
(1995) 08 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 20921 of 1994

Sheelendra Textiles Pvt. Ltd.

APPELLANT

Vs

Madras Port Trust

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Customs Act, 1962 — Section 150

Citation : (1995) 80 ELT 255

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Judgement

1. The third respondent was appointed as their auctioneer by the first respondent to auction certain abandoned goods which were lying in the Port

of Madras. The auction was held on 28-7-1994 and the petitioner participated in the auction through its authorised representative. The petitioner is

the successful bidder in respect of lot No. 560/90, the bid amount being Rs. 10.50 lakhs. Before ever the auction was confirmed, the first

respondent received a letter from one Amith Enterprises stating that they are interested in buying the lot for Rs. 14 lakhs. The first respondent

cancelled the earlier auction and once again the said lot was put to auction. On 30-9-1994 on which date also the petitioner renewed his bid of Rs.

10.50 lakhs, which is the highest. This time also, before ever the confirmation was made, the same Amith Enterprises wrote a letter to the first

respondent, offering to buy the goods for Rs. 12.50 lakhs. Hence the goods were once again brought to auction on 27-10-1994. This time also

the petitioner renewed his bid for Rs. 10.50 lakhs. The Additional Collector of Customs requested the petitioner to enhance the offer voluntarily to

Rs. 12 lakhs and the petitioner also accepted and revised the Offer to Rs. 12

lakhs. The petitioner came to know that he has been requested to make this Offer of Rs. 12 lakhs because once again Amith Enterprises had written to Madras Port Trust Offering Rs. 12 lakhs. The Collector of Customs had confirmed the Offer of the petitioner and sent the communication to the first respondent by his letter dated 15-11-1994. The copy of which has been forwarded to the petitioner also. On receipt of the letter from the second respondent, the petitioner paid the entire consideration of Rs. 12 lakhs under two demand drafts dated 1-11-1994 and 15-11-1994 deducting the advance paid already. Even though the entire consideration has been paid, without confirming the bid of the petitioner, the first respondent by their letter dated 24-11-1994 informed the petitioner that the Port Trust has not confirmed the sale and advised the petitioner to collect the two demand drafts sent by him.

2. The petitioner has filed this writ petition praying for certiorarified mandamus to quash the said proceedings of the Post Trust dated 24-11-1994 and consequently direct the respondents to release the goods forming the subject-matter of lot No. 560/90 to the petitioner pursuant to the payment of Rs. 12 lakhs made by the petitioner.

3. On 20-12-1994 notice of motion was ordered by this Court. The first respondent has filed Counter. In the Counter, the first respondent has given various details with regard to the auction on several occasions and the number of occasions when the Offers were rejected. The first respondent further contended that the third respondent has no authority to confirm the sale and the exclusive right to accept or reject the Offer is with the first respondent. Whenever an Offer is received, it should be forwarded to the third respondent just for approval and not for confirmation.

This is because the third respondent is having a lien over the property for the charges due to them and unless they are satisfied with the Offer, they may not approve the same. The approval or non-approval by the third respondent would depend upon the fact as to whether the Offer would satisfy the claim of the third respondent i.e., the amount due to them. By letter dated 15-11-1994 sent by the third respondent, the petitioner will not get any right over the same. So far as the offer is concerned, the first respondent had not accepted the same and under the impugned letter dated 24-11-1994, the petitioner had been categorically informed that the Offer

has not been accepted. So long as the Offer is not accepted, the petitioner cannot have any legal right to force the first respondent to release the goods.

4. Though no counter has been filed by the third respondent, the learned counsel for the third respondent contended that they are having lien over the property in accordance with Section 150(2)(c) of the Indian Customs Act. The third respondent is not the authority to confirm the sale. But they are only the recommending authorities. The ultimate acceptance or refusal of the Offer is with the first respondent.

5. After hearing the counsel, the point for consideration is whether the impugned proceedings dated 24-11-1994 is to be set aside? and whether the petitioner is entitled to get the release of the goods pursuant to the order of confirmation passed by the third respondent?

