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ss/jks 10.03.2022

MAT 1338 of 2018
With
CAN 2 of 2018 (Old CAN 8555 of 2018)
With
CAN 4 of 2021

Union of India & Ors.
Vs.
Pramod Kumar Jaiswal
(Through Video Conference)

Mr. Rabindranath Bag
Mr. Deepak Kumar Singh
… … for the appellants
Mr. Ramesh Kumar Chowdhury
Ms. Micky Chowdjury
Mr. Tapan Kumar Mitra
… … for the respondent

This appeal is at the instance of the respondent in the writ petition challenging the order of the learned Single Judge dated 3rd October, 2018 whereby WP No.3297(W) of 2018 filed by the respondent/writ petitioner has been allowed and the order impugned dated 21st January, 2018 issued by the appellant no.4, Deputy Chief Material Manager (Production) has been set aside.

The facts in brief are that the appellants had fixed e-auction schedule on 6th December, 2017 for sale of lot no. KGPM 1718-4005/7204, catalogue serial no.B2 comprising of 20 numbers scrap anvil blocks on as is where is basis. The respondent/writ petitioner had inspected the lots and being satisfied had submitted the bid which was found to be the highest bid in the e-auction held on 6th December, 2017. The full consideration amount was paid by the respondent/writ petitioner and the receipt thereof was issued by the competent authority. The respondent had deployed labours and done the work of digging, cutting and dismantling of the anvil blocks comprised in the lot sold to the respondent and had made request to the appellants to issue delivery programme but the said request was not acceded to and ultimately the impugned order dated 21st January, 2018 was issued cancelling the lot on the ground that there was dispute in the quantity of the lot which became the subject matter of challenge at the instance of the respondent/writ petitioner before the learned Single Judge.

Learned Single Judge has examined the issued in detail and has reached to the conclusion that in the auction catalogue as well as in the delivery/ sale release order the description of the lot material was on the basis of quantity and not on the basis of weight. Learned Single Judge has taken note of the admitted position in paragraph 10 of the affidavit-in-opposition of the appellants. Learned Single Judge has also reached to the conclusion that the special conditions would have precedence over the general conditions of sale and lot would be sold on as is where is basis.

Having regard to the fact that no disputed question of fact was involved in the matter the learned Single Judge has examined the issue and has reached to the conclusion that the impugned action of the appellants fails to satisfy the test of reasonableness and the appellants could not have introduced the fresh criterion towards weight in the auction proceeding.

In the aforesaid background, the learned Single Judge has allowed the writ petition and has set aside the impugned order.

Learned counsel for the appellants has referred to the clause 31 of the General Conditions of contract relating to right of cancellation and also has referred to the Special Conditions of contract providing for the arbitration clause and has submitted that having regard to the nature of controversy the parties should take resort to the arbitration clause.

Opposing the prayer the learned counsel for the respondent has submitted that no error has committed by the learned Single Judge in passing the impugned order and that for the first time the criteria of weight was introduced while issuing the impugned order dated 21.01.2018 and prior thereto it was very clear that the auction sale would be on the basis of the lot and not on the basis of weight. She has further submitted that the entire consideration amount has already been paid and sale was completed thereafter the impugned order could not be issued at the stage of lifting the material.

We have heard the learned counsel for the parties and perused the record. In the e-auction catalogue which was issued at the stage of e-auction it was clearly mentioned that the lots were offered for sale on as is where is basis and the quantity was mentioned to be 20 in number but no weight was mentioned therein.

In the bidsheet also the details of the lot were mentioned as under:

"Lot No/HSN Code	KGPM1718-4005/7204 Catalog No/ Lot Sr. No. 1718KGP022/ (B/2)
Material Description	Cond. Scrap Anvil Block of Hammer off sizes Leveled:4HD/5, 15HP/S, 6HP/5(NES), 12HP/5, 2HP/5, 17 HP/5, 18HP/5, 16HP/3/5, 13HP/5, 11HP/5/5, 9HP/5, 7HP/5(N), 6 HP/5(O), 4HP/5, 3HP/5, 1HP/5, 6 HD/5, 3HD/5(N), 2HD/5, 1HD/5. Quantity 20 Nos "as in the Lot" lying in different places of SSE-05/Smithy Shop No. 5 to be disposed on 'as0020 is where is basis' N.B.: i) 80 days FDP shall be applicable for this lot as a special case due to involment of digging cutting and dismantling of anvils, ii) Loading will be done by purchasers own arrangement. Note-Payment of BSV along with TCS and other charges if any to be made by purchaser through online payment mode available under website www.ireps.gov.in, GST will be paid by purchaser directly to tax authorities on reverse charge basis on receipt of payment memo/challan issued by Railway."

The delivery/ sale release order also indicates that the sale was at the rate of 45,000 per number and considering the total quantity of 20 numbers the sale consideration was ₹9,00,000/-. In this delivery/sale release order dated 20th December, 2017 the same description was given as was mentioned in the bidsheet.

It is not in dispute that the respondent e-auction purchaser had deposited the full consideration amount and thereafter had started the process for lifting the material which was sold on as is where is basis.

Learned counsel for the appellants does not dispute that for the first time in the cancellation order dated 21.01.2018 the weight was mentioned and prior thereto in none of the correspondence or in the e-auction documents the weight criteria was introduced. Once the sale was completed and the consideration amount was paid by the respondent then the appellants was not justified in introducing the weight criteria and cancelling the e-auction on that basis. The reason which has been assigned in the impugned order dated 21.01.2018 for cancelling the lot is unsustainable as it is found to be extraneous reason.

Learned counsel for the appellants has placed reliance upon clause 1(c) of the terms and conditions for auction sale, but in terms of this clause the railway administration could refuse to accept the bit or withdraw the lot before or during the course of auction sale. But this clause will not be attracted once the auction sale is completed and full consideration amount is paid.

So far as the issue raised by the learned counsel for the appellants in respect of the existence of the arbitration clause is concerned, since no factual dispute exist between the parties, therefore the learned Single Judge has not committed any error in examining the issue and setting aside the impugned order.

Having regard to the aforesaid analysis, we do not find any error in the order of the learned Single Judge and no case is made out to interfere in this appeal which is accordingly dismissed.

Pending all connected applications are accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)