

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.6245 of 2012
and M.P.No.1 of 2012

Dhivya Steels,
Rep. by its Prop.
R.Shiva Shankar,
Plot No.53, Sundaram Pillai Nagar,
Tondiarpet,
Chennai - 600 081.

...Petitioner

Vs

1.The Controller of Stores,
Southern Railway,
Perambur,
Chennai - 23.

2.The Deputy Chief Materials Manager,
General Stores Depot,
Perambur, Chennai - 600 023.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration to declare that the auction conducted by the second respondent on 04.08.2011 in respect of the Description of Material viz., Punching & Shearing Machine No.4, mentioned in Serial No.52 (Lot No.001010093517) of the Auction Catalogue, is null and void and direct the respondents to return back the money paid by the petitioner i.e., a sum of Rs.1,45,000/- to him.

For Petitioner : Mr.J.Kannan

For Respondents : Mr.P.T.Ram Kumar
Standing Counsel for Railways

ORDER

This writ petition has been filed for a declaration to declare that the auction conducted by the second respondent on 04.08.2011 in respect of the Description of Material viz.,

Punching & Shearing Machine No.4, mentioned in Serial No.52 (Lot No.001010093517) of the Auction Catalogue, is null and void and to direct the respondents to return back the money paid by the petitioner i.e., a sum of Rs.1,45,000/- to him.

2.It is case of the petitioner that pursuant to the auction notification issued by the second respondent on 29.07.2011, he participated in the auction with regard to the purchase of scrap items. It is his case that he submitted his bid in respect of two items namely those found in Sl.Nos.52 and 55 in the auction list. According to the petitioner, he was a successful bidder in respect of both the aforesaid items. It is his case that on verification, he came to know that the weight of the item of machinery mentioned in Sl.No.52 is not in accordance with the auction notification. It is his case that the weight of Sl.No.52 machinery is only 1.5 Metric tonnes instead of 8.000 Metric tonnes disclosed in the auction notification. Therefore, he sought for the refund of a sum of Rs.1,45,000/- paid by the petitioner for purchase of the item of machinery mentioned in Sl.No.52. It is his case that he gave several representations to the second respondent for refund. However, the second respondent has rejected the request for refund. It is his case that aggrieved by the rejection of the representation made by the petitioner seeking for refund of a sum of Rs.1,45,000/- paid towards the purchase of item of machinery mentioned in Sl.No.52 in the auction notification, the petitioner preferred a writ petition W.P.No.2825 of 2007. It is his case that the said writ petition was withdrawn as he was advised to challenge the auction notification and also to approach the Civil Court. It is the case of the petitioner that he has now challenged the auction notification dated 29.07.2011.

3.Heard Mr.J.Kannan, learned counsel for the petitioner and Mr.P.T.Ram Kumar, learned standing counsel appearing for the Railways.

4.Admittedly, the petitioner is a regular participant in auctions conducted by the respondents with regard to scrap items/machineries.

5.The learned standing counsel for the railways drew the attention of this Court to the general conditions relating to the auction sale of railway materials and in particular he referred to clause (4) of the general conditions which reads as follows:

"4.Goods in each lot are sold on "as is where is" basis and no warranty is given as regards size, quality, weight, description and the like. The description of any lot in the particulars of sale has

been given by way of identification there of only and the use of such description shall not constitute the sale thereof to be sold by description and no sale shall be invalid by reason of any defect or fault in any lot or on account of any lot being incorrectly described and or on account of the weight or approximate weight of any lot not sold by weight being in correctly stated any the Purchaser shall not be entitled to claim any damage or compensation what so ever on account of such fault, error of description, weight or the like..

As seen from the aforementioned clause, it is clear that the goods have been sold to the petitioner pursuant to the auction notification by the respondent only in "As is where is" basis and no warranty is given as regards size, quality, weight, description and like.

6.The petitioner is aggrieved only by the weight of the machinery mentioned in Sl.No.52 of the auction notification. According to him, after weighing the machinery, the petitioner found that the scrap machinery weighs only 1.5 Metric tones instead of 8.000 Metric tones as disclosed in the auction notification. But as seen from the terms and conditions of the auction notification, the goods have been sold to the successful bidders only in "As is where is" condition and no warranty has been given as regards size, quality, weight, description and like. Further, the auction notification also enables the petitioner to inspect the machinery before participating in the bid. In the case on hand, the petitioner may have inspected the machinery which is the subject matter of the auction before participating in the auction.

7.For the foregoing reasons, the contention of the petitioner that he was deceived with regard to the weight of the machinery in Sl.No.52 cannot be accepted by this Court. Further, the terms and conditions of the auction also provides for an Arbitration clause. As per the Arbitration clause, any question, dispute or differences arising out of the contract will have to be settled only by way of arbitration. Without approaching the Arbitrator to resolve the dispute, the petitioner has filed this writ petition.

8.Further, in the earlier round of litigation, the writ petition filed by the petitioner in W.P.No.28185 of 2011 challenging the rejection of the request made by the petitioner for refund of sale consideration paid by him towards purchase of machinery found in Sl.No.52 of the auction notification was withdrawn only at his instance on the ground that he will be

filing a civil suit. Despite the same, the petitioner instead of approaching the Civil Court to redress his grievance, has once again filed a writ petition challenging the auction notification issued by the second respondent. In the considered view of this Court, the present writ petition is not maintainable.

9. In the result, there is no merit in this writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

pam

To

The Controller of Stores,
Southern Railway,
Perambur,
Chennai - 23.

+1cc to Mr. P.T. Ramkumar, Advocate SR.7003

W.P.No.6245 of 2012

SSD(CO)
CB(02/03/2020)



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