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Court : Chennai Madurai

Decided On : Apr-27-2016

Judge : B. Rajendran

Appeal No. : W.P (MD) No. 4731 of 2016 & W.M.P (MD) No. 4273 of 2016

Appellant : R. Jayaraj

Respondent : The Assistant General Manager and Others

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Mandamus, directing the 1st respondent to permit the petitioner to participate in the auction to be conducted vide E tender notice (BID No.1000014211), dated 09.02.2016.)

1. This Writ Petition has been filed by the petitioner seeking for issuance of a Writ of Mandamus directing the first respondent to permit him to participate in the auction to be conducted pursuant to the issuance of the tender notice dated 09.02.2016.

2. In response to the tender notification issued by the first respondent on 09.02.2016, the petitioner submitted his application for participating in the tender proceedings. As per the terms and conditions of the tender notice, the Earnest Money Deposit of Rs.1,85,100/- (Rupees one lakh and eighty five thousand and one hundred only) has to be paid to the credit of the first respondent through on-

line through e-tender portal or net banking or bank transfer in the form of RTGS/NEFT. Therefore, the petitioner approached the second respondent bank and remitted the entire amount of Rs.1,85,100/- towards earnest money deposit and requested the second respondent to transfer the amount online. The second respondent Bank in turn credited the amount to the account of the first respondent, but unfortunately the bank, by mistake, remitted a sum of Rs.1,85,000/-, instead of remitting Rs.1,85,100/- was deposited by the petitioner. Realising the mistake on their part, the bank remitted the short fall of Rs.100/- to the credit of the first respondent the next day. However, as per the terms and conditions of the tender, the amount of Rs.100/- credited by the bank has not been accepted by the first respondent as belated and contrary to the last date indicated in the tender notification. In such circumstances, the tender application of the petitioner was not entertained by the first respondent. According to the petitioner, the tender floated by the first respondent is in the nature of two tier system namely eligibility of the participants will be determined first and thereafter the price bid will be considered. As the second respondent bank belatedly remitted a sum of Rs.100/- which was not given credit to due to the mistake of the second respondent bank, the petitioner was declared as not eligible for participation in the tender. Therefore, the petitioner is before this Court with this writ petition.

3. The learned counsel for the petitioner vehemently contended that the petitioner is not at fault for having remitted the earnest money deposit with a short fall of Rs.100/-. Even though he has remitted the entire amount, by reason of the mistake committed by the second respondent bank, he was made to suffer. Even the short fall amount of Rs.100/- was credited by the second respondent bank the next day on their own after realising the mistake committed by them. In such circumstances, the first respondent ought to have permitted the petitioner to participate in the tender. However, by citing the non-payment of the entire earnest money deposit within the time stipulated in the tender notice, the petitioner was not permitted to participate in the tender and therefore he prayed for issuing appropriate direction to the first respondent to permit the petitioner to participate in the tender.

4. The second respondent bank has filed a counter affidavit admitting the mistake committed by them. They have categorically stated before the Court that the actual amount has been duly remitted by the petitioner, but it is their mistake which led to crediting the amount remitted by the petitioner with a short fall of Rs.100/-.

5. The learned counsel appearing for the first respondent, relying on the counter affidavit of the first respondent, would contend that when a specified time is indicated in the tender notice, the participants are bound to adhere to the schedule of time indicated thereof. When the earnest money deposit has not been credited to the account of the first respondent for whatever reason, the tenderer will not be permitted to participate in the tender. Admittedly, the earnest money deposit credited by the petitioner was with a short fall of Rs.100/-. Further, the earnest money deposit has not been credited to in entirety within the time stipulated in the tender notice, while so, the application of the petitioner will automatically become invalid. When the application submitted by the petitioner is construed as invalid, he cannot be expected to participate in the tender proceedings. Inspite of the delayed remittance of the earnest money deposit, if the petitioner is allowed to participate in the tender proceedings, it will lead to multiplicity of proceedings. The first respondent has duly adhered to the terms and conditions incorporated in the tender notice and therefore, the learned counsel for the first respondent prayed for dismissal of the writ petition.

6. I heard the learned counsel on either side. This is a peculiar and a rare case which has come up for adjudication before this Court. Admittedly, as per the terms and conditions incorporated in the tender notice, the petitioner has paid the entire amount of Rs.1,85,100/- representing the earnest money deposited within the time stipulated in the tender notice. Since the amount has to be credited to the account of the first respondent only through on-line or bank transfer, such amount was remitted by the petitioner with the second respondent bank. While giving credit to the amount in favour of the first respondent, due to inadvertent omission, the bank has transferred only a sum of Rs.1,85,000/- instead of Rs.1,85,100/- paid by the petitioner. This mistake in remitting the amount is entirely attributable on the part of the second respondent and the bank also admitted it in the counter affidavit.

7. As far as the first respondent is concerned, no doubt, there is a delay in remitting the amount by the petitioner. The entire amount has not been remitted within the date stipulated in the tender notice. According to the first respondent, the tender notice is in the nature of a two tier system where the tenderer's eligibility will be assessed first and only if they are eligible, they will be permitted to participate in the next level relating to financial bid. According to the first respondent, when the petitioner is not eligible to participate in the tender as per the terms and conditions of the tender notice, no Mandamus could be issued to the first respondent.

8. Before proceeding further, it has to be mentioned that when the writ petition was taken up for hearing on 14.03.2016, this Court passed an interim order restraining the first respondent from opening the tender of the other bidders till 29.03.2016. It is represented on behalf of the first respondent that in view of such interim order passed by this Court, the tenders of the other tenderers have not been opened so far.

9. Admittedly, in view of the interim order passed by this Court, the first respondent has not opened the tenders of the other bidders till date. As regards the eligibility of the petitioner is concerned, this Court is of the view that there is no fault attributable on his part in belatedly remitting the earnest money deposit within the time stipulated in the tender notice. As mentioned above, the second respondent bank has filed a counter affidavit admitting the omission on their part in remitting the amount deposited by the petitioner with a short fall of Rs.100/-. Even the amount of Rs.100/- was also remitted by the bank on the next day. Merely there is a delay of one day in remitting the earnest money deposit especially when there is no mistake on the part of the petitioner, the petitioner cannot be thrown away from the purview of the tender process. In normal circumstance, this Court will not interfere in contractual matters. However, in this case, a peculiar circumstances exist which warrants interference by this Court. This Court is therefore constrained to interfere with the decision of the first respondent in not entertaining the tender of the petitioner because there is no mistake on the part of the petitioner in remitting the earnest money deposit within the time stipulated in the notice and such mistake is attributable on the part of the second respondent/Bank. Therefore, this

Court feels that this is a rare case where a direction has to be given to the first respondent to permit the petitioner also to participate in the tender process by declaring him eligible to participate in the tender process. Merely because there was a shortfall of Rs.100/- towards the earnest money deposit payable and such amount was also remitted by the bank the next day, this Court feels that the petitioner has to be permitted to participate in the tender and if such a direction is issued, it will not cause any loss to the first respondent. Therefore, this Court is of the view that interest of justice demands that the petitioner has to be permitted to participate in the tender floated by the first respondent. In other words, the petitioner has to be construed as eligible for participating in the tender and the earnest money deposit remitted by him has to be treated as the one which was remitted within the time stipulated in the tender notice. It is needless to mention that the bid of the petitioner along with the bids made by the other bidders shall be opened by the first respondent and thereafter, the first respondent shall proceed further in accordance with law.

10. This order is passed taking note of the peculiar facts and circumstance exist in this case and this need not be cited as a precedent.

11. With the above direction, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

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