
(2012) 09 CHH CK 0035
In the Chhattisgarh High Court
Case No : Writ Petition No. 1761 of 2005

Wasim Nizami

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Citation : (2012) 09 CHH CK 0035

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : V.G. Tamaskar, for the Appellant; P.K. Bhaduri Panel Lawyer for the State, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Shri Satish K. Agnihotri, J.—By this petition, the petitioner seeks a direction to the respondent authorities to release the security amount of Rs. 2,56,000/- by issuing a writ of mandamus and to direct the respondents to pay interest at the rate of 22% till the above amount is released. The facts, in brief, as projected by the petitioner are that the respondent No. 2 issued a notification on 18.10.2004 for auction of fishing rights over Tandula Water Tank, Balod and Khapri Tank, Gunderdehi, situated in Durg District. The date of auction was fixed on 18.11.2004 at the office of Collector, Durg. The petitioner participated in the said auction proceedings. By letter dated 19.1.2004 (Annexure P/2), the respondent No. 2 directed the petitioner to deposit a sum of Rs. 59,800/- as first installment and Rs. 2,56,000/- towards security deposit. The petitioner deposited the security deposit but could not deposit the first installment of Rs. 59,800/-. The amount of security deposit of Rs. 2,56,000/- was deposited on 29.11.2004 (Annexure P/3) by way of demand draft, which was received by the respondent No. 2. The petitioner was served with a letter dated 05.01.2005 (Annexure P/5), but he could not deposit the amount as demanded by the respondent authorities. The petitioner submitted an application for refund of his security deposit on 21.03.2005 (Annexure P/6).

2. Shri Tamaskar, Learned Counsel appearing for the petitioner submits that the petitioner is an unemployed person. He could hardly arrange the amount of security deposit, thus, he was constrained to move an application for refund of the said amount as he was not in a position to deposit the rest amount, as demanded by the respondent authorities. Further, in absence of any agreement between the petitioner and the respondent authorities, the respondents cannot withhold the said amount and the same needs to be returned back to the petitioner.

3. On the other hand, Shri Bhaduri, learned Panel Lawyer appearing for the State/ respondents would submit that as per the auction conditions, the petitioner was required to deposit the security amount of Rs. 2,56,000/- and the first installment of Rs. 5,98,500/-. This amount was to be deposited within a period of 10 days. When the petitioner failed to do so, the petitioner was again informed on 19.11.2004. It was further clarified to the petitioner that if he fails to comply with the same, the amount of Rs. 2,56,000/- shall be forfeited. There is no illegality or irregularity in the proceedings of the respondent authorities and the petitioner cannot claim refund of the aforesaid amount.

4. The relevant clause of the tender notice, reads as under:

5. The facts are indisputable. The auction was conducted on 18.11.2004 for the purpose of allotment of fishing rights in Tandula water tank. As per the terms and conditions of the auction notice (for short "the tender notice"), the petitioner was required to deposit some advance money (

) by way of draft or pay order, payable in the name of Deputy Director, Fisheries, Durg and also he was required to deposit first installment and security amount and get the agreement executed within a period of 10 days, as per clause 3 of the tender notice. Clause 5 of the tender notice provides that if the successful bidder does not comply with the tender notice's conditions and does not enter into the agreement or does not deposit the security amount or first installment of the amount, the advance money so deposited shall be forfeited and the second highest bidder shall be allotted the water tank for the purpose of fishing. It further provides, that if the second highest bidder also fails to comply with the aforesaid conditions, same procedure would again be adopted and the third highest bidder shall be allotted water tank.

6. It is not the case of the respondents that they are forfeiting the advance money which is to be forfeited under the auction terms and conditions. There is no mention of deposit of any advance money in the entire pleadings as to whether any advance money was paid or not. Admittedly, the petitioner failed to enter into agreement and deposit the first installment of the tender bid amount. However, a sum of Rs. 2,56,000/- towards security amount was deposited. A notice was sent to the petitioner on 19.11.2004 (Annexure P/2) for doing the needful at the earliest. The petitioner, after deposit of the security amount failed to deposit the first installment of the amount on the ground that he was not in a

position to continue with the terms and conditions of the auction notice or carry out the fishing operations. A second notice was also issued on 09.12.2004 (Annexure P/4).

7. Thereafter, a reminder was sent to the petitioner on 05.01.2005 (Annexure P/5) wherein he was granted one more week's time to deposit the remaining amount of installment and proceed to execute the agreement. In response, the petitioner on 21.03.2005 (Annexure P/6) stated that he was not in a position to deposit the advance money and thus, the security amount to the tune of Rs. 2,56,000/- be returned back to him.

8. In this petition, the sole contention of the respondents is that the petitioner could not deposit the first installment of Rs. 5,98,500/- and also could not execute the agreement with the respondents, within time specified, thus, the respondents were at liberty to hand over the water tank for fishing to other person and not to forfeit the money deposited by the petitioner.

9. On perusal of the terms and conditions of the tender notice and various correspondences between the parties, it is nowhere found that any advance amount was paid by the petitioner which could be forfeited in absence of deposit of security amount and the first installment, or execution of the agreement. No such document has been filed by either party wherein it is provided that security amount of first bidder would be forfeited in case of violation of terms and conditions of the tender notice. In this background, it is difficult to come to any conclusion as to whether any advance amount which could have been forfeited, was deposited or not. There is no dispute that the first installment of Rs. 5,98,500/- was not deposited and the agreement was also not executed between the parties as required, within the specified time. Thus, the respondents cannot be straightaway directed to refund the security amount deposited by the petitioner.

10. In view of the above, the respondent authorities are directed to consider the case of the petitioner afresh after examining the terms and conditions of the tender notice and other terms and conditions, which were applicable in the case of the petitioner at that point of time, as it is nowhere found that there is any provision to forfeit the security amount in case of breach of any of the terms and conditions of the auction notice, within fixed time of 8 weeks, after affording proper opportunity of hearing to the petitioner. Resultantly, the writ petition is allowed to the extent indicated above, with no order as to costs.