

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.12227 of 2006

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the letter of the second respondent bearing Ref.MSTC(V)/NTPC/RSTPS/05-06/EA-1641 dated 10.04.2006.

Heard learned counsel for the petitioner and Ms.G.Sudha, learned counsel for the first respondent.

According to the petitioner it is a company established at Mumbai carrying on the business in Esters and chemicals used in the industries. It is stated that the first respondent identified the waste oil in its possession and estimated the same approximately as 1,18,000 Lts and proposed the same to be sold in public auction and handed over the said exercise to the second respondent and the second respondent issued an e-auction notification, inviting tenders from the prospective tenderors and, subsequently, auction was conducted on 24.01.2005 wherein the petitioner company had become the highest bidder. According to the petitioner, it deposited a sum of Rs.3,42,200/- towards security deposit within three days from the date of auction by way of a demand draft bearing No.356298 dated 01.02.2006 for the said sum. It is further stated that, as per the tender conditions, the balance amount had to be paid within a period of fifteen days from the date of sale order, but admittedly, the petitioner herein did not make the said payment

within the time stipulated and according to the petitioner it submitted a representation on 01.02.2006 to the first respondent requesting for instalments for payment of the said amount. By way of a letter, under challenge, dated 10.04.2006 the second respondent ordered forfeiture of the security deposit made by the petitioner herein in terms of Clause 18 of the conditions of auction.

According to the learned counsel for the petitioner the said action on the part of the respondents is illegal, arbitrary and violative of principles of natural justice. It is further submitted that, despite submission of representation by the petitioner, the respondents did not consider the request of the petitioner herein. On the contrary it is submitted by the learned counsel for the first respondent-Ms.G.Sudha that there is no illegality nor there exists any infirmity in the impugned action and the validity of the conditions of the contract, having participated in the process, cannot be the subject-matter of the Writ Petition under Article 226 of the Constitution of India. It is further brought to the notice of this Court that Clause 20 of the conditions provides for resolution of disputes by way of arbitration which the petitioner failed to arrive. The copy of the said terms and conditions is placed on record by the learned counsel for the first respondent. Clause 18 of the same stipulates that, if the payment is not received within the schedule as mentioned in the sale order or workmen are found indulging in illegal and unauthorised activities in NTPC, RSTPP

premises, the sale order will be cancelled and the EMD/security deposit will be forfeited without reference to the purchasers and without prejudice to the other rights of the sellers. It is also clear from clause 20 that, in the event of any dispute or difference of opinion between the seller and the purchaser as to their respective rights and obligations or as to the true intention or meaning of the terms and conditions of the contract, such dispute or difference of opinion can be agitated before the Arbitrator. In the present Writ Petition the clause, which authorised the respondent herein to forfeit the security deposit, is not under challenge and having agreed to the conditions of the auction notification and having participated in the auction in the considered opinion of this Court it is not open for the petitioner herein to turn back and assail the validity of the said Clauses. Since the second respondent acted strictly in accordance with the terms and conditions of the contract, this Court does not find any valid reason to interfere with the order under challenge.

The Writ Petition is, accordingly, dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

14th June, 2017
Tsy

A.V.SESHA SAI, J

