(2019) 02 RAJ CK 0167

In the Rajasthan High Court

Case No : Special Appeal Writ No. 191 Of 2019

M/s. Dev Ganga Contractors Pvt. Ltd — APPELLANT

Vs

State Of Rajasthan And Ors — RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Limitation Act, 1963 — Section 5
Rajasthan Minor Mineral Concession Rules, 2017 — Rule 37(10)

Citation : (2019) 02 RAJ CK 0167

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : P.S. Chundawat, Sandeep Shah, Abhimanyu Singh

Final Decision : Dismissed

Judgement

1. The present application under Section 5 of the Limitation act (I.A. No.2/2019) has been filed, inter alia praying to condone the delay in filing the appeal and leave to appeal against the Single Bench judgment dated 30.10.2018 rendered in the case of Shiv Shankar and Company Vs. State of Rajasthan & Ors., S.B. Civil Writ Petition No.6715/2018.

2. Having heard learned counsel for the applicant, we are of the view that delay of 39 days in filing appeal/leave to appeal, is bonafide and deserves to be condoned.

3. The application (I.A. No.2/2019) is, therefore, allowed, delay is condoned.

4. The applicant has filed the present leave to appeal craving liberty to lay challenge to the order dated 30.10.2018, passed by learned Single Judge in S.B. Civil Writ Petition No.6715/2018.

5. The applicant has stated that by way of the order impugned, the applicant's concluded right of getting royalty and excess royalty collection contract, pursuant to the NIT No.1806 dated 07.05.2018, has been set at naught, by learned Single

Judge, without hearing it.

6. It has been stated that though an application seeking impleadment was filed by it, being Application No.3844/2018, in the aforesaid writ petition (6715/2018), but the same was rejected by the learned Single Judge on the one hand and fresh tender process initiated by the department has been struck down on the other. A direction has also been issued to issue fresh tender for the ensuing financial year, which has resulted in frustration of its right to get the contract, pursuant to the advertisement dated 07.05.2018.

7. Having heard learned counsel for the parties and upon perusal of the order impugned, we find that the learned Single Judge has struck down the fresh tender process initiated by the department vide advertisement dated 07.05.2018, qua which the applicant was declared as a successful bidder. As the issuance of the fresh tender vide advertisement dated 07.05.2018 was under challenge, the applicant being a successful bidder, was having right of audience, inasmuch as cancellation of the fresh tender process had a definite bearing on its right to get the contract.

8. In our considered opinion, the rejection of applicant's impleadment application was contrary to facts and law involved in the present case.

9. Be that as it may, in present factual backdrop, we are of the view that the applicant has a locus to maintain the appeal against the impugned order dated 30.10.2018, passed by the learned Single Judge in Writ Petition No.6715/2018.

10. The application is, therefore, allowed. The appeal by the appellant is taken up for consideration.

11. Adverting to the facts relevant for the present intra-court appeal, suffice it to note that the writ petitioner Shiv Shankar and Company (respondent No.6 herein) had filed a writ petition, challenging the order dated 24.04.2018, passed by the Director, Mines and Geology, vide which the e-auction held on 12.04.2018, in furtherance of the notice inviting tender No.1272 dated 30.03.2018, has been cancelled. A challenge was also laid to the auction proceedings initiated vide advertisement No.1806 dated 07.05.2018.

12. The petitioner contended that the respondents were not justified in turning down its highest bid of Rs.8,73,19,700/-offered for the contract of excess royalty collection and DMF for area code 227, of the advertisement No.1272 dated 30.03.2018.

13. In the aforesaid writ petition filed by the writ-petitioner, on 18.05.2018, a learned Single Judge of this Court, while issuing notices, granted an interim order in the following terms:-

"Meanwhile, the fresh auction process may go on but the same shall not be finalized till the next date of hearing."

14. It is undisputed that after non-acceptance of the petitioner's bid and passing

of the order dated 24.04.2018, fresh auction notice No.1806 dated 07.05.2018 for the contract of collection of excess royalty and DMFT on the mineral for the said area (area code No.227) was proceeded with, as this Court had permitted the respondents to go ahead with the process.

15. It is the case of the applicant that in pursuance of the impugned NIT, it had offered a bid of Rs.9,22,08,638/- and it was declared a successful bidder. It has also been asserted that its bid was approved by the State Government. The appellant contended that it had a right to be heard in the said writ petition filed by the writ petitioner (respondent No.6 herein), but learned Single Judge while denying such right, has put its contractual rights to peril and struck down the auction process.

