(2014) 11 OHC CK 0080

In the Orissa High Court

Case No : Writ Petition (Civil) No. 15701 of 2013

Sudarsan Barik APPELLANT

Vs

The Managing Director RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Citation : AIR 2015 Ori 17 : (2015) 3 BC 60 : (2015) 120 CLT 383 : (2015) 1 ILR 221

Hon'ble Judges : Amitava Roy, C.J;Dr. Akshaya Kumar Rath, J

Bench : Division Bench

Judgement

Amitava Roy, C.J.—The petitioner, who is a participating tenderer in the process initiated by the notice dated 16.10.2012 issued by the Managing Director, Orissa Forest Development Corporation, (for short, hereinafter referred to as "the Corporation") seeks to impugn the decision to forfeit his EMD/security deposit for his failure to offer the entire amount of earnest deposit in terms of the stipulation to that effect.

2. We have heard Mr. B.S. Tripathy, learned counsel for the petitioner and Mr. S.K. Patnaik, learned Senior Advocate for the opp. parties.

3. Briefly stated, the facts are that the process aforementioned was initiated for collection of cashew nuts with thalamus from the plantation lots of Bhubaneswar (Commercial) Division and other Divisions for three years i.e. 2013, 2014 and 2015 crop. The petitioner had submitted his sealed tender for lot No. 27/13 (Kadambajhara RF) and 32/13 (Sulia RF) on 30.10.2012. According to him, he offered a price of Rs. 24,33,000/- for lot No. 27/13 and Rs. 9,63,000/- for lot No. 32/13 and also deposited Rs. 3,50,000/- and Rs. 1,50,000/- respectively by way of earnest money along with the tender papers. A dispute followed as lot No. 27/13 was declared in favour of one Shri Nigamananda Parida at his offer price of Rs. 13,51,000/- though the petitioner had offered much higher bid, in connection with which, W.P.(C) No. 22424 of 2012 was instituted in this Court. During the pendency of the said writ petition, as averred by the petitioner, the Corporation

put lot No. 32/13 to auction and settled it for Rs. 13,27,000/- in favour of one Shri Golakh Marthi in spite of the orders passed by this Court not to finalize the tender process.

4. Be that as it may, while the matter stood at that, the petitioner received the impugned letter dated 03.06.2013 of the Managing Director of the Corporation intimating him that on his failure to deposit the entire amount of earnest money and royalty/lease rent for 2013 crop though called upon to do so vide office letter No. 20602/PL/24/12/dated 01.12.2012 and letter No. 21603/PL/24/12 dated 15.12.2012, the amount of Rs. 3,50,000/- deposited by him as EMD stood forfeited in accordance with the provisions of clause Nos. 4 and 14 of the terms and conditions of the tender sale. Contending that the impugned decision is illegal and arbitrary the petitioner seeks redress.

5. The opp. party-Corporation in its counter has averred vis-?-vis plantation lot No. 32/13, that the petitioner had offered a bid of Rs. 24,33,000/- for three years (2013 to 2015) and not Rs. 9,63,000/- as claimed by him. According to the Corporation, in terms of his offer i.e. Rs. 24,33,000/- his earnest money deposit of Rs. 3,50,000/- was short of 15% of the offered amount in terms of Clause No. 4(a) of the terms and conditions of the tender. The answering opp. party stated further that as the petitioner''s bid was adjudged to be the highest, his offer was accepted subject to his depositing the balance EMD of Rs. 14,950/-. However, as the petitioner in spite of the letters dated 01.12.2012 and 15.12.2012 referred to in the impugned order failed to make deposit of the balance amount as well as the royalty/lease rent from 2013 crop, his EMD of Rs. 3,50,000/- was forfeited in terms of Clause Nos. 4 and 14 and of the terms of the conditions of the tender sale.

6. Mr. B.S. Tripathy, learned counsel for the petitioner, has urged that though the EMD accompanying the tender with the highest bid was not as prescribed, in the facts and circumstances of the case, the impugned forfeiture is unwarranted and is liable to be interfered with.

7. Mr. S.K. Patnaik, Sr. Advocate, in reply, has argued that as the relevant records demonstrates that the petitioner''s bid for lot No. 32/13 was for Rs. 24,33,000/- and thus the earnest money deposit of Rs. 3,50,000/- was short of the amount prescribed by Clause No. 4(a) of the terms and conditions of sale, the opp. party-Corporation was justified in forfeiting the said amount as mandated by Clause (4)(b) of the terms and conditions of sale, as in spite of two notices he (petitioner) did fail to make up the deficit in the earnest money deposit and pay the royalty/lease rent for 2013 crop.

