

HON'BLE SRI JUSTICE K.LAKSHMAN

WRIT.PETITION No.20381 OF 2008

ORDER:

Heard Sri E. Madan Mohan Rao, learned Senior Counsel representing Sri Kowturu Vinay Kumar, learned counsel for the petitioner and Sri O. Manohar Reddy, learned Senior Counsel appearing for respondents.

2. This Writ Petition is filed to declare the order proceedings dated: 09.09.2006 issued by the respondents as unreasonable, illegal, arbitrary, contrary to record and violative of principles of natural justice and consequently direct the respondents to refer the amount of Rs.14 lakhs paid by the petitioner towards 10% of the contract amount to the petitioner.

3. The respondent had issued notification for auction of the "Right" to be appointed as LPG distributor for Bharat Petroleum Corporation Limited at Nagole, Ranga Reddy District. The petitioner herein had participated in the said auction and was declared as highest bidder on 17.08.2006. As per the terms and conditions of the auction, he had deposited an amount of Rs.14 lakhs (i.e. 10% of the bid amount) on the day of the auction itself. He was to deposit the balance amount within the next 15 days.

4. The petitioner vide letter dated 30.08.2008, informed the respondents that he is withdrawing the offer and requested the corporation to refund the said

amount of Rs.14 lakhs on the ground that he was 21 years as on that date, he was well-versed with the terms and conditions of the auction. He had no ability and competence to conduct the said business and mobilizing the huge bid amount. With the said submissions, he sought refund the aforesaid amount. According to the petitioner, the respondent had conducted re-auction. The respondents vide impugned proceedings dated 09.09.2006, informed the petitioner that his request for refund of 10% of the bid amount cannot be considered and it is forfeited. Challenging the same he has filed the present Writ Petition.

5. According to Sri E. Madan Mohan Rao, learned Senior Counsel, the petitioner has withdrawn from the auction for the reasons mentioned in the letter dated 30.08.2008. Respondents have already conducted re-auction of the said outlet and therefore there is no loss to the respondents' corporation. In terms of the Section 74 of the Contract Act, the petitioner is entitled for some amount. He has also placed reliance on the judgement of Honourable Apex Court in **Kailash Nath Associates Vs Delhi Development Authority**¹, and also the principle laid down by the High Court of Andhra Pradesh at

¹ (2015) 4 SCC 136

Amaravati in the case of **D. Raju Vs. APSRTC, Vijayawada, Krishna District and others.**²

6. Whereas the learned Senior Counsel appearing for respondents would submit that the petitioner herein had deposited 10% of the amount on the day of auction and balance has to be paid within 15 days from the date of auction. Petitioner herein failed to deposit the said amount. He has deposited only 14 lakhs i.e. 10% of the auction amount.

7. As per clause 19 of the tender notification, all the bidders shall be deemed to have right and appoint themselves with the condition and as per Clause 20, in case of default in payment by the highest bidder, subsequent to the completion of auction, BPCL will be entitled to forfeit his right and the money till then paid. Therefore, the amount of Rs.14 lakhs deposited by the petitioner is forfeited. He is not entitled for refund. With the said submissions he sought to dismiss the present writ petition.

8. To decide the list involved in the present case, the following terms of the tender are necessary and the same are reproduced:

7(a). Only the eligible bidder will be allowed to participate in the auction and bid in auction subject to his submission of the following before entering into the auction hall:

² 2020 (1) ALD 342 (AP)

- a. Eligibility certificate issued by the Bharat Petroleum Corporation and
 - b. A Demand Draft or pay order of Rs.1 lakh mentioned in the schedule hereunder.
- i) The successful bidder will have to pay 10% of his bid amount less Rs.1 lakh at the fall of hammer.
 - ii) The money paid under clause 7 (a)(ii) and 7 (b) above by the successful bidder will be adjusted against part payment of the bid price and the balance amount of the bid price will have to be paid by the successful bidder within 15 days from the date of auction.

19. All bidders shall be deemed to have read and acquainted themselves with the conditions of auction/sale and given their bids subject to these conditions. Failure on the part of bidder to comply with any of terms and conditions contained herein will prohibit him/them from participating in the bid and/or to get any right arising out of the auction in spite of him/them being the highest bidder.

