respondents as the disputes are arising out of contractual obligations. Hence, the writ petition is disposed of with a direction to the petitioner to approach the Arbitral Tribunal invoking the arbitration clause.

The writ petition is accordingly disposed of. Consequently, miscellaneous petitions, if any shall also stand disposed of.

18.10.2016
pln

JUSTICE RAJA ELANGO