

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5758 of 2023

Suresh Kumar Goyal Son of Charanji Lal Goyal, Resident of Village-A-1/102, Ground Floor, Hari Mandir, Janakpuri, West Delhi, Pin-110058 and also at present address at M/s Goyal Iron and Steel Traders, K-173/6B, Lakkar Mandi, Shamson Road, Nangal Raya, New Delhi-110046.

... .. Petitioner/s

Versus

1. The Union of India through the Ministry of Steel, Government of India.
2. The State of Bihar through the Principal Secretary-cum-Chief Managing Director, North Bihar Power Distribution Company Limited, Patna, Bihar, having his registered office at Vidyut Bhawan, Bailey Road, Patna.
3. The Chief Engineer (S and P) North Bihar Power Distribution Company Limited, registered office at Vidyut Bhawan, Bailey Road, Patna.
4. The Chairman and Managing Director MSTC Limited (formerly known as Metal Scrap Trade Corporation Limited) having his office MSTC Limited Headquarters in Kolkata (West Bengal).
5. The Deputy Manager, MSTC Limited, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shekhar Kumar Singh, Advocate Mr.Binod Kumar Singh, Advocate Ms.Pooja Kumari, Advocate
For the Respondent/s	:	Mr.Mrigank Mauli, Sr. Advocate Mr.Sanket, Advocate Mr.Kunal Tiwary, Advocate Mr.Kumar Priyaranjan, Advocate Mr.Amish Kumar Jha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-02-2024

The petitioner is aggrieved with Annexure-6 order which resulted in cancellation of a sale contract awarded in favour of the petitioner's firm, forfeiture of Rs.6,50,06,443/- and the stoppage of further business with the firm issued by the 4th



respondent.

2. The only argument of the learned counsel for the petitioner was that Clause No. 16.9 of e-Auction, Buyer Specific Terms and Conditions (for brevity 'BSTC') of Metal Scrap Trade Corporation Limited (for brevity 'MSTC') was not in existence at the time of the contract entered into between the petitioner and the North Bihar Power Distribution Company Limited; which is herein after called the awarder. The learned counsel would also refer to an order passed by another Division Bench of this Court bearing no. 7 dated 11.08.2023, wherein it was directed that authenticated documents of Annexure-3 be placed on record to establish that it is one implemented prior to 08.01.2021. There is no such document produced is the contention of the learned counsel, Shri Binod Kumar Singh, appearing for the petitioner.

3. Shri Mrigank Mauli, learned Senior Counsel appearing for the Power Distribution Company, on the other hand specifically refers to the counter affidavit filed, to demonstrate the manner in which a buyer has to get registered in the portal of the MSTC which requires the buyer to accept the BSTC of e-Auction. Both the buyer and the seller have to register in the portal of the MSTC and when there is a tender



issued by the seller, the buyer has to bid online in the very same portal after accepting the terms and conditions.

4. Learned counsel Shri Kumar Priya Ranjan appearing for the MSTC, who does not join issue, only refers to the certificate issued, produced along with the second supplementary counter affidavit of the MSTC pursuant to the order passed by this Court.

5. Admittedly, the petitioner's firm, M/s Goyal Iron and Steel Traders bid in an e-Auction as initiated by the Power Distribution Company in the portal of the MSTC, as is indicated in Annexure-1. The tender was for sale of scrap materials in two lots specified as Lot No. 1 and 2 as per Annexure 1 and the quantity respectively were 1112.858 MT and 182.846 MT. The bid was made on 05.01.2021 as is seen from Annexure-1 and Clause 16 specifically speaks of the sale being governed by the material list and Special Terms and Conditions displayed on the live auction floor as well as the General Terms and Conditions and BSTC already accepted by the bidder at the time of e-Auction registration with MSTC. This align with the submission of the learned Senior Counsel for the Power Distribution Company that a buyer has to register himself in the portal of the MSTC accepting the General Terms and Conditions and the



BSTC. When a tender is floated in the portal, the buyer has to make a bid, at which point the material list and Special Terms and Conditions displayed on the live e-Auction floor has also to be accepted. Hence, when a buyer is registered, it is deemed that the buyer accepts the General Terms and Conditions as also the BSTC. This is evident from the documents produced, especially the extract of e-Auction documents produced in the counter affidavit dated 21.06.2023 of the Power Distribution Corporation.