20. In case of default in payment by the highest bidder, subsequent to the completion of the auction, Bharat Petroleum Corporation Limited will be entitled to forfeit his right and the money till then paid.

9. The petitioner herein had participated in the tender and he stood as successful bidder in the auction conducted on 07.08.2006 for a sum of Rs.1.31 crores. As per the terms and conditions of the auction, he has deposited 10% of the bid amount, on the same day and balance he has to deposit within 15 days from the date of auction. He has not deposited the said auction. After a lapse of two (2) years, on 30.08.2008, he has submitted an application to the respondents saying that he was 21 years of age and he is not well-versed with the terms and conditions of the auction. He has no ability and competence to conduct business and mobilize the huge bid amount, therefore, he is

withdrawing from the said offer. He had requested the respondents to refund the said amount of Rs. 14 lakhs.

10. As per Clause 19 of the aforesaid contract, it is deemed that the petitioner has gone through the tender Conditions and he is aware of the same. Therefore, he cannot go back and say he is not well-versed with the tenders and he has no ability and competence to conduct the business. Clause 20 of the above said tender deals with forfeiture and the respondents have invoked the said clause and forfeited the amount of Rs.14 lakhs deposited by the petitioner.

11. Section 74 of the Contract Act deals with compensation for breach of contract, where penalty stipulated for. It says when a contract has been broken, if a sum is named in the contract as the amount to be paid, in case of such breach or if the contract contains any other stipulation by way of penalty, the party complaining of breach is entitled, whether or not actual damaged or loss to have been caused, to receive from the party who is broken the contract reasonable compensation not exceeding amount so named or, as the case may be, the penalty stipulated for.

12. In **Maula bugs Vs Union of India**³ followed by **Union of India Vs Rampur Chemicals Limited**⁴ Apex Court categorically held that the earnest money/security deposit can only be forfeited to the extent of loss caused. It cannot be used as a wind fall or to make a gain. The said principle was also reiterated by the High Court of Andhra Pradesh at Amaravati in **D. Raju Supra**. The similar principle was held by Apex Court in **kailash Nath Associates** (Supra).

13. Thus, in view of the aforesaid law laid down by the Apex court and High Court of Andhra Pradesh at Amaravati, Coming to the facts on hand, as discussed (supra), the respondents have already conducted auction of the subject outlet. Thus the re-auction was conducted. The contention of the respondent is that they spent huge amount towards site inspection, advertisement and other things. But certainly it cannot be 14 lakhs. According to this Court the aforesaid amount of Rs. 14lakhs is on higher side and the respondents cannot forfeit the aforesaid amount of Rs. 14 lakhs.

14. There is no dispute that the aforesaid two clauses i.e. clause 19 and 20 says that the petitioner, bidder is deemed to have knowledge and gone through the entire tender document and also the consequences of the same and if the

³ AIR 1970 SCC 1955

⁴ AIR 1973 SCC 1098

bidder fails to deposit the amount within aforesaid amount, the security deposit will be forfeited. The said terms of contract are in an ambiguous terms. However, the respondent has to consider the loss that is caused to the respondents' corporation.

15. As discussed supra, the petitioner herein had deposited the aforesaid amount of Rs.14 lakhs on the day of auction i.e.17.08.2006. Since then, the respondent is holding the said amount of Rs.14 lakhs with it. Therefore, according to this Court forfeiture of an amount of Rs.7 lakhs is reasonable and not entire amount of Rs.14 lakhs.

16. In view of the aforesaid discussion, the respondents are directed to return an amount of rupees seven lakhs to the petitioner herein within four (4) weeks from the date of receipt of a copy of this order out of 14 lakhs amount deposited by the petitioner.

17. Accordingly, the Writ Petition is allowed in part. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the Writ Petition, shall also stand closed.

JUSTICE K. LAKSHMAN

Date: 17.10.2022
SAI

THE HON'BLE SRI JUSTICE K. LAKSHMAN

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17.10.2022

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