(2003) 01 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2887 of 1993

Alok Enterprises APPELLANT

Vs

Rajasthan Financial Corporation and Others RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 2 BC 564 : (2003) 3 RCR(Civil) 846

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : A.K. Bhandari and Rizwan Ahmad, for the Appellant; V.S. Yadav and K. Verma for S. Kasliwal, for the Respondent

Final Decision : Dismissed

Judgement

Gyan Sudha Misra, J.—The petitioner herein-M/s. Alok Enterprises claims to be the auction purchaser of an industrial unit by the name of M/s. Vin-Cum Engineering Enterprises (P) Ltd. situated at Jaipur, from the respondentNo. I Rajasthan Financial Corporation (R.F.C for short) and has, therefore, sought a direction to the respondent No. 1 to issue acceptance letter of the tender, execute the necessary documents and handover the possession of the aforesaid unit to the petitioner without any further delay.

2. Hence the question which requires determination in this writ petition is whether the auction sale can be held to be complete in favour of the petitioner so as to direct the respondents to execute the sale deed and hand over possession of the industry in favour of the petitioner, although the terms and conditions of the offer and acceptance in regard to the sale had still been at the stage of negotiation which had not reached a final stage.

3. The petitioner has sought the desired relief on the premise that a tender notice was issued by the respondent No. 4-Deputy General Manager of the RFC for the sale of various units which were taken over by the RFC u/s 29 of the

State Financial Corporations Act, 1951. The tenders for the sale of land, building, plant and machineries of M/s. Vincum Engineering Enterprises (P) Ltd. were called by the respondent-RFC on 24.11.1990 and the conditions of sale were enumerated in the said tender notice which had been published in the local newspaper-Rajasthan Patrika on 22.11.1990.

4. The petitioner submitted his offer in a sealed cover alongwith a cheque of Rs. 42,500/- drawn in favour of the RFC alongwith an offer of Rs. 8,50,000/- for the land and building, plant and machineries of the industrial units. The petitioner, however, put in a condition in its offer that the liability of Rajasthan State Industrial and Investment Corporation (RIICO for short) or any other will not be paid by the petitioner except the liability of Public Health & Engineering Department (PHED for short) and Rajasthan State Electricity Board (RSEB for short). It, however, agreed to pay the balance amount of 75% of the sale price in five years time in quarterly instalments including the interest as applicable. The other offers from various industrial units were also received by the RFC. The petitioner thereafter, received a letter dated 30.11.90 from the Deputy General Manager (R), RFC, Jaipur calling the petitioner in the office on 5.12.90 for further negotiation, which was postponed to 7.12.1990. On this date the petitioner revised his offer and increased the amount of his offer to Rs. 10.50 lacs excluding all the liabilities except the liabilities of RSEB and PHED. The petitioner''s case is that this offer of the petitioner was the highest of all the parties due to which the Deputy General Manager, RFC informed him in the meeting that it was highest; hence it was accepted and a formal information would be sent in this regard within a few days. The petitioner has complained that thereafter he did not receive the letter of acceptance form the respondents due to which he represented to the RFC without any result. He also claims to have made personal visits for issuance of acceptance letter and for handing over possession but the petitioner was told that the liabilities from the various Departments and Corporation are being collected and after these informations are received, the petitioner will be sent a formal letter of acceptance, which he never received. It has been stated by him that he was always assured by the RFC personnel that letter of acceptance would be sent to him shortly but the commitment was never honoured. The petitioner has complained that the RFC thereafter colluded with the debtor Vincum Engineering Enterprises (P) Ltd. and, therefore, the letter of acceptance was never issued in his favour although his bid is the highest. It is further stated by him that when more than two and a half years elapsed and he did not receive the letter of acceptance nor possession of the industrial unit, he gave a notice for demand of justice to the respondents on 12.1.93 which did not receive any response and hence he was compelled to file this writ petition challenging the arbitrary action of the respondents in not issuing the letter of acceptance, not executing the necessary documents in pursuance thereof and thereafter not handing over the vacant possession of the industrial unit.

