IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.02.2018

C O R A M

THE HON'BLE Mr.JUSTICE K. RAVICHANDRABAABU

W.P.No.13934 of 2017
and
WMP No.15123 of 2017

SYR Infrastructure,
a proprietary concern, rep. by its Proprietor,
Mr.K.Yougandhar,
Bye Pass Road, (opp. Mitsuba Company),
Gummidipoondi, Thiruvallur-601 201. ...Petitioner

vs

1.Chennai Port Trust,
rep. by its Chairman,
Rajaji Salai,
Chennai 600 001.

2.Chief Mechanical Engineer,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

3.MSTC Limited,
(A Govt. of India Enterprise),
Leelavathi Building, Second Floor,
69, Armenian Street,
Chennai 600 001. ... Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the impugned order of the second respondent bearing No.MEE/F3/160040/16/MM dated 16.05.2017, quash the same and consequently direct the respondents one and two to permit the petitioner to evacuate and lift the balance 89,649.740 Metric Tons out of 132300 Metric Tons of Iron Ore Fines and lumps at iron ore plots of BD II at Chennai Port Trust in conformity with the delivery order No.MSTC/SRO/16-17/1828/5917 dated 27.01.2017 issued by the third respondent and delivery order bearing No.MEE/F3/160040/16/MM dated 27.01.2017 issued by the second respondent pursuant to the e-auction Tender No.Mee/T/F3/e-72/16/MM held on 30.12.2016.

For petitioner : Mr.Vijay Narayan
Senior Counsel/Advocate General

For Respondents : Mr.S.Haja Mohideen Gisthi for R1 & R2
Standing Counsel
No Appearance for R3

O R D E R

The petitioner is aggrieved against the order dated 16.05.2017 passed by the second respondent, wherein and whereby the evacuation/delivery of top layer Iron ore fines carried out by the petitioner was suspended from 30.03.2017 onwards due to administrative reason, until further intimation from the Trust.

2.The case of the petitioner, in short, is as follows:

The petitioner is engaged in the business of trading iron ore, civil construction activities, etc., The first and second respondents entrusted the auctioning of 1,32,300 Metric Tons approximately, disposal of top layer of iron ore fines at iron ore plots of BD-II in as is where is condition basis to the third respondent. Accordingly, the third respondent issued e-notification and conducted the e-auction on 30.12.2016. The petitioner participated in the tender and became the successful bidder in the said auction. The petitioner had offered the highest price of INR 681 per metric ton. The petitioner received sale intimation letter dated 31.12.2016. Consequently, the petitioner paid a total sum of Rs.10,18,53,867/-. The Chennai Port Trust issued a receipt dated 25.01.2017, indicating the above said payment. Thereafter, a delivery order was issued to the petitioner on 27.01.2017, upon certain terms and conditions. As per the terms and conditions, the petitioner has to clear the sold goods from the site within 180 working days from 01.01.2017, failing which the petitioner's proprietary concern has to pay ground rent as applicable. In terms of the said sale intimation letter and delivery orders, till 30.03.2017, the petitioner lifted a quantity of 42,650.260 Metric Tons leaving a quantity of 89,649,749 Metric Tons to be lifted in terms of the sale intimation letter and delivery orders. On 30.03.2017, the petitioner was orally instructed by the second respondent to stop lifting the balance goods purchased by the petitioner in the said auction. The petitioner repeatedly sent communications, requesting the first respondent to intervene and instruct the concerned officials of the Chennai Port Trust to permit the petitioner to resume the iron ore evacuation. However, to the petitioner's shock and surprise, the second respondent issued the impugned communication, suspending the evacuation temporarily with effect from 30.03.2017.

3.The respondents 1 and 2 filed a counter affidavit wherein it is stated as follows:

An e-auction was held on 30.12.2016. The delivery order was placed on 27.01.2017. The order for stoppage of delivery was issued on 16.05.2017. M/s.Eastern Bulk Trading & Shipping Pvt. Ltd. (H3) vide letter dated 24.01.2017, has stated that payment of Rs.3,00,00,000/- and Rs.7,18,53,887/- has been remitted on 23.01.2017 and 24.01.2017 respectively into Chennai Port Trust SBI Account on behalf of the petitioner, but in the name of M/s.Eastern Bulk Trading & Shipping Pvt. Ltd., itself. The petitioner vide letter dated 25.01.2017, had intimated that the payment of sale value was made by M/s.Eastern Bulk Trading & Shipping Pvt. Ltd., on behalf of the petitioner company and thus requested to issue the payment certificate for taking further action. The Deputy CAO (Stores) vide letter dated 25.01.2017 has accepted the payment of Rs.10,18,53,867/- made by M/s.Eastern Bulk Trading & Shipping Pvt.Ltd., on behalf of the petitioner. The sale value remitted by H3 bidder on behalf of the petitioner is a violation of Integrity Pact under commitments of the Bidder/Contractor. The entire sale value has been paid by the H3 bidder only on his own account and not in the name of H1 bidder. Hence H1 bidder, viz., the petitioner is not liable to execute the sale process. The CBI has filed FIR against the Chennai Port Trust officials and others in No.C1/RC MA1 2017 A0011/CBI/ACB/CHN dated 19.06.2017, based on a complaint dated 11.05.2017, against the petitioner, M/s.Eastern Bulk Trading & Shipping Pvt. Ltd., M/s.M.C.Jain & Associates and the Port Trust officials under Section 120-B read with 420 of Indian Penal Code and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. In the FIR, it is alleged that the officials of the Chennai Port Trust entered into a criminal conspiracy with the petitioner and others and awarded the contract to the petitioner for sale of iron ore based on the reserve price, which was very low and permitted the H3 bidder to make the payment of the contract, which was awarded to the petitioner (H1 Bidder). Thus, the FIR alleged that the wrong loss to the tune of Rs.7,10,45,000/- was caused to the Chennai Port Trust and corresponding wrongful gain to the petitioner. In such circumstances, any further action could be taken only based on the outcome of the investigation to be carried by CBI in pursuant to the above said FIR.