16. Mr. Sandeep Shah, learned Additional Advocate General, appearing on behalf of the respondent-State clarifying the fact situation submitted that it is true that the applicant's bid was the highest bid and it was declared a successful bidder, but the fact remains that its bid was never accepted by the competent authority, viz., Director, Mines and Geology. He further asserted that the e-auction, pursuant to the subsequent tender notice, took place on 11.06.2018, but in wake of the interim order dated 18.05.2018, passed in the captioned writ petition, the same was not proceeded with.

17. Learned AAG argued that until and unless the offer made by the successful bidder is accepted by the competent authority in terms of Rule 37(10) of the Rajasthan Minor Mineral Concession Rules, 2017, no right, much less contractual right, accrues to such bidder, notwithstanding the fact that its bid has been found to be the highest.

18. We have heard learned counsel for the parties and perused the material available on record.

19. At the outset, we wish to observe that rejection of appellant's impleadment application was not proper, particularly when the auction proceedings initiated vide advertisement No.1806 dated 07.05.2018 well under challenge and the appellant had asserted that it was the successful bidder. Requirement of hearing the appellant was all the more necessary, as the learned Single Judge had struck down the fresh tender process and ordered to issue fresh tender for the ensuing year.

20. The impugned order to the extent of rejecting appellant's impleadment application is, thus, set aside.

21. Be that as it may, considering the facts noted above, particularly the fact that the applicant's bid of Rs.9,22,08,638/-, despite being the highest, had not been proceeded with obviously in light of the interim order dated 18.05.2018; we are firmly of the view that no right whatsoever has accrued to the applicant as its bid was not accepted.

22. At this juncture, we would like to refer to Provision of Rule 37(10), which

reads thus:-

"37. Procedure for e-auction and grant of contract.-

XXX XXX XXX XXX XXX XXX XXX XXX XXX

(10) The competent authority shall take decision for sanction or rejection and convey the same to the Mining Engineer or Assistant Mining Engineer concerned and the successful bidder."

23. A perusal of the above quoted provision, leaves no room for ambiguity that rights in favour of the successful bidder crystallizes only upon acceptance of its bid by the competent authority.

24. We have perused the impugned order dated 30.10.2018, passed by the learned Single Judge, vide which he has directed the State Government to continue collection of excess royalty and DMFT, up to the end of the current financial year, while giving liberty to float tender afresh in the forthcoming financial year.

25. We find that while granting such direction, the learned Single Judge has noticed that collection of excess royalty for the period between April to September was Rs.6,24,93,773/-, which is way above the bid received, pursuant to the fresh tender process impugned by the writ petitioner.

26. As the contract for the area in question could not be granted in view of the pendency of writ petition, it appears that State has started collecting the amount at its own, and such collection has been permitted by learned Single Judge till the end current financial year (2018-19), after recording finding that public exchequer would be benefited, in case the collection by the State Government is continued.

27. Learned Additional Advocate General informed us that after the decision of the aforesaid writ petition on 30.10.2018 and in consequence of quashment of the fresh tender process initiated vide advertisement dated 16.01.2019, the respondents have floated fresh tenders for the financial years 2019-20 and 2020-21. Clarifying the position, he submitted that vide notice inviting tender dated 07.05.2018, the tenders were invited for two years, i.e. for the period 2018-19 and 2019-20; however, in view of the pendency of the writ petition and interim order dated 18.05.2018 passed by this Court, the collection of excess royalty was effected by the State Government and the same is to continue till the end of present financial year (up to 31.03.2019) as permitted by the learned Single Judge. He informed that in view of the prevailing practice, the fresh tender has been floated for two years, i.e., for financial years 2019-20 and 2020-21 and the bids are likely to be opened soon. It is also to be noted that while initiating fresh bid process, reserve price has been kept at Rs.11,61,38,000/- as against Rs.9,19,18,639/-, fixed under the NIT dated 07.05.2018, which is also in the best interest of the Revenue.

28. In view of the facts obtaining, particularly in view of the fact that the revenue collection for six months by the State Government was substantially higher than the bid submitted by the appellant, coupled with the fact that the bid submitted by the appellant had not been accepted by the competent authority as mandatory in sub-Rule (10) of Rule 37 of the Rules of 2017; we are of the firm view that no interference in intra-court appellate jurisdiction is warranted.

26. The special appeal, is thus, dismissed.