5. The writ petition has been contested by the principal respondent No. 1 RFC as

also the impleaded respondent No. 6-M/s. Vincum Engineering Enterprises (P) Ltd. which failed to pay its debt to the RFC. In fact the debtor industry M/s. Vincum Engineering Enterprises (P) Ltd. had also filed a suit for rendition of accounts, injunction and declaration before the ADJ No. 7 at Jaipur City, Jaipur but the suit was dismissed on 16.9.1996 against which first appeal is pending before this High Court and hence it has been prayed by their Counsel that this should be heard alongwith the first appeal. However, I do not see any justification for this prayer as that is the dispute between the debtor industry and the RFC. In so far as this writ petition is concerned, the question is whether the auction sale in between the petitioner and respondent-RFC can be held to be complete so as to issue necessary direction for issuing the letter of acceptance of the auction sale and execution of necessary documents as also the delivery of possession. The stand of the RFC in this regard is that the tender notice published in the Rajasthan Patrika on 22.11.1990 clearly notified therein that the respondent-RFC reserves the right to accept or reject the auction sale in consequence of the tender notice. It is their further plea that there was no occasion or any chance for the petitioner by which he could have acquired the right to get acceptance letter regarding his bid for the industrial unit M/s. Vincum Engineering Enterprises (P) Ltd. since the petitioner had made a conditional offer by refusing to accept the liabilities of some of the Departments like the RIICO and Ors. which was not in accordance with the terms of the tender notice due to which the final decision could not be taken regarding the offer made by the petitioner and hence the petitioner had no right to infer that the tender offer made by the petitioner was complete. Mere deposit of 5% amount towards the bid amounting to Rs. 42,500/- which was tendered by the petitioner, in a sealed cover cannot create a right in favour of the petitioner to conclude that his offer was accepted specially when it had made a conditional offer which was not in accordance with the terms of the tender notice. It has been stated that during the course of negotiation it had been clarified to the petitioner that the liabilities of the industrial units under sale were being determined and that final decisions could be conveyed to it in course of time clearly conveying him that it was liable to be rejected. It was also stated that if the petitioner industry had accepted the liabilities in terms of the tender notice as a whole, perhaps the complexion of the case would have been entirely different. The same not being the position, the petitioner had wrongly formed an opinion that his offer was accepted to conclude that the auction sale was complete so as to infer that the consequence of offer in pursuance thereof was its legal right. The arguments which have been advanced by the Counsel for the parties are on the aforesaid lines and hence do not require to be repeated.

6. From a perusal of the case and the counter case of the contesting parties, it is apparent that the petitioner''s offer although was the highest and he was also called for negotiation by the RFC, the same ultimately never culminated into final acceptance as the petitioner''s offer was conditional and it did not accept the terms and conditions of the tender notice in its entirety; on the contrary despite

being the highest bidder it laid down its own terms and conditions which was within the competence, power and at the option of the respondent-RFC to accept or reject it. It will, therefore, have to be inferred that no privity of contract had at all been created between the respondent and the petitioner since the petitioner had merely made an offer and that too a conditional one in response to the tender notice of the respondent-RFC and the terms and conditions laid down by the petitioner had not been fully accepted by the RFC since no letter of acceptance of his offer had been issued. One can understand that if a letter of acceptance of the offer had been issued by the respondent-RFC, a right would have been created in favour of the petitioner so as to seek a writ of mandamus to the respondent-RFC for executing necessary documents of sale and also claim for possession of the industrial unit but if the conditional offer of the petitioner itself had not been accepted, then merely on the basis of oral assurance the letter of acceptance cannot be claimed and it was nothing than a wishful thinking on the part of the petitioner to infer that his offer had been accepted. It hardly needs to be emphasised that unless an offer is accepted, a contractual right in favour of anyone who has made the offer do not arise and hence the respondents cannot be held under a constitutional obligation to issue the acceptance letter although the conditions offered by the petitioner were not acceptable to them. Hence direction to execute the necessary documents of sale and deliver the industrial unit to the petitioner cannot arise. In so far as the rendition of the amount of Rs. 42,500/- is concerned, the petitioner had never asked for its refund at any stage and the same being a condition precedent to the submission of an offer in response to the tender notice dated 22.11.1990, no refund could have been made as long as the offer was under consideration.

7. It is thus obvious that the auction sale in pursuance of the tender notice cannot be held to be complete in favour of the petitioner so as to issue any direction to the respondents to issue letter of acceptance. This answer being in the negative, the question of executing necessary documents and delivery of possession do not arise. The claim of the petitioner thus do not have any legal force and consequently, the writ petition is fit to be dismissed which is hereby dismissed. However, there shall be no order as to costs.