

(2013) 06 AP CK 0014
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9020 of 2013

M/s. Harsha Royal Minerals

APPELLANT

Vs

The A.P. Mineral Development Corporation Ltd.

RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:

Citation : (2013) 06 AP CK 0014

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : M.S.P. Kamaraju, for the Appellant; V. Subrahmanyam, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a mandamus to declare the action of the respondent in not supplying 3450 M.Ts. of C+D+W grade Barytes @ Rs. 840/- per M.T. in pursuance of confirmation order dated 5-10-2012, as illegal and arbitrary. The petitioner approached the respondent for supply of C+D+W grade Barytes. The respondent agreed to supply the quantity of 3450 M.T. of Barytes required by the petitioner @ Rs. 840/- per M.T. The petitioner has accordingly paid a sum of Rs. 33,19,862/- @ Rs. 840/- per M.T. on 5-10-2012. On receipt of the said amount, the respondent has issued confirmation order on the same day. The petitioner approached this Court by way of the present Writ Petition with the grievance that inspite of receiving the full value of the Barytes, the respondent has not been permitting the petitioner to lift the same.

2. On behalf of the respondent, a counter-affidavit is filed wherein the respondent inter alia admitted the payment of Rs. 33,19,862/- by the petitioner towards the value of 3450 M.Ts. of Barytes; that the respondent has released the delivery order on 5-10-2012 and that the P.O. was instructed to deliver the material. The counter-affidavit has however stated that the petitioner did not come forward to lift the material upto 25-3-2013 and therefore the respondent

went for e-auction which was held on 5-3-2013. The respondent has taken the plea that the market price of the Barytes has gone beyond 1066/- per M.T. and therefore it was resolved in the Board meeting held on 24-12-2012 that a quantity of 5 lakh M.Ts. of Barytes shall be put to sale by fixing minimum rate of Rs. 1066/- per M.T. through open tender; and that the open tender fetched Rs. 1926/- per M.T.

3. The sum and substance of the stand of the respondent is that as the petitioner failed to lift the Barytes stock within a reasonable time, the latter cannot insist on delivery of the stock at this point of time at the same price at which it has purchased the stock. The petitioner has filed a copy of the confirmation order, a perusal of which shows that against the column "Delivery period", it is shown as "Nil". It is not the pleaded case of the respondent that any time limit is stipulated between the parties for lifting of the stock by the petitioner. Not even a notice was issued by the respondent to the petitioner calling upon the latter to lift the stock within a specified time indicating therein that failure to lift the stock within such time will entail the petitioner for payment of higher price. The respondent being a public Corporation is bound to act with reasonableness and fairness. Having received the entire value of the Barytes in advance, the respondent cannot be permitted to turn round and demand higher price on the specious ground that the petitioner failed to lift the stock within a reasonable time. Such a plea would have been countenanced, at least, had a notice been issued to the petitioner as observed hereinbefore.

4. In the light of the above findings, the petitioner would have been entitled for a direction to the respondent to supply the Barytes @ Rs. 840/- per M.T. However, through its own letter dated 8-3-2013, the petitioner committed itself to pay Rs. 962/- per M.T. Having thus made its commitment for payment of a higher price, I am of the opinion that it would be reasonable to direct the respondent to supply the agreed quantity of 3450 M.Ts. of C+D+W grade Barytes to the petitioner, subject to the latter paying the balance amount @ Rs. 962/- per M.T. within one month from the date of receipt of this order. The petitioner shall be permitted to lift these quantities within a period of one month from the date of payment of the balance amount.

5. Subject to the above directions, the Writ Petition is allowed. As a sequel, WPMP No. 11266 of 2013 is disposed of as infructuous.