8. Upon hearing the learned counsel for the parties and on consideration of the pleaded facts and the documents on record, we are of the opinion that no interference is called for. There is no manner of doubt that vis-?-vis Cashew lot No. 32/13 the petitioner had offered his bid for Rs. 24,33,000/- and, accordingly, the EMD of Rs. 3,50,000/- being less than 15% of his quoted offer, the opp.

party-Corporation was well within its right in terms of Clause No. 4(b) of the terms and conditions of sale to forfeit the same as he failed to make the deposit and also pay the royalty/lease rent for 2013 crop in spite of the notices dated 01.12.2012 and 15.12.12 calling upon him to do so. The relevant provisions of Clause 4(a), 4(b), 12 and 14 of the terms and conditions of sale are quoted herein below:

"4(a) Intending tender shall be required to submit tender only in the prescribed form to be obtained from the above address as well as from concerned Divisional Managers/Sub-Divisional Offices on payment of Rs. 200/- (Rupees two hundred only) (non-refundable) with initials and seal of the issuing officer. Each tender must accompany with Earnest Money Deposit (E.M.D.), 15% of the tendered amount in shape of Account Payee Bank Draft drawn at any Nationalized Bank/ Scheduled Bank payable at Bhubaneswar in favour of "Odisha Forest Development Corporation Limited", Money Receipt in support of purchase of tender form, up to-date VAT clearance certificate in form VAT-612 and VAT Registration Number (TIN) or undertaking to produce VAT Registration Number before execution of the agreement.

4(b) The tender with highest bid, but not accompanied with prescribed E. M.D. shall be forfeited with deposited E.M.D. on tenders of the lot in question, which shall be settled as deemed fit by the OFDC Ltd.

xx xx xx xx

12. The successful tenderer shall have to deposit 1/3rd (One-third) of the tendered amount for a crop year towards royalty in one installment as per the following schedule:--

- for 2013 crop year - on or before 10th day of issue of demand letter.

- for 2014 crop year - on or before 30.09.2013.

- for 2015 crop year - on or before 30.09.2014

xx xx xx xx

14. In the event of failure to deposit the royalty as stipulated in clause No. 12, the Odisha Forest Development Corporation Limited will be at liberty to forfeit the security deposit and part royalty paid if any without issuing any show cause notice to the tender and without assigning any reason thereof. The forfeiture of Earnest Money Deposit/Security Deposit/part royalty shall be treated as final and conclusive and the Corporation shall be at liberty to re-lease the lot in any manner as deemed expedient."

9. The above quoted text would demonstrate in clear terms that the impugned action of forfeiture of the earnest money deposit of Rs. 3,50,000/- on the petitioner''s failure to comply Clause Nos. 4(a) and 12 was in valid compliance of Clause Nos. 4(b) and 14. In absence of any rejoinder on the part of the petitioner, it also not possible to conclude that the pleaded averments of the opp.

party-Corporation that prior to the impugned order the petitioner had been required to make the required deposit as per letter Nos. 01.12.2012 and 15.12.2012 is untenable on facts. Thus, the impugned action is not only inconformity with the relevant clauses of the terms and conditions of sale but also in compliance with the principles of natural justice.

10. As it is in a process initiated by the State, its instrumentalities and any public authority contemplating participation of eligible members of the public, the professed norms and stipulations proclaimed to govern the same ought to be strictly adhered to. In other words, such an authority for the sake of fairness, transparency and objectivity in the process is to be held rigorously to such norms and stipulations lest the exercise undertaken degenerates to be unfair, clandestine, veiled and discriminatory. Inflexibility in the matter of enforcement of such norms to ensure uniformity in approach and consistency in decision is thus an inviolable imperative in every public participatory process.

11. It has been held time out of number by the Hon''ble Apex Court that an essential tender condition must be strictly adhered to as reiterated in Harminder Singh Arora Vs. Union of India (UOI) and Others, and in B.S.N. Joshi and Sons Ltd. Vs. Ajoy Mehta and Another, .

12. This judicially evolved rule on administrative law has reverberated since the classical enunciation of Mr. Justice Frankfurter in Vitarelli v. Seaton (1959) 359 US 535, and referred to with approval by the Hon''ble Apex Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , wherein it was predicated that an executive authority must be rigorously held to the standards by which it professes its action to be judged and that it must scrupulously observe those standards on the pain of invalidation of an act of any violation thereof.

13. In the facts and circumstances of the case, to reiterate, we are of the unhesitant opinion that the impugned action is in strict adherence to the terms and conditions of the sale and thus no interference in the exercise of power of judicial review, in our comprehension, is warranted.

The petition lacks in merit and is dismissed.

Dr. Akshaya Kumar Rath, J.

I agree.

