IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.12069 of 2005
and WPMP.No.13193 of 2005

M.Balusamy,
S/o.Mari. ... Petitioner

vs.

State Industries Promotion Corporation
of Tamilnadu Limited (SIPCOT),
rep. by its Chairman and Managing Director,
No.19A, Rukmani Lakshmipathi Road,
Post Box.No.7223
Egmore, Chennai-600 008. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the respondent in PF/F&R-II/281/2004 dated 08.06.2004 and quash the same and consequently direct the respondent to refund the sum of Rs.1 lac forfeited by them.

For Petitioner : Mr.R.Sugumaran

For Respondents : Mrs.Sudarsana Sundar

O R D E R

This writ petition has been filed to quash the proceedings of the respondent in PF/F&R-II/281/2004 dated 08.06.2004 and consequently direct the respondent to refund the sum of Rs.1 Lakh forfeited by them.

2.The petitioner had participated in the auction sale of the assets of Meenam Rexine Private Limited and the petitioner made an offer of Rs.20,00,050/- and he was declared as successful bidder. Therefore, he made an earnest money deposit of Rs.1,00,000/-. As per clause 18 of the terms and conditions of auction, the purchaser has to pay the property tax, land tax, sale tax, electricity, water charges or any other dues to the Government (Central/State) or other statutory authorities, if any in respect of the company whose property is advertised for sale. At the time of conducting the auction, the respondent had not declared about the quantum of the taxes and charges payable to the Government. However, the petitioner made discreet enquiries and came to know about the dues about Rs.6,00,000/- and keeping the same in mind the petitioner offered the above price. By way of communication dated 04.05.2004, the petitioner was informed by the respondent that the balance amount of Rs.19,00,050/- had to be deposited within one month and was also called upon to produce 'no due certificate' from the authorities including the Central Excise Department. Thereafter, the petitioner conducted discreet enquiry and was informed that there were no dues to him. While so, all of a sudden, the respondent informed the petitioner through letter dated 28.05.2004 that the petitioner is due to pay Rs.38.85 lakhs. Immediately thereafter the petitioner sent a reply dated 11.06.2004 stating that the sum due to the Central Excise Department if made known to him prior to auction, he would not have ventured to purchase the same. In view of the huge amount of due, the respondent had invoked clause 20 of the terms and conditions of offer, cancelled the bid and forfeited the EMD paid by the petitioner. Therefore, the petitioner issued a legal notice dated 29.06.2004 requesting the respondent to refund the EMD of Rs.1,00,000/-, for which the respondent by a letter dated 20.08.2004 stating that the assets will be sold if the petitioner fails to pay the dues to the statutory authorities. Aggrieved against the same, the petitioner has filed the present petition with the aforesaid prayer.

3.Heard Mr.A.Sugumaran, learned counsel for the petitioner and Mr.Sudarsana Sundar, learned counsel appearing for the respondent.

4.The learned counsel for the petitioner would submit that the petitioner made earnest money deposit to the tune of Rs.1,00,000/- for participating in the tender auction and he was declared as successful bidder. Thereafter, the petitioner was informed that he has to pay the balance amount of Rs. 19,00,050/- within a period of one month. While the petitioner was of the impression that he has to pay only 19,00,05/-, he was informed by the respondent that the dues payable by the petitioner is to the tune of Rs.38.85 Lakhs. According to the petitioner, it is higher than the bid amount for which the petitioner was not ready to pay the huge amount. The learned counsel for the petitioner submitted that the petitioner was not informed about the dues while participating in the tender. Therefore, he prays to allow this writ petition and to direct the respondent to refund the EMD of Rs.1,00,000/- to him.

5.Per contra, the learned counsel for the respondent drew the attention of this court to the Clause 18 of the terms and conditions of auction. According to the terms and conditions of auction, the purchaser/petitioner has to pay the property tax, land tax, sales tax, electricity, water charges or other dues to the Government in respect of the company whose property is advertised for sale. He further submitted that the petitioner is well aware of the dues and thereafter only participated in the bid and hence, he has to necessarily pay the dues payable to the government. If any violation of the terms and conditions of auction, the earnest money deposit payable by the petitioner will be forfeited and the same was informed to the petitioner at the time of participating in the auction itself. Hence, he prays for dismissal of this petition.

6.On perusal of records, it reveals the petitioner is the successful bidder for an offer of Rs.20,00,050/- and had also deposited earnest money deposit and to pay the balance amount within one month and to produce 'no due certificate' from the authorities including Central Excise Department. However, on perusal of Clause 18 of the terms and conditions of auction, it reveals that the purchaser has to pay the property tax, land tax, sales tax, electricity, water charges or other dues to Government or other statutory authorities, if any in respect of the company whose property is advertised for sale. Admittedly, the petitioner company is due to the Government and the petitioner is well aware of the dues payable to the Government but he of the impressions that the due is only Rs.6 Lakhs but later it is found that the due is Rs.38.85 lakhs. When the petitioner is aware of the dues payable to the government, unless he clears the dues, he is not entitled to get the property. Admittedly, the petitioner should have been paid the balance amount within a period of one month. However, the petitioner had made the payment after lapse of three months. The petitioner was directed to pay the balance amount of Rs.38.85 lakhs within 30 days from the date of confirmation of the bid amount on 04.05.2004. On perusal of the confirmation letter dated 04.05.2004, the respondent has clearly informed the petitioner that he has to pay the balance amount within a period of 30 days from the date of sale consideration and in case the petitioner fails to remit the balance amount, the earnest money deposit would be forfeited as per the terms and conditions of tender. The respondent have confirmed the tender in favour of the petition on 04.05.2004. Even thereafter, the petitioner has not paid the balance amount and also not cleared the dues payable to the Government Authorities. Hence, the Earnest Money Deposit paid by the petitioner at the time of application of tender is forfeited. The petitioner has not followed the terms and conditions of tender and therefore, I do not find any illegality or error in the forfeiture. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

rm
To:

The Chairman and Managing Director,
State Industries Promotion Corporation
of Tamilnadu Limited (SIPCOT),
No.19A, Rukmani Lakshmipathi Road,
Post Box.No.7223
Egmore, Chennai-600 008.

+1 CC to Mr.A.V. Arun, Advocate sr 62541.
+1 CC to Mr.Sudarsana Sundar, Advocate sr 62514.

W.P.No.12069 of 2005

MP(CO)
SP(29/08/2019)