IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 2177 OF 2019
AND
W.M.P. NOS. 2422 & 2426 OF 2019

A.R.Karthick .. Petitioner

- Vs -

1. Government of Tamil Nadu
rep. By its Prl. Secretary to Government
Environment & Forest Department
Secretariat, Fort St. George
Chennai 600 009.

2. Tamil Nadu Forest Department
8th Floor, Panagal Maaligai
No.1, Jeenis Road, Saidapet
Chennai 600 015.

3. MSTC Ltd.
3rd Floor, 'Ispat Bhavan'
No.5, Kodambakkam High Road
Chennai 600 034, rep. By
its Senior Manager. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records pertaining to the Special Terms & Conditions for Global e-Tender cum e-Auction No.23246 held on 29.12.2018 for sale of Red Sanders Wood of the 2nd respondent and quash the same and consequently forbear the respondents from issuing confirmation of sale to the successful bidder pursuant to the e-Tender cum e-Auction No.23246 held on 29.12.2018.

For Petitioner : Mr. Ravi for M/s.Gupta & Ravi

For Respondents: Mr. Vijay Narayan, AG
assisted by Mr.Vijay Prasanth
AGP (Forest) for RR-1 & 2
Mr. R.Rajaram for R-3

ORDER

The present writ petition has been preferred by the petitioner to quash the Special Terms & Conditions for Global e-Tender cum e-Auction No.23248 held on 29.12.2018 for sale of Red Sanders Wood of the 2nd respondent and to forbear the respondents from issuing confirmation of sale to the successful bidder pursuant to the e-Tender cum e-Auction No.23246 held on 29.12.2018.

2. The facts which are necessary for the disposal of the writ petition could be briefly summarised as hereunder :-

The Government of Tamil Nadu has taken a decision to sell a large quantity of seized red sanders wood to the extent of 299.732 MT through global e-Tender cum e-Auction. The Chief Conservator of Forests, Government of Tamil Nadu, vide his letter dated 5.5.16, had requested the Government of India, for issuance of No Objection Certificate from Convention on International Trade in Endangered Species (CITES) to export 299.732 MT of red sanders wood and requested for relaxation of the export policy for export of red sanders logs (confiscated). In pursuance to the various efforts taken by the authorities concerned, the Government of India, Ministry of Commerce, Director General of Foreign Trade has issued notification dated 2.9.16 permitting the Government of Tamil Nadu to export red sanders in log form and time limit was originally fixed upto 31.8.17 which was subsequently extended upto 30.4.2019, vide notification dated 3.10.16.

3. Thereafter, Government of Tamil Nadu, vide G.O. (D) No.160, Environment & Forests Department, dated 29.6.2017 accorded due permission for engaging the services of the 3rd respondent for conducting the sale of red sanders wood through global e-Tender cum e-Auction and export of red sanders in addition to their e-auction services. In pursuance of the agreement between the 3rd respondent and the Government, a global advertisement was issued on 29.11.18 calling for interested parties to register themselves with the 3rd respondent. According to the advertisement, the intending bidders have to go through the special terms and conditions for the tender-cum-auction as well as the general terms and conditions and in addition to buyer specific terms and conditions, which could be seen and downloaded from the Homepage of the e-auction website. The pre-bid meeting was also conducted on 19.12.18 at the office of the Principal Chief Conservator of Forests.

4. The petitioner, in response to the global advertisement, registered with the 3rd respondent for the e-auction bid for Lot No.V. It is relevant to mention here that the bids were called under various Lot Numbers and the intending bidders could bid in either one or any of the lots depending on their capacity and

interest to bid. As far as the petitioner is concerned, he participated in the tender for 20 MT of non-graded red sander woods, which was covered under Lot No.V and paid the necessary EMD. The bidding process has been provided under clause 17 of the special terms and conditions. The bidding process, as described in para-17 of the special terms and conditions, is extracted hereunder for reference :-

> "17. The Bidding Process
>
> i. The bid value shall be the basic price of the material (Red Sanders Wood) exclusive of all applicable levies, duties etc., in USD per Metric Tonne. The bidders shall quote in United States Dollars only on Metric Tonne basis for each Lot. Bidders can increase the bid amount by a minimum of 100USD or its multiples per Metric Tonne.
>
> ii. Each Lot is a separate entity for bidding. Bidders have to bid separately for each Lot. EachLOT shall be treated as independent contract for the purpose of bid, sale, agreement, payments, delivery etc.
>
> iii. E-Auction period will be for 6 (Six) hours duration (from 11:00 AM to 05:00 PM of Indian Standard Time -IST) subject to automatic extension. If any valid bid is received within the last fifteen (15) minutes before the closing time, time will be automatically extended by an additional 7 15minutes,thusgiving enough opportunity for others to revise their bids on that Lot. The process will continue as long as the bidding continues and e-auction will close when no bid is received for 15 consecutive minutes. The bidders can increase the bid amount by a minimum of 100 USD or its multiples per Metric Tonne during both regular and extended periods of e-auction.
>
> iv. Bidder may participate in e-tendering or e-auction or both for each Lot by choosing appropriate option while offering bids. However, E-tender can be offered only once. The bidder can continue to participate in e-auction after submission of e-tender.
>
> v. The Bidder shall be solely responsible for all consequences arising out of the bid submitted by him / her and no complaint/representation will be entertained by the TNFD/MSTC in this regard. Therefore, Bidders must be careful to check (the Bid Amount/Number of zeros/No. of Digits/Unit of Measurement etc.,) and rectify their bid (if required) before submitting their Bid on the live e- auction floor by clicking the 'Bid' Button.