6. The only argument of the learned counsel for the petitioner is that on three occasions i.e., 28-7-1994, 30-9-1994 and 27-10-1994 the petitioner's bid is the highest one and in all the three occasions the first respondent received letter from Amith Enterprises, Offering highest amount and only because of this the first respondent has not accepted the Offer made by the petitioner. So far as Amith Enterprises is concerned, it is a non existing firm and the first respondent themselves fully aware of the same, is the letter sent by them to the said Amith Enterprises had returned unserved. When that be so, the first respondent has no other option except to accept the Offer of the petitioner. There is no valid reason to reject the Offer of the petitioner. It is further contended that if the third respondent has no say in the matter of acceptance of the Offer, then there is no necessity for the first respondent to forward any offer to the third respondent either for approval or for acceptance. When once the offer is forwarded to the third respondent, it will mean that both the first and third respondent should act conjointly and when the third respondent confirmed the bid of the petitioner, the first respondent also should confirm the same.

7. The learned counsel for the first respondent mainly contended that since the petitioner's Offer was not accepted, it is not open to them to challenge the order of rejection. The condition on the tender makes it clear that the Port Trust reserves the right to accept or reject any Offer

without assigning any reason. Further Clause 12 of the tender conditions specifies that all the lots sold in the auction are subject to confirmation.

When the first respondent is the absolute authority to confirm the auction, equally the first respondent is the authority to reject the Offers. It is not open to the petitioner to challenge the order of rejection.

8. As pointed out already the counsel for the third respondent has categorically stated that they have nothing to do with the impugned proceedings.

Though the first respondent is the absolute authority either to confirm or reject the Offer; but still they have to exercise their power with

reasonableness. The absolute power will not entitle them to exercise their power in an arbitrary manner. It is seen that from the files and also the

data furnished by the counsel for the first respondent that the auction is being held from 26-9-1991. The data price fixed by the customs as early as

1991 was 180 lakhs. The Offer received was Rs. 35 lakhs which was rejected by the first respondent. Subsequently the data price had been

reduced and in June, 1992 the data price was fixed at Rs. 1.15 lakhs. The Offer received was Rs. 10 lakhs. Even though the auction was held on

five occasions in between 26-12-1991 and 25-6-1992 there was no bid at all. The Offer made on 25-6-1992 was also rejected and thereafter in

a number of occasions there was no bid and ultimately on 25-2-1993 the data price reduced to Rs. 40 lakhs and the Offer made was Rs. 7.50

lakhs which was also rejected. From February, 1993 till 27-10-1994 there were number of auctions held and the data price has been reduced

periodically and ultimately the price was fixed at Rs. 10 lakhs. The petitioner's Offer on three occasions on 15-9-1994, 30-9-1994 and 27-10-

1994 is for Rs. 10.50 lakhs. There is no bid at all. In such circumstances, this Court is entitled to see whether the rejection of the Offer made by

the petitioner by the respondent is reasonable?

9. When the Port Trust fixed the upset price at Rs. 180 lakhs in 1991, which was ultimately reduced to Rs. 10 lakhs, is it not the Port Trust put to

loss? Except the two offers made in 1991 for a sum of Rs. 35 lakhs and Rs. 30 lakhs, on no other occasion any offer is made more than Rs. 10.50

lakhs and this offer was also made in 1994. In 1992 and 1993 there was absolutely no offer beyond Rs. 5 lakhs except on one occasion.

10. Though it is contended by the first respondent that as per the conditions they

are not bound to give reasons, I am of the view that this

contention can be accepted if they rejected the tender once. But the power of non-furnishing the reason will not entitle them to reject the offer

repeatedly. The Supreme [Court] in a recent judgment reported in Union of India and others Vs. Hindustan Development Corpn. and others, has

held as follow :-

It must be mentioned at this stage that the validity of the conditions in the tender as such are not questioned. Consequently the Government had

the right to either accept or reject the lowest offer but that of course, if done on a policy should be on some rational and reasonable grounds.

Though the learned Judges have elaborately considered this aspect, I am not proposed to extract the same here, in view of the decision that I am

going to take in this case. I am referring to above facts only to condemn the conduct of the first respondent for them to repeatedly postpone the

auction by bringing down the upset price fixed by them by which the Port Trust is put to loss. Moreover, by postponement of acceptance, the

deterioration of the value of the goods also should be taken into consideration. As pointed out by the Supreme Court in the judgment referred to

supra, they should act with reasonableness. Hence, even assuming they are not bound to give reasons; but still they have to give the reasons if they

refuse the offer more than once.

11. For the reasons stated above, the writ petition is dismissed. There will be no order as to costs.