

(2016) 05 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2812 of 2013

Eden Transport Pvt. Ltd.

APPELLANT

Vs

Bihar State Road Transport Corporation

RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 PLJR 44

Hon'ble Judges : Mr. Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Mr. Abhinav Srivastava, Mr. Ajay Kumar Jha, Mr. Raushan, Advocates, for the Petitioners; Mr. Prabhat Kumar Verma, Advocate, for the Corporation

Final Decision : Allowed

Judgement

Mr. Kishore Kumar Mandal, J. (Oral)—The petitioner is a Transport Company and operates buses on different routes under permits. An advertisement for operation of different buses on behalf of the Bihar State Road Transport Corporation (for short "the Corporation") was published. The notice required the applicant to submit the Earnest Money Deposit (EMD) @ 10,000/- per bus through bank draft along with the tender/application. This was with a view to ensure that only serious applicants apply. The petitioner is said to have filed application/submitted papers and paid EMD amount in the sum of Rs. 20,40,000/- along with the application(s). There was another advertisement for operation of buses in the interstate route which also required filing of application(s) along with EMD amount @ 20,000/- per bus. The petitioner became an applicant for operation of 15 buses in terms of the said advertisement and deposited EMD amount in the sum of Rs. 03 lacs through the bank draft. Be it noted the petitioner-company had filed application for operation of 72 buses city routes of Patna in terms of advertisement and submitted EMD amount @ 10,000/- per bus. The Corporation again came out with another advertisement

inviting application/papers for operation of buses under the control of the Corporation on payment of 7% of the earning of the seating capacity along with EMD amount of Rs. 20,000/- per bus for intra - State routes and the advertisements indicates that the EMD amount shall be refunded to the applicants in case of failure. It is stated that in many cases inviting tender, he was declared unsuccessful bidder and the agreement was signed. In the circumstances, the petitioner was entitled to refund of the EMD amount of those NITs which was not heeded to by the Corporations. Again a request to this effect was made for refund of the EMD amount which was also not responded to. Reminders were also sent for refund of the EMD amount paid under different notices inviting application/tender. Details of the EMD amount paid against the advertisement are set out in paragraph 18 of the writ petition. The petitioner claims refund of Rs. 57,10,000/- of the EMD which the petitioner deposited with the Corporation along with the interest. Finding no wayout, the writ petition is filed for a direction on the Corporation to refund the EMD amount.

2. Heard Mr. Abhinav Srivastava in support of the application and Mr. P.K. Verma who appeared on behalf of the Corporations. Parties have exchanged their pleadings.

3. I.A. No. 1534 of 2014 is filed to amend the prayer and direct the respondent - Corporation to refund the EMD amount in the sum of Rs. 30,60,000/- by the Corporation. Rest of the claims have not been pressed seeking leave to file a separate writ petition. It is stated by virtue of NIT (Annexure-1), the petitioner deposited 20,40,000/- EMD @ 10,000/- per bus. The said NIT did not fructify in execution of the agreement between the parties. The result being that no agreement was signed. The Corporation was required to refund the EMD amount as per notice inviting application/tender which it defaulted and hence a direction for refund of the said amount.

4. The claim of the petitioner has been resisted by Mr. P.K. Verma on the sole ground that the petitioner-company has not come up with clean hands. The petitioner cannot invoke the discretionary writ jurisdiction of the Court. Referring to Annexure-D to the reply of the interlocutory application, it is stated that this Court in another writ petition had directed the petitioner to pay outstanding dues of the Corporation in relation to other agreement(s) which has not been paid till date. A huge amount is outstanding against the petitioner in respect of other agreements. The matter went in arbitration and the award was passed which has not been honoured by the petitioner. In this connection, he has drawn attention to paragraph 15 of the reply/affidavit. Even today, the petitioner is plying buses under different agreements but not paying dues of the Corporation. The brashness/brazenness on the part of the petitioner should disqualify him from seeking the relief.

5. Per contra, it has been submitted on behalf of the petitioner that although both the party, at one point of time, had agreed to negotiate and settle the monetary dispute in relation to those agreements but the respondent

Corporation took an unreasonable stand contrary to the spirit of the agreement which propelled the petitioner not to go for one time settlement with the Corporation in respect of those monetary claims/dispute(s). In this connection, the documents placed at Annexure-B (at page 89), Annexure-C to the reply as well as the document at page 99 have been referred in order to impress upon the Court that an unreasonable and unrealistic stand taken by the Corporation frustrated the settlement of the dispute between the parties. However, all these claims or counter claims pertain to the cases where the petitioner company was found successful bidder and agreements were signed between the parties. The claim in this writ petition is only in respect of those applications and EMD amount furnished therewith where ultimately no agreement was signed between the parties. It is stated that part of those dues of the Corporation have been paid. It is not correct to say that the petitioner-company is plying buses under the aegis of the Corporation without paying any amount.

6. On a consideration of the rival submissions, this Court finds, according to the terms of the advertisement which concerns the present case, the intending party was required to file application(s) along with EMD amount at the specified rate on a representation that in case of failure or non success at the bid the EMD amount so furnished shall be refunded. This position has not been disputed by the respondent Corporation. The objection is that the petitioner has not approached this Court with clean hands which would deny the petitioner the right to invoke the writ jurisdiction of the Court. Equity does not lean in favour of the petitioner.

7. I have perused the order passed by this Court and the stand taken by the petitioner. The dispute, indisputably, pertains to diverse claims against the Corporation in respect of the agreements signed between the parties. An arbitration proceeding was levied in which the award was passed which has been challenged by the petitioner before the court of competent civil jurisdiction. Again it is not a case of suppression of relevant-material facts in order to get undue advantage from the court. Can the Corporation retain the EMD amount furnished by a party even though it was a case of failure of the party to get the contract/privilege resulting in execution of the agreement? A representation was made by the Corporation through the notice inviting application(s) that in such a scenario the EMD amount shall be refunded to the applicant/tenderer. Once such representation is made on which the petitioner acted, it would be highly unreasonable on the part of the Corporation to deny refund of the EMD amount on the plea that some dispute(s) pertaining to other agreements entered by and between the parties are pending and a huge amount of the Corporation is outstanding against the petitioner. Even the respondent Corporation has not disputed entitlement of the petitioner to get refund of the EMD amount to the applicant/tenderer(the petitioner) in case the applicant did not succeed in getting the privilege under the notice. The only objection is that the petitioner has not come up with clean hands which, as noticed above, does not appear to be well grounded.

8. In the circumstances indicated above, the writ application merits to be allowed. The petitioner shall file a fresh request for refund of the EMD amount before the Managing Director of the Corporation where after the said respondent shall ensure payment/refund of the EMD amount submitted by the petitioner in relation where to no agreement could be signed between the parties not on account of any default on the part of the petitioner within a maximum period of six weeks.

9. The Court considering the facts of the case, would not direct for payment of interest on the amount leaving it to the petitioner to agitate the said claim either before the concerned respondent or in appropriate proceeding before the competent/appropriate forum in accordance with law.