There is no provision for bidding in decimals. During Live e-auction, only brief details of Lot will be shown under the 'Lot Name' on the e-auction Floor, where Bidders are required to bid. The complete "Lot Details" can be seen by the bidders by clicking on the respective hyperlink under Lot Name. It shall be the responsibility of the bidders to see the "Lot Details" before bidding and no representation/complaint from the bidders in this regard will be entertained by MSTC or TNFD.

vi. Each Lot will be bid, sold and delivered on the basis of Unit of Measurement (UOM) as Metric Tonne (MT) stipulated in the Lot List displayed on the e-auction Floor of 'View Live e-auctions'.

vii. The TNFD or MSTC will not provide any computer terminal for buyers; it shall be the responsibility of the bidders to arrange for the hardware, software and the internet connectivity required for participation in the e-auction / e-tender process.

viii. For detailed Procedure and Guidelines for Registration and Bidding for bidders, please refer Annexure-B."

5. According to the petitioner, as regards Lot No.V was concerned, the base price of US $ 12,000/MT appeared in the e-auction portal of the 3rd respondent. The petitioner logged into the website of the 3rd respondent and submitted a bid for US $ 12,100/MT. The bid amount shall keep increasing in multiples of US $ 100 each time. According to the petitioner, no other bids were received for Lot No.V in the e-auction and in the website it was indicated that the petitioner was the H-1 bidder. Therefore, the petitioner logged out of the website and was under the impression that he would be declared as the successful bidder, he being the H-1 bidder. However, the petitioner appears to have not got any information as to his declaration as the highest bidder in the e-auction for Lot No.V.

6. Whileso, on 3.1.19, the 1st respondent issued G.O. (D) No.1, confirming the bids received for the red sanders wood sold through global e-tender cum e-auction held on 29.12.18. According to the petitioner, eventually his name was not one of the successful bidders notified or declared and, therefore, he is before this Court challenging the auction conducted on 29.12.18.

7. Mr.Ravi, learned counsel appearing for the petitioner submits that as per the bidding process, the e-auction will be conducted for six hour duration from 11.00 a.m. till 5.00 p.m.

on Indian Standard Time and as per sub-clause (3) of clause 17, the closing time will get extended by additional fifteen minutes in order to give opportunity to the bidders to revise their bids after coming to know of the bids by the other competitors. But as regards e-tender is concerned, the same would be closed at the closing time without any extension. According to the learned counsel for the petitioner, the dual form of auction, i.e., e-tender and e-auction is arbitrary and the same is non-transparant for the reason that in respect of e-tender, the bidders would not know what is the bid amount mentioned in the e-tender and, therefore, there would not be any competitive bidding as in the case of e-auction. In the e-auction, the bidders can always increase their bids till the closing time or the extended time and in which event, the State would be the beneficiary to get the highest bid amount from the prospective buyer. Learned counsel for the petitioner further submitted that simultaneous e-tender procedure adopted by the 3rd respondent has caused grave prejudice to the right of the petitioner, since the petitioner had no opportunity to increase his bid based on the bid submitted in the e-tender process. According to the learned counsel for the petitioner, the person, who opted for e-tender and e-auction would have an unfair advantage to become aware of the bid submitted in the e-auction methodology and it is always open to such participants to quote higher amount in the e-tender and can become successful in the auction. The petitioner, who had participated only in the e-auction having been declared as the H-1 bidder, cannot be denied the right to improve his bid in order to stake a claim for the ultimate grant of auction in his favour. On the whole, learned counsel for the petitioner submits that the procedure adopted by the 3rd respondent was opposed to fair play, equity, transparency and reasonableness and, therefore, the auction as conducted by the 3rd respondent is liable to be interfered with.

8. Per contra, Mr.Vijay Narayan, learned Advocate General appearing for respondents 1 and 2 submits that the petitioner, who has made an offer from the base price of US $ 12,000/MT to just US $ 12,100/MT cannot expect to be declared as the successful bidder for the reason that factually in respect of Lot No.V, as per e-tender, the price quoted was US $ 30,100/MT. Compared to the said amount, the offer of the petitioner, i.e., US $ 12,100 is woefully low and as per the terms and conditions, the petitioner was not declared as the successful bidder in view of his very low quotation.

