(2011) 03 GAU CK 0006

In the Gauhati High Court

Case No : Writ Petition (C) No. 458 of 2006

Fortuna Agro Plantations Ltd. APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Citation : (2011) 03 GAU CK 0006

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; T.D. Majumder, Government Advocate, for the Respondent

Judgement

Amitava Roy, J.—Annulment of the decision for forfeiture of the amount of Rs. 2.5 lakhs deposited by the Petitioner herein, on demand, for the disposal of sawn timber as well as Rs. 5,000/- made by way of security deposit, in connection therewith is the relief, which the Petitioner seeks by invoking the writ jurisdiction of this Court.

2. I have heard Mr. D K Biswas, learned senior counsel for the Petitioner and Mr. T D Majumder, learned Counsel for the state Respondents.

3. The Petitioner has averred that in response to the Notice Inviting Tender (herein after in short NIT), dated 26.11.2004, floated by the Divisional Forest Officer (herein after in short DFO), Udaipur Forest Division, South Tripura inviting sealed offers from various Forest Trade License holders of the Forest Department of the State for disposal of about 1287 Cum round and 682 Cum sawn timber at the places mentioned therein, it submitted its offers. The NIT inter alia mentioned that the earnest money would be of Rs. 5,000/- and the sale price valuation of the timber lots would have to be deposited by the successful tenderer within 7(seven) days of the work order and that all sold timber lots would have to be removed at the cost of the successful tenderer from the respective depots.

4. Clause-5 of the NIT, in particular mentioned that the timber lots would be sold on "as is where is basis". It recited as well that the details of measurement of the lots would be available in concerned Head Office of the Division concerned and that the tenderer would have to quote their rates after examining the volume, measurement etc. of the timber lots and that no subsequent complaint regarding the quantity, quality and measurement would be entertained.

5. The Petitioner, responding to this NIT offered its rate for sawn timber vide communication, dated 12.12.2004, addressed to the DFO, Udaipur. The price offered by it for sawn timbers and timber logs was as herein below in express terms.

We offer our best price as under with terms and conditions as under:

1-Price for sawn Timber ex depot for all species:

45% (Forty Five Percent) less than the upset/Royalty price fixed under Govt. of Tripura Notification number F.7(170). For-FP-98/12281-680/ dated 22nd Sept., 1999.

2-Price for Timber Logs ex depot for all species:

40% less than the upset/Royalty price fixed under Govt. of Tripura Notification number F.7(170). For-FP-98/12281-680/dated 22nd Sept. 99.

6. While extending its offer for the whole quantity of sawn timber and timber lots, as mentioned in the tender, it cited the following two stipulations as well.

6-Your terms as per Tender is acceptable subject to you deliver as per present measurement as mentioned in first para of tender document and work order is issued after assessment of present measurement. The present measurement must be done jointly between both the parties and signed by both the parties.

7- Part Damage/Defect lots/sawn Timber may be accepted subject to discount to be settled between both the parties and documented in writing. However the full damage Timber shall not be lifted.

7. The DFO, Udaipura, South Tripura vide his letter, dated 21.11.2005, accepted the rate offered by the Petitioner for seized sawn timbers for an amount of Rs. 36,10,646.00 (Rupees thirty six lakhs ten thousand six hundred and forty six) only clarifying that the actual amount would depend on the quantity of timber supplied to it. Thereby the Petitioner was requested to lift the timbers with the following conditions.

1. 50% of the total royalty along with taxes has to be deposited in the respective Head of Accounts within 7(seven) days of receipt of this letter. After lifting the timber equivalent to the amount deposited, rest 50% royalty along with taxes shall be deposited.

2. The measurement of the sawn timber shall be done by a committee under the Chairmanship of Shri G. Das, Addl. DFO, Udaipur, respective Range Officer and

Shri Jagannath Choudhury, In-Charge, DFPP, Paratia as members.

3. The timbers have to be lifted within a month from the date of deposit of money. Forest Department will not have any responsibility if the timber is not removed from site within this period.

8. The Petitioner viewed the conditions contained in the letter, dated 21.11.2005, as quoted above, to be in departure from those in the NIT and insisted for measurement of the acceptable timber strictly as per the terms of its offer. It however, deposited an amount of Rs. 2.5 lakhs, as demanded by the department vide its fax message dated 10.01.2006 as well as its letter, dated 15.01.2006. It also agreed to lift 10% of the stock every month as required by the department, subject to the measurement of the sawn timber and the assessment of the value thereof. Thereafter, vide the order, dated 18.01.2006 of the Addl. DFO, Udaipur Division, Udaipur, the department insisted the deposit of the royalty, as per the Government norms following the measurement of the timbers before they were lifted.

9. The department by its letter dated 15.01.06 had detailed the following conditions -

1. Rs. 2.50 lacs (Rupees two lacs fifty thousand) only has to be deposited as advance in the respective Head of Account within 7(seven) days of receipt of this letter. After measurement of the timber the royalty has to be deposited before lifting the timbers.

2. The measurement of the sawn timber shall be done by a committee under the Chairmanship of Shri G. Das, Addl. DFO, Udaipur, respective Range Officer and in-Charge, DFPP, Paratia as members alongwith a representative from your side.

3. A minimum of 10% of the timbers have to be lifted in every month from the date of deposit of money. Forest Department will not have any responsibility if the timber is not removed from site within this period.

