

March 7, 2022
ARDR
(15)

WPA 12474 of 2021

Sk. Golam Dastagir
Vs.
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.,
Ms. Santi Das,
...for the petitioner.
Mr. Suvoven Sengupta,
Mr. Subir Paul,
...for the State.

Heard learned counsels for the parties.

It is contended on behalf of the petitioner that being the highest bidder in e-auction for grant of lease of minor minerals and upon payment of one-third of the bid amount, Letter of Intent was issued in favour of the petitioner on 25th September, 2017. The petitioner deposited the remaining bid amount in terms of notice issued by the respondents on 29th November, 2017 as well as in terms of Rule 10(2) of the West Bengal Minor Minerals (Auction) Rules, 2016 on 27th December, 2017 which was received on behalf of the District Land & Land Reforms Officer. The petitioner submits that the lease deed could not be executed by the State respondents in view of temporary suspension of execution of such lease by the National Green Tribunal. The petitioner has prayed for refund of the bid amount deposited by him before the authority along with statutory interest thereon.

Learned counsel for the petitioner has placed reliance on an order of a coordinate bench of this Court passed on 18th September, 2020 on an identical issue in WPA 6236 of 2020, the said order being affirmed by the Hon'ble Division Bench by an order dated 24th December, 2021 in MAT 1307 of 2021.

Placing reliance on the report in the form of affidavit submitted by the State respondents, learned counsel for the State respondents submits that though the Letter of Intent was issued on 25th September, 2017, the petitioner took no initiative for execution of the deed of lease despite several notices issued upon him by the authority. In the meantime, the order of the National Green Tribunal came into operation and the State respondents were unable to execute the lease. Had the petitioner taken appropriate steps within the statutory period of time, the lease deed could have been executed by the State respondents and the respondents would have been in a position to collect enormous royalty therefrom. The Government has suffered heavy loss due to non-execution of the deed of lease on time. As the deed could not be executed due to fault of the petitioner, the petitioner is not entitled to refund of the bid amount. Learned counsel further submits that clause 8 of the Letter of Intent indicates that the Letter of Intent shall remain valid for a period of two months from the date of its issuance and if the successful bidder is unable to fulfil all the above conditions within this period, he may submit

an application addressed to the District Magistrate for extension of time. No such extension was prayed for by the petitioner. Moreover, the claim of the petitioner is purely a money claim which can be made before the appropriate forum and the writ Court has no jurisdiction to deal with such claim. Learned counsel, has placed reliance on the judgment of the Hon'ble Supreme Court in ***Andhra Pradesh Industrial Infrastructural Corporation Limited and anr. vs. Shivani Engineering Industries*** reported in ***(2015) 7 SCC 241*** in support of his contention.

The orders of the National Green Tribunal at Annexure R/3 to the report submitted by the State respondents demonstrate that the issue of illegal mining of sand was under consideration of the Tribunal since 2015. Despite such fact, the e-auction was floated by the respondent authorities on 18th May, 2017 and the Letter of Intent was issued in favour of the petitioner on 25th September, 2017. It is admitted by the State respondents in their letter issued to the petitioner on 11th September, 2018 that the entire bid amount was deposited by the petitioner on 27th December, 2017. The petitioner was called upon to appear before the authority with all necessary documents for execution of the lease deed on 8th September, 2018 despite the order of the National Green Tribunal imposing suspension of mining activities passed on 4th September, 2018. No time frame being mandated

for depositing the second and third installments by the petitioner under Rule 10(2) of the West Bengal Minor Minerals (Auction) Rules, 2016, the petitioner cannot be held guilty of making delayed payment of the said amount, more so, as the amount was accepted by the State authorities without a demur.

The authority relied upon by the State respondents deals with a fact situation where the incumbent did not implement the revised project within two years from the date of an agreement though it was put in permission of the plot and granted permission to change the manufacturing activity. There being no such non-compliance by the petitioner in the present matter, the ratio *decidendi* of the said judgment is not applicable to the facts and circumstances of the present case.

The petitioner has claimed refund of the bid amount deposited by him before the authority. It is a fact that the deed of lease could not be executed due to the ban imposed by the National Green Tribunal.

In view of the same, the petitioner is entitled to refund of the entire bid amount by the authority along with statutory interest thereon, given the fact that the amount has been lying with the authority for a considerable period of time.

Accordingly, the writ petition being WPA 12474 of 2021 is disposed of directing the third respondent to cause refund of the entire bid amount along with statutory

interest thereon to the petitioner within a period of two months from the date of communication of this order.

However, there shall be no order as costs.

Since no affidavits are invited, the allegations contained in this writ petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)