9. Learned Advocate General drew the attention of this Court to sub-clause (4) of clause 17, which has already extracted supra, which clearly stipulates that the bidder may participate in the e-tender or e-auction or both for each Lot by choosing the appropriate option while offering the bid.

According to the learned Advocate General, nothing prevented the petitioner from participating in both the e-tender as well as the e-auction.

10. Learned Advocate General also drew the attention of this Court to the rules of bidding in the e-tender cum e-auction, wherein in para-25, it is stated as under :-

> "25. After close of auction, system will compare the higher of the H-1 prices (Net Price) received in e-Tender and e-Auction and it will be taken on Subject to Approval (STA) basis."

11. The petitioner being aware of the condition cannot be heard to complain that he was not aware of the bid made in the e-tender. Learned Advocate General submits that when the petitioner makes a bid, he must be aware of the worth of the red sanders wood and, accordingly the quotation must be made. In any event, the petitioner himself has emphasised the fact that there must be competitive bidding in the auction in order to get the highest revenue for the State. In this case, admittedly, the e-tender for the same Lot, in which the petitioner participated, the quotation was for US $ 30,100 as against a meagre amount of US $ 12,100 quoted by the petitioner in the e-auction. Therefore, the respondents have correctly valued both the e-tender and the e-auction and decided to grant the auction in favour of the other person, who had made an offer of US $ 30,100. According to the learned Advocate General, ultimately, public interest is paramount in generating more revenue to the State and when higher revenue has been generated through e-tender, the same has to be accepted and in this case the e-tender bid was accepted as being the highest. Therefore, there cannot be any legitimate cause to raise a complaint against the auction process conducted by the 3rd respondent. In fine, it is submitted by the learned Advocate General that the challenge made by the petitioner to the auction conducted by the 3rd respondent lacks merit and substance and, therefore, the writ petition has to be dismissed.

12. Heard Mr.Ravi, learned counsel appearing for the petitioner and the learned Advocate General appearing for the respondents 1 and 2 and perused the materials and pleadings placed on record.

13. The point for consideration in this writ petition is "Whether the interest of the State is secured in the matter of generating revenue by conducting auction for the sale of red sanders wood by calling for global tender?"

14. Admittedly, the services of the 3rd respondent, which is an independent agency had been engaged and the fact of the

matter was that the 3rd respondent was a Government of India Undertaking. The 3rd respondent, while in the process of conducting the auction, has devised a procedure of both e-tender cum e-auction and called for bids from the global market. This was to ensure that the State concerned receives maximum revenue from the potential bidders. In line with that objective, the special terms and conditions and the general terms and conditions as well as buyer specific terms and conditions were framed and all the bidders were supposed to be aware of these conditions. The petitioner, after participating in the auction, has chosen to make the bid only in the e-auction for a particular Lot and not chosen to participate in the e-tender, cannot turn around at this belated point of time and complain that the person, who participated in the e-tender has quoted more price than him in the e-auction.

15. As rightly contended by the learned Advocate General, as per sub-clause (4) of clause 17 of the special terms and conditions, the bidder may participate both in e-tender as well as e-auction. Therefore, nothing prevented the petitioner from participating in both forms of auction. The submission made on behalf of the petitioner that in regard to e-tender process, there was no scope of knowing the price in the said process cannot be an acceptable piece of argument for the reason that once the procedure has been approved for both e-tender as well as e-auction, such procedure, unless found to be arbitrary, irrational and unreasonable, the same cannot be questioned successfully by the participants of the auction after being declared unsuccessful in the auction. As rightly contended by the learned Advocate General, the participants in the tender are bound by the terms and conditions and, therefore, it is not open to them to challenge the procedure adopted by the 3rd respondent after participating in the tender and after becoming unsuccessful in the bidding process.

16. Once the petitioner, with open eyes, after accepting all the terms and conditions, has participated in the tender-cum-auction process, it is not open to him to challenge the said auction. Allowing the petitioner to challenge the said tender-cum-auction process after due acceptance by him of the terms and conditions would make the whole exercise a futility and to the detriment of not only the highest bidder, but also the interest of the public in the matter of State Revenue. Further, with open eyes, the petitioner had opted only to participate in the e-auction and not in the e-tender process, which clearly shows that the petitioner was fully aware of its implications. Therefore, at this point of time, it is definitely not open to the petitioner to question the whole process as bad, just

because, he was declared as the successful bidder.

