(2017) 04 MAD CK 0180

In the Madras High Court

Case No : 3483 of 2017

Arockiamatha Transport APPELLANT

Vs

The General Manager RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

Citation : (2017) 04 MAD CK 0180

Hon'ble Judges : V.Parthiban

Bench : SINGLE BENCH

Advocate : V.Parthiban

Judgement

1. This writ petition has been filed by the petitioner seeking for issuance of a Writ of Mandamus, directing the respondent to refund the E.M.D of Rs.6,30,000/- to the petitioner forthwith as per his representation dated 17.02.2017.

2. According to the petitioner, the petitioner firm submitted an application in response to the tender invitation called for by the respondent. The last date for submission of application is 30.11.2016 at 02.00 p.m and the tender was to be opened at 3.00 p.m on 30.11.2016. As per the tender condition, the tender to remain open for acceptance upto and inclusive of 13.01.2017. One of the tender conditions is that the respondent may at his discretion extend by 30 days and such extension shall be binding on the tenderers. In pursuance to the tender condition, the tender period was extended by 30 days by the proceedings of the respondent, dated 11.01.2017 and on extension of 30 days, finally, the tender validity expired on 12.02.2017. Since 12.02.2017 was Sunday, the last date for acceptance of the tender was taken as 13.02.2017.

3. According to the petitioner, till 13.02.2017, the respondent had not issued any acceptance letter and therefore, the tender was deemed to have lapsed in respect of the petitioner. While so, the respondent sent a communication through E-mail extending one month period from 13.02.2017 to 14.03.2017 and requested the consent of the petitioner. In response to the said communication,

the petitioner appears to have sent a reply on 14.02.2017 stating that their offer for acceptance of tender expired on 13.02.2017 and therefore, he was not willing to give any consent for further extension of the validity period of the tender. The said letter was also received by the respondent. Even after the receipt of the letter of the petitioner expressing his unwillingness for further extension of time, the respondent is said to have issued letter of acceptance on 16.02.2017 through E-mail by antedating the same on 13.02.2017 and the letter through speed post was dispatched on 15.02.2017 at 18.03 hours. Since the petitioner did not accept the extension of validity period of the tender and the offer had not culminated in proper acceptance by the authority, the petitioner''s request for refund of EMD of Rs.6,30,000/-, which was given to the respondent at the time of tender application submitted, was not considered. Therefore, the petitioner made a request on 17.02.2017 and no action was taken on the said representation.

4. While the matter stood thus, the respondent by the letter dated 13.02.2017 imposed a condition that within 15 days the petitioner had to deposit an amount of 5% of the value of the contract of Rs. 15,75,000/- and 10% of the value of the contract of Rs.31,50,000/- in the form of irrevocable and unconditional bank guarantee and in case of failure in making the said payment, the petitioner would also suffer the penalty of 1%. If he failed to pay within 30 days and thereafter, 2% penalty has to be deposited.

5. According to the petitioner, in view of indefinite extension of validity period of tender, the petitioner appears to have diverted the fund and therefore, he was no more interested in the tender process and the contract with the respondent. Since the request for refund of the amount was not acceded to, the petitioner has come before this with the relief as stated supra.

6. Mr.V.Panneerselvam, learned counsel appearing for the petitioner would submit that the contract cannot be imposed on the petitioner and since he was not willing to accept and no consent having been taken from the petitioner regarding the second extension of the tender period, it was not open to the respondent to retain the EMD amount of Rs.6,30,000/-. The respondent being a Government of India Organization cannot unjustly enrich themselves by withholding the EMD amount due to the petitioner. Such an action by the respondent is unreasonable and arbitrary. In support of his contention, the learned counsel relied on a decision reported in AIR 1966 SC 543 (Bhagwandas Goverdhandas Kedia vs. Girdharilal Parshottamdas and co.,). According to the said decision, an agreement does not result from a mere state of mind: intent to accept an offer or even a mental resolve to accept an offer does not give rise to a contract. There must be intent to accept and some external manifestation of that intent by speech, writing or other act, and acceptance must be communicated to the offeror, unless he has waived such intimation, of the course of negotiations implies an agreement to the contrary.

7. In the instant case, though they seem to be some kind of acceptance

expressed by the respondent, but still such acceptance cannot be accepted to be valid, in view of the fact that the petitioner had not given consent for the second extension and there was no valid explanation as to why there was repeated extension of the validity of the tender. Moreover, the learned counsel for the petitioner would submit that as per the conditions of the tender, initial extension of 30 days was permissible and beyond that was not authorized by any tender conditions. Therefore, it was not incumbent upon the petitioner to submit to the demand of the respondent, particularly, the 2nd extension appears to be not authorized by the tender conditions.

8. On the other hand, the learned counsel appearing for the respondent would contend that before the expiry of the first extension, the offer of acceptance was communicated to the petitioner and the petitioner having participated in the tender process cannot be allowed to wriggle out from the tender process, which was in the advance stage of finalization. The conduct of the petitioner to back out from the tender process for his own reasons cannot be condoned and therefore, as per the conditions of the tender, the EMD of Rs.6,30,000/- has been forfeited.

9. I have given my anxious consideration to the rival submissions of both the parties and perused the material and pleadings.

10. There is a considerable force in the contention put forth by the counsel for the petitioner that the petitioner was not under any obligation to give consent for second extension of the validity period of the tender. Moreover, in the absence of express consent from the petitioner, the acceptance by the respondent on 13.02.2017 cannot held to be valid, since there was no proper offer and acceptance giving raise to valid contract in terms of the provisions of the Indian Contract Act. Therefore, the petitioner was justified in demanding refund of the EMD amount of Rs.6,30,000/- to him, since the contract could be not fructified into a valid agreement between the petitioner and the respondent, for the reasons attributable to the conduct of the respondent. Therefore, the petitioner was well within his right to claim back the EMD amount deposited by him with the respondent.

11. In the above said circumstances, the writ petition is allowed and the respondent is directed to refund the EMD amount deposited by the petitioner to the tune of Rs.6,30,000/- within a period of four weeks from the date of receipt of a copy of this order. In case of delay in settlement of EMD amount to the petitioner, the said amount will carry interest at 9% from the date of this order till the date of realization. No costs. Consequently, connected miscellaneous petition is closed.