4. Other rules which are applicable.

10. The Petitioner, as a sequel thereto by its letters, dated 10.4.06 and 27.04.06, complained about non-cooperation of the officers of the department in the matter of authenticating the measurement of 2000 pieces of timber resulting in the non-delivery thereof to it. Underlining the fact that, meanwhile, it had deposited an amount of Rs. 2.5 lakhs as advance for receiving the sawn timber, it insisted for the delivery of the stock already measured. It pointed out as well that timbers partly damaged/defective would be acceptable to it in case the price thereof was discounted.

In reply, the department by the letter, dated 21.06.2006 of the DFO, Udaipur, South Tripura reiterated that the timber had been sold on "as is where is basis". It was stated therein that measurement of timber (sawn) of volume of 62.90 cum had been completed and was ready to be lifted as per the conditions mentioned in the NIT. The Petitioner was thereby requested to deposit the royalty and lift the timber from the different depots within 25 days from the issuance of the said letter. The letter, dated 13.09.2006 carrying the impugned decision followed.

11. In the affidavit of the Respondents affirmed by the Joint Secretary of the department, they insisted that in terms of the NIT, the tender price was to be quoted on the goods on "as is were is basis" and that therefore, there was no scope for the Petitioner to contend that it would lift only the good quality timber. While clarifying that the department had accepted the rate by having the entire stock in mind, they asserted that the Petitioner could not be permitted to selectively lift the timber. The Respondents alleged 7 unjustified abstention of the Petitioner in the second round of measurement of the timber and pleaded that the resultant delay in the clearance there of, entailed deterioration in quality portending enormous loss to the Government. The allegation levelled by the Petitioner about non-cooperation of the departmental authorities and departure from the NIT norms was denied.

12. Mr. Biswas, insistently argued that the Petitioner having made it unambiguously clear in its initial offer that partly damaged/defective logs/sawn timber would be accepted, subject to a discount granted to the same on mutual settlement, the insistence on the part of the Respondents to lift the entire stock without any concession on the price as concurred upon, is patently illegal and arbitrary. The department having consciously departed from the stipulations to the above effect, mooted by the Petitioner, in its offer and accepted by it, the impugned decision on the ground of purported delay on its part, is not only unsustainable in law but also obviously unfair, unreasonable and unjust, he urged.

13. Mr. Majumder, against this has contended that the Petitioner, as a tenderer, as required by the Respondents had responded to the NIT conditions, which had clearly spelt out that the stock would have to be lifted on "as is where is basis" and the department having accepted its offer on such a consideration it is not open for it to insist on a norm on which the authorities had 8 never been ad idem, and thus the impugned decision is valid having been taken in the interest of State revenue.

14. The pleadings available and the arguments advanced have been duly considered. Whereas it is apparent from the NIT that the timber lots were thereby offered to be sold on "as is where is basis" a tenderer was required to quote its rate on the basis thereof. The Petitioner in Clause 7 of the offer however mentioned that "partly damaged/defective lots/sawn timbers would be accepted, subject to discount in the price thereof to be settled between the parties". The letters of acceptance, dated 21.11.2005 and 15.01.2006 of the Petitioner''s offer, however, do not disclose anything in particular with regard to this stipulation. Thereby the Petitioner''s rate was accepted for an amount of Rs. 36,10,646.00 (Rupees thirty six lakhs ten thousand six hundred and forty six) only, being payable, depending upon the quantity of timbers, supplied to it. The

Petitioner thereby was requested to lift the timbers subject to the conditions, as mentioned therein. In absence of any clear indication in the aforementioned letters about the acceptance by the department of the conditions laid by the Petitioner, vis-?-vis the partly damaged/defective lots/sawn timbers, in the estimate of this Court, such a concession by it ought not to be read therein. The pleaded stand of the Respondents seems to emphatically endorse this orientation of the department. The insistence on the part of the Petitioner for discount, therefore, in the opinion of this Court, cannot be sustained as valid and enforceable in law.

15. Noticeably, both the parties have complained of noncooperation in the process of measurement and assessment of the value of the timber involved resulting in delay in the completion of the transaction. The Petitioner in Clause-9 of its offer, had agreed that the timber would be lifted only after the payment is made. By the letter, dated 21.11.2005, amongst others 50% of the total royalty along with taxes was required to be deposited and after lifting the timber equal to the amount deposited the balance 50% of the royalty along with taxes was to be deposited. The sawn timber was to be lifted within a month of depositing the money and the Forest Department relieved itself of any responsibility, if it was otherwise. The materials on record presently available reveal that as insisted, the Petitioner, meanwhile has deposited 2.5 lakhs by way of advance and that it had expressed its willingness to lift 10% of timber every month, subject to the measurement and the assessment thereof.

16. Having regard to the progress made by the parties in the transaction and the perishable nature of the goods involved which, in my view of the time lag and as is submitted in the Bar, is in the process of being decayed, this Court is of the view that they ought to be left to decide between themselves ways and means to sort out the differences and arrive at a consensus to take the process to a logical end. With that end in view, it is considered expedient to close this proceeding requiring the Principal Chief Conservator of Forest, Agartala, Tripura West to intervene in the matter and cause necessary steps to be taken for a resolution of the stalemate at the earliest, in a manner, as would be deemed appropriate by him.

17. In view of the urgency for the completion of the exercise, for the reasons cited herein-above, the Petitioner would submit a certified copy of this order before the aforementioned State authority so as to enable him to do the needful as expeditiously as possible, preferably within a period of 4(four) weeks from the receipt thereof.

18. Petition stands disposed in the above terms.