6. Annexure R3/A speaks of the registration methodology. At Page 2 of the document, the second photograph indicates the bidders registration form which requires acceptance of the General Terms and Conditions of e-Auction and the BSTC of e-Auction. The instructions require the bidder to tick both the check boxes for accepting the aforesaid conditions. The bidder is also provided the option of verifying the terms and conditions which would be available if the link is clicked.

7. The petitioner's bid was accepted as is indicated in Annexure-2, and Annexure-3, the BSTC produced by the petitioner himself indicates the existence of Clause 16.9. Clause 16.9 is extracted hereunder:



16.9 The buyer will be held responsible for such acts of irregularities/mis-conduct of his own or committed by his authorised representative or persons engaged by them for executing the sale order. Any irregularities/mis-conduct may lead to forfeiture of earnest money/security deposit, portion or whole money of material value as the case may be in addition to cancellation of sale and or stoppage of further business and/or appropriate legal action as may be deemed fit at the sole and absolute discretion of MSTC/Principal.

8. The petitioner admittedly lifted three installments out of the four installments of scrap sold to him after remitting the money. Subsequent to lifting of 110.400 MT from Rosera Store, Mushrigharari P.S., it was informed that there was an excess lifting of scrap material on 25.04.2021. The petitioner was restrained from lifting the stock further and the scrap was checked/weighed by the Rosera Store and it was detected that approximately 25 MT were lifted in excess, that too by tampering of weighing machine. An FIR was lodged by the Store Assistant of the Rosera Store and the written report of the operator of the weighing device also was referred to. The petitioner's son was arrested in connection with the said FIR. A further verification was carried out and five FIR's were lodged



for the very same offence of excess lifting of scrap material from the Chapra, Siwan, Bettiah, Khagaria and Rosera Stores. This led to invocation of Clause 16.9 of BSTC and a show-cause notice was issued at Annexure-4. Not being satisfied with Annexure-5 reply, Annexure-6 was passed, against which, grievance is raised in the above writ petition.

9. As we noticed above, the only contention of the petitioner was that Clause 16.9 was not available at the time of the uploading of bid document i.e., 05.01.2021. In fact, no such contention was raised in Annexure-5, reply submitted to the show-cause notice at Annexure-4; which specifically extracted Clause 16.9 in the notice. Annexure-5 was the objection made at the first instance as reply to the show-cause notice.

10. We are of the opinion that the contention taken by the petitioner that Clause 16.9 was not in existence at the time of the bid is only an after-thought and a clearly misleading statement. We have to also notice that the petitioner has produced the BSTC at Annexure-3. Therein, we find Clause 16.0 delivery, the sub-clauses of which are numbered from 16.1 to 16.12 continuously. The petitioner does not have a contention that there was no BSTC at the time of his contract and the specific contention is that Clause 16.9 was introduced later. If



that be the case, the petitioner ought to have specified how the addition was made when the sub-clauses are numbered in seriatim and there is no amendment or incorporation evident, later on.

11. Yet again the MSTC has filed an affidavit clearly certifying that the petitioner's firm had agreed to the BSTC in the e-Auction event hosted by MSTC held on 08.01.2021. It is also specified that the participation was in online auction floor of MSTC at 12:39 hours. It is specified that even before participating in the e-auction, the petitioner's firm had registered on the online auction portal of MSTC as a bidder and the online user-id was generated after accepting and agreeing to the BSTC. The MSTC is not at all interested in the dispute and is an independent operator providing a portal for conducting e-Auction. The petitioner and the respondent/Power Distribution Company are both registered under the portal and the dispute arise between themselves. The Power Distribution Company which floated the tender and invited the bids cannot be asked to produce any authenticated document since the portal is managed by MSTC, an independent operator. The MSTC has categorically filed an affidavit indicating that the petitioner has registered in its portal and that the petitioner has accepted the



BSTC.

12. We find absolutely no reason to entertain the writ petition and reject the same, finding the contention raised to be a deliberate falsehood and an attempt to only mislead this Court. the writ petition would stand dismissed with costs of both the Power Distribution Company and MSTC, who are unnecessarily dragged to this Court which is quantified at Rs.5000/- each.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.02.2024
Transmission Date	

