

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.4057 of 2012 (O&M)
Date of decision : 08.02.2016

State of Haryana and ors.

...Appellants

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. D.K. Mittal, DAG, Haryana.

Ms. Manisha Garg, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

CM No.11049-C of 2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 17 days in filing the present appeal is condoned.

Application is allowed.

Main Case

The appellant-State is aggrieved of the concurrent findings of fact, whereby suit for recovery of the amount of ₹51,110/- along with interest sought to be recovered on the premise that the respondent-plaintiff

have submitted a bid for 11 mines has been decreed. The tenders were to open on 27.12.2007. On opening of tender, it was found that bid supplied by the plaintiff was lowest. The respondent-plaintiff sent revocation letter by fax on 28.12.2007 and called upon to give acceptance letter for executing the contract which pertains that revocation was in respect of the 7 mines. Since the Contractor did not send the acceptance letter, the earnest money was forfeited. It is the said forfeiture which had been challenged in civil suit.

Mr. D.K. Mittal, DAG, appearing on behalf of State, submits that as per Rule 30 of the Punjab Minor Mineral Concession Rules, 1964, the tender was to be opened in the presence of tenderer. There is procedure prescribed of filing of tender and provisionally selected bidder was required to deposit 25% amount of bid for one year as security and to offer one surety solvent in terms of the tender while in contract and deposit immediately the other amount. The earnest money was to be refunded within a period of three months from the date of receipt of final decision of the tender to the unsuccessful tenderer. Since, auction was accepted on 27.12.2007, the revocation is subsequent date, the respondent-plaintiff is not entitled to refund of earnest money and thus following substantial question of law arise for determination by this Court:-

1. Whether respondent-plaintiff can seek the refund of earnest money deposited for allotment of the contract vis-a-vis the mining or not?

Ms. Manisha Garg, learned counsel appearing on behalf of respondent-plaintiff submits that since contract was not complete,

respondent-plaintiff did not give the acceptance and in absence of acceptance, contract remain unfulfilled and, therefore, appellant-State could not have forfeited the earnest money and rightly so, Courts below have decreed the suit. The concurrent finding of facts should not be interfered by invoking the provision of Section 100 of the CPC.

I have heard learned counsel for the parties and appraised the paper book.

Rule 30 & 31(3) and 33 of the aforementioned Rules reads thus:-

“Rule 30. Period of Contract :-

(1) Each contract will ordinarily be auctioned for a period of three years unless the period is specifically stated. The successful bidder will be informed of the auction in his favour.

2. The auction shall be notified:-

i) on the notice board of Director, Mining Officers and at least in one newspaper having wide circulation in the locality nearest to the area in question, in the regional language;

ii) In the Haryana Government Gazette by publishing the auction notice at least 10 days before the date of auction and it shall mention the terms and conditions of the contract. A copy of the auction notice shall be sent to the local authority having jurisdiction over the area in question for giving wide publicity in the area.

(iii) The terms and conditions and description of the contract, shall be read out to the intending bidders at the time of auction. The intending bidders shall deposit such earnest money as may be fixed by the Director. In each case such amount shall be notified in the Government

Gazette;

No person shall be entitled to participate in the auction unless he produces a certificate from Assistant Mining Engineer/Mining Officer of the District in which the quarry is situated or furnished an affidavit sworn before any Magistrate to the effect that no amount of contract money, royalty or dead rent or surface rent in respect of any mining lease or contract held by him earlier or in respect of any recovery certificate issued by the Director of Mines Geology in terms of Rule 53 is outstanding against him.

