IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: December 02, 2016
Judgment delivered on: December 22, 2016

\+ LPA 142/2016

SHIV SHAKTI CYLINDERS THR. ITS PROPRIETOR ..... Appellant
Through: Mr. A.K. Singla, Sr. Adv. with Mr. Abhimanyu Singh Khatri and Ms. Manorama, Advs.

versus

INDIAN OIL CORPORATION LTD. AND ANR. ..... Respondents
Through: Ms. Mala Narayan with Mr. Siddharth Menon, Advs. for IOCL.

CORAM:-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this appeal is to the order dated 4th February, 2016 passed by learned Single Judge of this Court in Writ Petition (Civil) no. 5572/2014 whereby the Writ Petition was dismissed. The challenge in the writ petition was primarily to the letter dated 20th February, 2014 issued by respondent no.2 forfeiting the earnest money of Rs.9,18,000/- of the appellant. Consequential relief was also sought for the refund of the same with interest.

2. The case of the appellant in the writ petition was that a tender notice

was issued by the respondent Corporation inviting bids for a period of three years for statutory testing and painting of LPG Cylinders. The bids were submitted in two parts, i.e., technical and financial bid. The last date for submission of the tender was 30th October, 2013 at 11.00 Hrs. and the technical bid was to be opened at 11.30 Hrs. same day. The earnest money for submission of tender was Rs.9,18,000/- payable at New Delhi. It was the stand of the appellant in the petition that as per the bid document, the bidder who is an existing party was required to submit a copy of PESO license, or a copy of having applied for the same, copy of factory license and proof of having applied for its renewal and copy of Provident Fund Registration Number. It was the case of the appellant, as it was not having valid factory license, on the advice of the officials of the respondent Corporation, appellant had applied for factory license on 25th October, 2013 along with all required documents and court fee with retrospective date, i.e., the year of 2007. The appellant duly submitted his tender on 28th October, 2013 along with a demand draft of Rs.9,18,000/-. Along with the bid, the appellant had submitted a copy of the application filed for factory license. The appellant was declared successful and was issued a Letter of Intent (LOI) dated 28th November, 2013. As per the Letter of Intent, the appellant was required to submit a factory license on or before 28th January, 2014. The appellant's case was that it had addressed a letter dated 6th December, 2013 to the respondent Corporation asking for extension of time for submission of the factory license. It was the case of the appellant in the writ petition that the appellant was pursuing for the factory license, in the meanwhile instead of considering the genuine and bona fide request of the appellant, to the utter shock, the appellant received a letter dated 20th February, 2014 intimating the earnest money has been forfeited as it had failed to comply with the tender requirements. It is the submission of Mr. A.K. Singla, learned Sr. Counsel for the appellant that the appellant had never represented that it had the factory license. In fact, a stipulation in the tender documents included that the party, which had applied for license of factory was also eligible to tender. He states that the appellant had written a letter to the respondent Corporation to grant him time to submit the factory license. Unfortunately, the said request was not heeded to. Mr. Singla would concede that the application submitted by the appellant for obtaining factory license was rejected in the month of March, 2014 on the ground that the license was applied for a factory which falls in residential zone. He submitted that the appellant had applied for fresh license at a new address and got the license on 31st March, 2016.

3. On the other hand, Ms. Mala Narayan, learned counsel appearing for

the respondent / IOCL would justify the order of the learned Single Judge. She states that action against the appellant has been taken as per the contract. She has drawn our attention to various clauses of the tender, LOI etc.

4. Having heard the learned counsel for the parties, there is no dispute that one of the conditions for applying for the tender was that the party had applied for a license of factory. In fact, the tender of the appellant was accepted. There was clear stipulation in the LOI dated 28th November, 2013 in terms of Clause 7 which we reproduce as under:

> *"The application for Factory License is "Applied For". The Factory License is be submitted on or before 28.01.2014 before issue of Work Order."*

5. The said stipulation in the LOI has not been challenged by the appellant. Rather vide letter dated 6th December, 2013, the appellant had asked for some more time to submit the factory license. The appellant could not submit the factory license on or before 28th January, 2014, which was a failure to comply with the term of LOI after acceptance of LOI. This resulted in the respondent Corporation forfeiting the earnest money. This action of the respondents is justified in view of clause 1.12 of the Tender which we reproduce as under:

> *"1.12 EMD (if applicable) shall be forfeited and the vendor may be put in holiday list in case:*

a) The tender is accepted and the vendor falls to furnish Performance Bank Guarantee (if applicable) or to execute the contracts within the stipulated period.
b) In case the tenderer alters / modifies / withdraws the bid suo-moto after opening the bids (un-priced bids in case of 2 bid tender) and within the validity period."

6. In view of the stipulation in the tender document, as the power exists with the Corporation, the earnest money was rightly forfeited. In fact, it is the case of the appellant itself that the earlier application of the appellant for factory license was rejected on the ground that the area falls in residential zone. The subsequent application, even if made, would be of no consequence. In view of the clear condition in LOI, which the appellant has failed to adhere to, the order of the learned Single Judge is justified. We do not see any merit in the Appeal. The appeal is dismissed.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 22, 2016
jg