4.Mr.Vijay Narayan, learned Advocate General appearing for the petitioner submitted as follows:

When the petitioner has become successful bidder and has also paid the entire money towards the evacuation of the iron ore in respect of the total quantity of the goods referred to in the sale intimation letter, the respondents 1 and 2 are not justified in preventing the petitioner from removing the balance iron ore, that too, based on an administrative reason. He further submitted that pendency of the criminal case filed by the Central Bureau Investigation cannot be a bar for the petitioner to remove the balance iron ore as admittedly the petitioner has paid the entire sale consideration towards such total quantity of iron ore. Therefore, he contended that the parties to the contract are bound by the terms and consequently, the petitioner is entitled to remove the balance iron ore. Alternatively, he submitted that atleast the respondents 1 and 2 should pay back the balance amount equivalent to the iron ore, which the petitioner has not removed so far.

5. On the other hand, the learned Senior Standing Counsel appearing for the respondent Port Trust Mr.S.Haja Mohideen Kisthi submitted that when the CBI has filed a criminal case against the petitioner as well as the officials of the Port Trust and other private parties, specifically alleging criminal conspiracy of the petitioner and others resulting huge loss to the Port Trust and especially, when all the files are taken away by the CBI and the matter is pending investigation, the question of considering the request of the petitioner either for removing the ore or for returning the money does not arise. Therefore, he submitted that the petitioner has to wait for the outcome of the criminal case.

6.Heard both sides.

7.It is true that the petitioner became the successful bidder in respect of the subject matter contract. It is also not in dispute that major portion of the sale value money was paid by one M/s.Eastern Bulk Trading & Shipping Pvt. Ltd., on behalf of the petitioner firm, as is evident from the proceedings issued by the Chennai Port Trust dated 24.01.2017. The petitioner is also not disputing the said fact. However it is contended by them that the said money was paid by the said Company on behalf of the petitioner and therefore, the petitioner is entitled to continue the remaining evacuation or in the alternative to get the balance sale value for which the iron ores are not removed so far.

8.The question now arises in this case is as to whether, under the given facts and circumstances, the petitioner is entitled to remove the balance iron ore or in the alternative, get back the amount equivalent to the iron ores, which are not removed by the petitioner so far.

9.There is no difficulty in answering the said question against the petitioner, atleast for the present, in view of the admitted fact that a criminal case has been registered by the

CBI not only against the petitioner and also against the Port Trust Officials, specifically alleging that all of them have conspired to get the contract awarded in favour of the petitioner for the sale of iron ore based on a very low reserve price, more particularly, by permitting the unsuccessful bidder viz., H3 bidder, M/s.Eastern Bulk Trading & Shipping Pvt. Ltd., to pay the money on behalf of the petitioner. There is a specific allegation that resulting out of such conspiracy and the consequential contract awarded to the petitioner, the Port Trust has to face loss while the petitioner was made to get a wrongful gain. It is also an admitted fact that the investigation is still pending and the entire records are seized by the said Investigating Agency. When such serious allegations are made in the FIR against the petitioner and the Port Trust Officials, I do not think that the petitioner, during the pendency of such criminal case, is entitled to get the balance iron ore removed or to receive the balance amount out of the amount totally paid, representing the equal value of the iron ores, which are yet to be removed by the petitioner.

10. Needless to say that any direction, as sought for by the petitioner, if issued, would certainly dilute and hamper the investigation already initiated by the CBI, as any finding rendered by this Court on the issue involved herein would certainly have a barring on the investigation which is being carried on by the CBI, especially, when the offences alleged to have been committed were under Section 120-B read with 420 of Indian Penal Code and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Therefore, I am of the firm view that the petitioner is not entitled to get any relief as sought for in this writ petition and also for refund of the balance amount, for which the iron ore is not removed by them. Needless to say that it is open to the petitioner to work out their remedy, depending upon the outcome of the criminal case. Thus, the writ petition fails and the same is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vri

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate, S.R.No.9257

+2cc to Mr.S.D.Venkateswaran, Advocate, S.R.No.9086

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RRK(16/02/2018)