



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4210/2022

Ascentia Services, Thr. Proprietor, Ajinkya S/O. Rahul Bahadure
Vs

State Of Maharashtra, Thr. Secretary, Revenue And Forest
Dept., Mumbai And Others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.R. Ingole, counsel for petitioner.

Ms. T.H. Khan, AGP for respondent Nos. 1 to 3.

CORAM: AVINASH G. GHAROTE &
URMILA JOSHI-PHALKE, JJ

DATED : 22/08/2023.

1. Heard Mr. A.R. Ingole, learned counsel for petitioner challenges forfeiture of the earnest amount of Rs.9,93,050/-deposited by the petitioner with the respondent no.2 towards the auction of sand ghat at Mouza- Ashta, Tah.Pombhurna, Survey no. 329 and 331 admeasuring 1.50 HR. The petitioner had submitted his Bid on 19.1.2022.

2. It is the contention of the petitioner, that before the communication of acceptance of the Bid, the petitioner had withdrawn his offer and therefore, on this count, the petitioner was entitled for refund of the earnest amount. The petitioner in order to substantiate his submission, place reliance upon the communication dated 19.1.2022 (Page-13) and so also, the communication dated 19.1.2022 (Page-42). He

therefore contents that since the withdrawal of the bid was communicated before its acceptance, the petitioner would be entitled to refund of the earnest amount.

3. In so far as the first communication dated 19.1.2022 (Page-13) is concerned, the petitioner was asked to produce the inward register in that regard to indicate the date on which, the communication was received by the office of the Dy. Collector, Chandrapur.

4. The petitioner has today tendered across the bar a document which according to him is an extract of the inward register of the Deputy Collector, Chandrapur, regarding the receipt of the application for withdrawal of the offer. This inward register is taken on record and marked as 'X' for the purpose of identification.

5. A perusal of this entry in the inward register, which is presumed to be in respect of the communication dated 19.1.2022 (Page-13) would indicate that it was received on 25.01.2022. This communication therefore is of no assistance to the petitioner to contend that the Bid was withdrawn before its acceptance. What is also material to note is that the acceptance of the Bid was communicated to the petitioner by a communication dated 19.1.2022 (Page-41). Though it is true that the same is signed by the Additional Collector on 20.1.22 and it is contended

by the petitioner that he has received the same on 21.1.2022, however, the communication dated 20.1.2022 by the petitioner himself (Page-42), though the same is incorrectly dated 19.1.2020, would indicate that it makes a reference to the acceptance of communication dated 19.1.2022 (Page-41), by which the respondents have accepted the bid. This is apparent from the mention of the reference number of the communication at (Page-41), in the communication in the letter of the petition at Page-42. This would indicate that the claim which is made by the petitioner of the acceptance having being received, subsequent in point of time, is clearly false.

6. Though reliance is also placed upon the same communication at Page-15 and the entry of receipt at the bottom dated 21.1.2022 that does not detract from the fact that the communication dated 19.1.2022 (incorrectly mentioned as 19.1.2020) indicates receipt of the acceptance.

7. Though, *Vinod J. Agrawal v/s Chief Officer and others in W.P. 3208/1994 decided on 16.3.2006* is relied upon by Mr. A.R. Ingole learned counsel for the petitioner, however that was a case, where the offer was withdrawn by the petitioner before opening the tender. Similar is the position, in the case of *M/s Bholenath Trading Company v/s S.B.I. in W.P. No.5991/2005 decided on 26.4.2006*, where also the

withdrawal of the offer was before the acceptance by the bank (Page- 68).

8. In that view of the matter, since the communication by the petitioner himself at Page-42 indicates receipt of the acceptance as indicated from the subject thereof, it cannot be said that the withdrawal was before the acceptance. The forfeiture of earnest amount was clearly justified.

9. We therefore do not see any reason to accept the plea in the petition. The petition is without any merits and deserves to be dismissed and is accordingly dismissed with no order as to cost.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)