Provided that where any injunction has been issued by a Court of law or any other competent authority staying the recovery of any such amount the non payment thereof shall not be treated as a disqualification for purpose of participation in the auction.

iv) No bid shall be regarded as accepted unless confirmed by Government on completion of the auction the result will be announced and provisionally selected bidder shall immediately deposit 25% amount of bid for one year as security and shall offer one surety solvent in the sum of his bid for the whole contract for the due observance of the terms and conditions of the contract,; he shall also deposit immediately the following amount as advance contract money:-

Where the bid amount for one year:

- a) does not exceed rupees one thousand .. Whole of such amount*
- b) exceeds rupees one thousand but does not exceed rupees five lakhs .. Twenty five percent of such amount*
- c) exceeds rupees five lakhs .. 1/12th of such amount.*

{Provided that under special circumstances Director may fix the amount to be deposited at the time of auction as security and advance contract money subject to the condition that total amount to be deposited at the time of auction shall not exceed 50% of the annual bid amount in the auction;}

Provided {further} that when Director/Additional/Joint Director of Industries/State Mining Engineer acts as the Presiding Officer, he may subject to the directions of the Govt. as may be issued to him from time to time, accept the bid.

{Provided further that in case the surety offered by the contractor during the subsistence of the contract is not found solvent, the contractor shall offer another solvent surety and a supplementary deed to this effect will be executed.}

v) The earnest money shall be refunded immediately at the completion of the auction to all excepting the person whose bid is provisionally accepted. The earnest money shall be adjusted against the security under clause (iv);

{Provided that if the highest bidder whose bid is provisionally accepted withdraws his bid, the amount of earnest money deposited by him shall stand forfeited.}

Rule 31. PROCEDURE FOR CALLING TENDERS :

3) Tenders shall be opened in the presence of tenderer or tenderers who may be present at the notified time for opening of tenders. The tenderer who is provisionally selected shall deposit 25% of the amount of the tender for one year as security and shall offer one surety solvent in the sum of his tender for the whole contract for due observance of the terms and conditions of the contract. He shall also deposit immediately the following amounts as

advance contract money.

{Provided that in case surety offered by the contractor during the subsistence of the contract is not found solvent the contract or shall offer another solvent surety and a supplementary deed to this effect will be executed.}

Where the amount of tender for one year:

- a) does not exceed rupees one thousand .. Whole of such amount*
- b) exceeds rupees one thousand but does not exceed rupees five lakhs .. Twenty five percent of such amount*
- c) exceeds rupees five lakhs .. 1/12th of such amount.*

Rule 33: Execution of Contract:

When a bid is confirmed or a tender is accepted the bidder or tenderer shall execute a deed in Form 'L' and Form 'N' in the case of saltpetre contract. The execution of the deed shall be made within one month from the date of communication of acceptance of bid or tender to the bidder or tenderer and if no such contract is executed within the aforesaid period, the order accepting the bid or tender shall be deemed to have been revoked and the amounts paid under rule 30(2) (iv) or 31(3) as the case may be, shall be forfeited to the Government.

Provided that in cases where the highest bids are accepted on the spot, the execution shall be made within a period of ten days from the date of acceptance of the bid;

Provided further that in case highest bidder or tenderer submits a written request for condonation of delay and where the Director is satisfied that the highest bidder or tenderer is not responsible for delay in execution of contract, the Director may condone the delay and permit

the execution of contract agreement in case the delay is not more than 3 months. Further in case the delay is more than the period of 3 months, the delay shall be condoned by the State Government.”

As per Clause 5 of Rule 30, the earnest money of all the unsuccessful persons shall be returned except of the successful bidder, in essence, earnest money shall be adjusted and in case the highest bidder did not honour the bid, amount of earnest money deposited shall stand forfeited. The respondent-plaintiff was found to be highest bidder on 27.12.2005 as auction was accepted in his favour with the revocation of subsequent date 28.12.2007. Non-submission of the acceptance letter would not entail the cause of action for the respondent-plaintiff to seek the refund of the earnest money. The aforementioned Rules are sacrosanct between the bidder and the respondent-Department and cannot be deviated until and unless vires of the same are challenged and accepted to be onerous. Both the Courts below failed to refer to the aforementioned Rules while decreeing the suit.

Keeping in view the aforementioned facts, judgment and decree of both the Courts below are hereby set aside. Substantial question of law as noticed above is accordingly answered in favour of appellant and against the respondent-plaintiff.

Suit stands dismissed.

Appeal is allowed.

08.02.2016

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**(AMIT RAWAL)
JUDGE**