

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.659 of 2012

ORDER:

The relief sought for, in this Writ Petition, is for a writ of certiorari to call for the records pertaining to the proceedings of the 5th respondent dated 21.11.2011, and to quash the same.

Facts, to the limited extent necessary, are that, pursuant to the notification issued on 14.12.2010 inviting bids for grant of sand quarry lease in Nelatur village, Duvvur Mandal, Kadapa District, the petitioner submitted his bid. The lease period was 12 months from the date of confirmation of the bid. The petitioner was the sole bidder for the subject reach. As against the minimum auction amount of Rs.6.00 Lakhs per year, the bid was confirmed in the petitioner's favour at Rs.6,70,000/-, and the petitioner agreed to pay 25% thereof i.e. Rs.1,67,500/-, besides Rs.3,800/- towards income-tax, within two days. The petitioner claims to have paid the said amount within time.

It is the petitioner's case that, on visiting the subject sand reach, he found that there was four feet depth of flowing water, and it was impossible to operate the sand quarry. He, therefore, filed W.P.No.1500 of 2011 seeking a mandamus to direct the respondents to consider his representation dated 13.01.2011, and to direct respondents 2 to 5 to allot any one of the notified reaches, other than the subject reach, and permit him to quarry sand corresponding to the value paid by him in terms of the proceedings dated 06.01.2011. The said Writ Petition was disposed of, by order dated 14.10.2011, directing the respondents to consider the petitioner's representation. Thereafter, by letter dated 21.11.2011,

the petitioner was informed that, at the time of submission of the application and sealed tender, the petitioner had agreed to abide by all the conditions, like payment of 25% of the knocked down amount, along with the prevailing income-tax rates, within two working days; the balance 75% was required to be submitted on or before the date mentioned in the confirmation order, and that a lease-deed be executed within 7 days from the date of confirmation. The petitioner had also affirmed that, in case of negligence on his part to pay the balance amount and to execute the lease deed in time, any action could be taken by the concerned authority to cancel the auction or terminate the lease as the case may be; and to forfeit all sums paid. In the tender form, he had also stated that he was aware of the particulars furnished in the notification regarding the reach/mandal for leasing out the right of quarrying sand, in response to which he had submitted his tender; it was his bounden duty to ascertain facts and the possibilities of availability of sand at the reach before he submitted his tender; the subject reach was identified, and given feasibility for sand auction, by the technical committee as per Section 23 of the A.P. WALTA; the same was approved by the concerned authority as per Rule 9-B(6) of the APMMC Rules, 1966; and there was no such facility of allocation of another suitable sand reach, or for refund of the money, as per Rule 9 of the APMMC Rules, 1966.

Sri K.Mohan Rami Reddy, Learned Counsel for the petitioner, would submit that, since the petitioner was unable to quarry sand in view of the huge depth of water in the subject area, the amount deposited by him should either be directed to be

refunded, or he should be permitted to quarry sand in an alternative reach for the amount paid by him.

On the other hand, the Learned Government Pleader for Mines and Geology, would refer to the counter-affidavit filed by the 5th respondent wherein it is stated that the petitioner was required to participate in the auction, after physically verifying the quarry site; there was no provision in the Rules for allotment of another suitable quarry, or for refund of the amount deposited as Earnest Money Deposit; the petitioner was obligated to verify the site and satisfy himself of the availability of sand before submitting his bid; it was not open to him, thereafter, to contend that he should either be shown an alternative area to quarry sand or for refund of the Earnest Money Deposit paid by him; the petitioner had participated in the bid knowing fully well the conditions of the auction; in terms thereof, he was required to certify that he was aware of the particulars furnished regarding the reach/mandal, and regarding lease of the right to quarry sand in terms of the notification, in response to which he had submitted the tender.

In the light of the declaration, which the petitioner himself gave in his tender form, it is not open to him, thereafter, to contend otherwise, and seek refund of the Earnest Money Deposit which was forfeited for his failure to enter into a lease agreement. As the Rules do not permit allotment of an alternate sand reach, the respondents cannot be faulted for not doing so. As the petitioner participated in the auction with his eyes open, and being well aware of the conditions of the auction, he cannot now turn around and contend otherwise, and claim refund of the Earnest

Money Deposit amount or for allotment of an alternative area to quarry sand.

The Writ Petition, as filed, is devoid of merits and is, accordingly, dismissed. The Miscellaneous Petitions pending, if any, shall also stand dismissed. No order as to costs.

RAMESH RANGANATHAN, ACJ.

Date:27-04-2018.
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