17. Even on facts, the price quoted by the other person for Lot No.V was US $ 30,100/MT, as against a measly amount of US $ 12,100/MT quoted by the petitioner. Had the amounts quoted by the successful bidder was anywhere close to the amount quoted by the petitioner, the contention of lack of competitive bidding would be relevant. However, the amount quoted by the successful bidder is miles apart from the amount quoted by the petitioner and, therefore, it does not lie in the mouth of the petitioner to complain about the lack of competitive bidding in the tender process.

18. When an auction of this nature takes place, the petitioner ought to have known the actual value of the material, which were being auctioned and the petitioner having quoted just fractionally above the base price cannot be expected to be conferred with the ultimate sale of the red sanders wood for Lot No.V as that would go against the interest of the State revenue. Ultimately, the bottom line is the generation of higher revenue to the State in the subject auction and in this case, as regards Lot No.V is concerned, the third party has quoted more than 200% than what has been quoted by the petitioner. Therefore, the petitioner was rightly not declared as the successful bidder.

19. Moreover, condition No.25 of the guidelines of auction, as found in Annexure-B, clearly stipulate that only on conclusion of the auction, after comparing of both the quotes in the e-tender as well as the e-auction process, the successful bidder will be declared is binding on the petitioner, as the petitioner having accepted such a condition and participated in the tender process, it is not open to him to turn around and assail the tender conditions. The counter filed by the 2nd respondent, more particularly in para-9 of the said counter, it is succinctly stated as under :-

> "9. It is respectfully submitted that the writ petitioner had requisite EMD for participating in only two lots but he had participated only for Lot No.V in e-Auction and the reason for not participating in Lot No.16 or any other lot is only known to him. At the same time, he did not participate in e-tender for any lots. In respect of Lot V, the rate quoted by him is US $ 12100/MT through e-auction whereas the amount fetched through e-tender is US $ 30100/MT offered by M/s.Morex Corporation Limited. In other words, the sale amount offered for Lot V (20 MT) through

> e-tender is Rs.4,21,27,117.20 (Rupees Four Crore Twenty One Lakh Twenty Seven Thousand and Hundred and Seventeen and Twenty Paise only) and the amount offered by the writ petitioner is only 1,69,34,821/- (Rupees One Crore Sixty Nine Lakhs Thirty Four Thousand Eight Hundred and Twenty One only). The difference of amount is Rs.2,51,92,295.80 (Rupees Two Crore Fifty One Lakhs Ninety Two Thousand Two Hundred and Ninety Five and Eighty Paise only). Hence the sale has been confirmed in G.O. (D) No.1, Environment & Forests (FR.4) Department, dated 30.1.2019 for Rs.4,21,27,117.20 (Rupees Four Crore Twenty One Lakh Twenty Seven Thousand and Hundred and Seventeen and Twenty Paise only) in the name of the person who had offered through e-tender and 100 percent sale amount for Lot V has been remitted now by the successful bidder as per Special Terms and Condition No.26 and 28.

20. From the above, it could be seen as to how the argument advanced on behalf of the petitioner pales into insignificance and do not merit any serious consideration, as the argument, in the light of the above figures appear to be too hollow and and opposed to public interest. In fact, under the pretext of protecting competitive bidding, the petitioner is only attempting to discourage competitive bidding by seeking to declare himself as the highest bidder, notwithstanding the amount quoted by a third party in the e-tender, which amount was far far higher than the amount quoted by the petitioner in the e-auction. Though e-auction was devised to promote competitive bidding and to generate more revenue to the State, though that was not happening in the e-auction, however, someone who participated in the e-tender had quoted phenomenally higher than the amount quoted by the petitioner, in which event the said bid was accepted by the respondents, in such a scenario, the decision of the respondents to confirm the sale cannot be faulted with. According to the counter affidavit, the person, who quoted US $ 30,100 for Lot No.V has been confirmed as the successful bidder vide G.O. (D) No.1 dated 3.1.2019.

21. For the reasons aforesaid, this Court does not find any infirmity in the decision taken by the respondents and does not find any irregularity or illegality in the procedure adopted in the e-auction conducted by the 3rd respondent. This Court finds no merit and substance in the writ petition and, accordingly, the same is dismissed. Order of status quo granted by this Court stands vacated. Consequently, W.M.P. No.2426 of 2019

stands dismissed and W.M.P. No.2422 of 2019 stands closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

GLN

To

1. The Prl. Secretary to Government
   Government of Tamil Nadu
   Environment & Forest Department
   Secretariat, Fort St. George
   Chennai 600 009.

2. Tamil Nadu Forest Department
   8th Floor, Panagal Maaligai
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+1cc to Mr.N.NSurekha, Advocate SR.No.27101

+1cc to Mr.Gupta & Ravi, Advocate SR.No.27209

+1cc to Mr.C.Vijaya Kumar, Advocate SR.No.26734

W.P. NO.2177 OF 2019

KK(CO)
GMY(10/05/2019)