
(2014) 05 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 642 of 2014

Kuber Associates

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-05-2014

Acts Referred:

Citation : AIR 2014 Raj 191

Hon'ble Judges : Dinesh Maheshwari, J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : Dinesh Mehta and Lalit Pareek, Advocate for the Appellant

Judgement

1. By way of this intra-court appeal, the appellants seek to question the order dated 14.03.2014 as passed by the learned Single Judge in CWP No. 5834/2013. The said writ petition was considered by the learned single Judge alongwith another writ petition bearing number 5787/2013 : Chaina Ram v. State of Rajasthan & Ors.; and both the petitions were decided by the common order dated 14.03.2014.

2. The subject matter of the said petitions had been the offers invited for grant of mining lease for excavation of bajri from rivers, drains etc. in gair mumkin land of various villages of Tehsil Jaitaran, District Pali. The appellant, M/s. Kuber Associates, describing itself as a partnership/association of persons (AOP) is said to have made an offer pursuant to the NIT dated 21.11.2012; and its offer was at Rs. 8.65 crores. The said other writ petitioner Chaina Ram had also made an offer at Rs. 5.21 crores. However, the tender submitted by the appellants was rejected for not conforming to the requirements of Rule 35(vi) of the Rajasthan Minor Mineral Concession Rules, 1986 ("the Rules") inasmuch as the tender was not found accompanied by the power of attorney in favour of the person signing the documents by the other persons of the AOP. The petitioner-appellant preferred the writ petition questioning the order dated 26.04.2013 issued by the Superintending Mining Engineer in compliance of the order dated 17.04.2013 as issued by the Directorate of Mines for issuance of fresh NIT for grant of the lease

in question on account of rejection of the appellant's bid as invalid and non-confirmation of the bid offered by the other petitioner Chaina Ram.

3. Several arguments were raised on behalf of the appellant before the writ Court which have been dealt with by the learned single Judge in his detailed impugned order dated 14.03.2014. After dealing with the arguments urged on behalf of the appellants as also on behalf of the other petitioner Chaina Ram, the learned single Judge dismissed both the writ petitions. During the course of consideration of these matters, it had transpired before the learned single Judge and was duly taken note of that in the fresh process of NTT, the highest bid received had been of Rs. 13.78 crores.

4. Assailing the order dated 14.03.2014, the learned counsel for the appellants submits that filing of power of attorney with the tender document was not a mandatory condition and secondly, it stood substantially satisfied by Clause (vii) of the Deed of Partnership, which was filed with the tender document. It is also submitted that as on the date of taking final decision by the State Government, the questioned requirement, of submission of power of attorney with the tender document, which was even otherwise ambiguous in nature, had been modified and it came to be specified that such a condition was directory and not mandatory.

5. As regards the question of quantum of bid offered and the fact that during the pendency of the petition, new bids were invited and the highest bid received was for Rs. 13.78 crores as against the offer of the appellant at Rs. 8.65 crores, the learned counsel submits that apart from the other arguments sought to be raised in this regard, the fact remains that the particulars of the offerer of Rs. 13.78 crores had not been supplied to the appellant nor the said offerer has been a party to the petition. The learned counsel submits that to the best of his information, the process has not been finalised yet and else, during the pendency of the writ petition, there was an undertaking on behalf of the respondents not to finalise the same.

6. After considering such submissions and examining the record, when we felt inclined to issue the notices in the matter but on the condition of the appellants coming out with a matching bid so that interest of revenue is safeguarded, particularly when there is a substantial difference in the offer made by the appellant, i.e., at Rs. 8.65 crores as against the new bid received by the Department at Rs. 13.78 crores. To this proposition, the learned counsel for the appellants would submit that any such direction, at the present stage, may prejudice the appellants in making submissions on the merits of the case and the consideration as regards substantial difference of price, as was applicable in the case of Chaina Ram may not apply in the case of the appellants, particularly when the appellants have a strong case on merits.

7. The proposition on the part of the appellants, when taken note of and examined with reference to the overall facts and circumstances, we are of the

view that irrespective of the arguments sought to be raised, if the appellants are not forthrightly and clearly in a position to make an offer at the present stage to match the higher bid already received by the department, it could only be seen as an attempt to make a claim for the contract in question at the offer made by them, i.e., at Rs. 8.65 crores. The arguments of the appellants even if to be considered, cannot ultimately lead to issuance of a writ, order or direction because writ being an equitable and discretionary remedy, mere submissions of some legal issues may not suffice in a given case.

8. In the present case, the reluctance on the part of the appellants to make an offer at the present stage in order to match the highest bid already received by the Department, in our view, is sufficient to non-suit the appellants because no writ, order or direction could be considered in this matter in the manner that it would stand contra the interest of Revenue.

9. For the aforesaid reasons, we feel disinclined to entertain this appeal. The appeal stands dismissed.