
(2015) 01 KL CK 0170
In the High Court Of Kerala
Case No : W.A. No. 74 of 2015

The Chairman, Cochin Port Trust and Others

APPELLANT

Vs

Subham Freight Terminal

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Citation : (2015) 01 KL CK 0170

Hon'ble Judges : Ashok Bhushan, A.C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : V. Abraham Markos, Binu Mathew, Tom Thomas (Kakkuzhiyil), Abraham Joseph Markos and Isaac Thomas, for the Appellant; Santha Varghese, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, Actg. C.J.

1. Heard learned counsel for the appellants and the learned counsel appearing for the respondent/writ petitioner.

2. This writ appeal has been filed against the judgment dated 12/11/2014 in W.P.C. No. 23260/2014. The writ petitioner quoted for the tender for developing and operating a full-fledged Truck Parking Terminal. As per the general conditions of the tender, successful tenderer has to pay one time premium and one year lease rent as security deposit. Earnest Money Deposit (EMD) to the tune of Rs. 35 lakhs which was directed to be furnished was also remitted by the writ petitioner. The tender of the petitioner, being the highest, was accepted. Petitioner was called upon to pay one time premium as well as two year's lease rent towards security deposit. Objection was filed by the petitioner stating that as per the general conditions of the tender, successful bidder should pay only one year lease rent and an order as Ext.P16 was issued by the respondent cancelling the grant. Petitioner, aggrieved by Ext.P16 order, filed the writ petition praying for the following reliefs:

"(i) A writ of certiorari or any other appropriate writ, order or direction be issued, calling for all the records leading to Ext.P-16 and quash the same.

(ii) A writ of mandamus or any other appropriate writ, order or direction be issued, commanding the respondents to reconsider Petitioner's original offer of (i) one time premium of Rs. 1,59,10,000/- with security deposit of one year lease rent of Rs. 77,85,172/- or (ii) one time premium of Rs. 1,59,10,000/- with security deposit of two years lease rent by Rs. 77,85,172/- as cash security and equal amount in the form of Bank guarantee and decide awarding the lease in favour of the petitioner.

or in the alternative

A writ of mandamus or any other appropriate writ, order or direction be issued, directing the 2nd respondent/Board of Trustees to consider petitioner's memorandum under Ext.P17 after issue of notice to all the Board members and affording a chance to the petitioner to be heard and pass appropriate orders awarding the lease in favour of the petitioner.

A writ of mandamus or any other appropriate writ, order or direction be issued, directing the respondents to refund the EMD of Rs. 35 lakhs furnished by the petitioner towards EMD, in case the respondents do not intend to accept petitioner's bid for the subject lease arrangement.

iv) Grant costs to the petitioner and such other reliefs as prayed for and are deemed fit to be granted in the circumstances of the case."

3. The learned Single Judge, after hearing the parties, allowed the writ petition and directed the respondents to return the EMD received from the writ petitioner.

4. The learned counsel for the appellants submits that a corrigendum was released on 11/02/2014 whereby Clause 10.1 of Section 3 of the General Conditions was modified and it was categorically provided that successful bidder should also pay two year lease rent as security deposit in the place of existing condition of one year lease rent. It is submitted that the writ petitioner, who had submitted the tender, would have very well asked clarification from the appellants regarding the corrigendum issued on 11/02/2014 wherein the appellants had rightly insisted for two years lease rent.

5. The submission made by the learned counsel for the appellants have been refuted by the learned counsel for the petitioner. It is submitted that although in the corrigendum it was mentioned that the said corrigendum should be submitted along with the tender document duly signed by the tenderer, the appellant never submitted the said corrigendum which clearly means that the petitioner never accepted the condition of two year's lease rent. It is submitted that the learned Single Judge has rightly opined that there was no contractual obligation arisen in the facts of the case. Hence the decision to forfeit the EMD has rightly been set aside.

6. We have considered the submission of the learned counsel for the parties and perused the records. There is no dispute between the parties that the corrigendum was issued on 11/02/2014 and the said corrigendum duly signed was not submitted along with the tender document. At the bottom of the corrigendum it was mentioned that "this shall be submitted along with tender document, duly signed". The said document having not been submitted by the writ petitioner along with the tender form, it was clear that he had never agreed with the aforesaid condition. The terms and conditions which were offered by the appellants thus having not been fully agreed by the writ petitioner, there was no concluded contract. Learned counsel for the writ petitioner further refers to one of the conditions regarding the amendment of tender conditions which provides as follows:

8.0 Amendment to Tender Document:

- i. At any time prior to the deadline for the submission of Tenders, the Cochin Port for any reason, whether at his own initiative or in response to tender, may modify the Tender documents by an amendment.
- ii. The amendment in the form of addendum will be sent in writing to all prospective tenderers who have collected the tender documents, to arrive not later than 10 days prior to deadline for submission of tender.
- iii. Xxxxx
- iv. xxxxx"

7. In the present case, 20/02/2014 was the date fixed for submitting the tender. Corrigendum itself was issued on 11/02/2014. There was thus clear breach of the conditions of amendment to tender document, as noted above. Taking into consideration the entire facts and circumstances of the case, the learned Single Judge has rightly come to the conclusion that the writ petitioner had never accepted the corrigendum and the condition of two year's lease rent. The learned Single Judge, further held that the right to forfeit EMD arises only when there is a contractual obligation. We do not have a different opinion to the one that was taken by the learned Single Judge after considering the facts and circumstances of the case. We do not find any error in the judgment of the learned Single Judge which warrants interference in the appellate jurisdiction. This writ appeal is dismissed.

Learned counsel for the appellants prays for time to refund the EMD. As prayed, two weeks time is allowed to the appellants to refund the EMD to the respondent, as directed by the learned Single Judge.