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Court : Andhra Pradesh

Decided On : Jul-09-2003

Reported in : 2003(5)ALD146; 2003(6)ALT42

Judge : D.S.R. Varma, J.

Acts : Constitution of India - Article 226

Appeal No. : WP No. 7909 of 2003

Appellant : Ramavathu Rambabu

Respondent : Apsrtc and ors.

Advocate for Def. : Posani Venkateswarlu, Adv.

Advocate for Pet/Ap. : A. Satyanarayana, Adv.

Disposition : Petition allowed

Judgement :
ORDER

D.S.R. Varma, J.

1. Petitioner seeks writ of Mandamus declaring the action on the part of the respondents 2 and 3 in not refunding the E.M.D. amount of Rs. 5,00,000/- with interest, as illegal and arbitrary.

2. Facts in brief are that the respondent - A. P. State Road Transport Corporation (for short hereinafter referred to as 'the Corporation') issued a tender notification on 10.8.2002 for the allotment of shops on licence basis. The petitioner was one of the successful bidders and as per the terms of the tender notification, he paid an amount of Rs. 5,00,000/- in the month of August, 2002. Thereafter, the Corporation issued the order of licence dated 24.10.2002 and required the petitioner to enter into an agreement and pay the balance amount of E.M.D. i.e., about Rs. 7,50,000/- within fifteen days from the receipt of the said order of licence. It is stated that the said order of licence was received by the petitioner on 18.11.2002 and he has to pay the balance amount within fifteen days from that date i.e. by 3.12.2002.

3. It is not in dispute that on 3.12.2002 some third party, who was aggrieved with the very same tender notification, approached this Court by way of filing a writ petition in W.P. No. 24194/2002 and obtained interim stay. However, the said writ petition was eventually dismissed at the instance of the Corporation on 17.6.2003. As there was delay, the petitioner in the meanwhile noticing that doing the cool drinks business in the off-season is not lucrative, issued a notice dated 9.12.2002 to the Corporation seeking refund of the E.M.D. amount and as there was no response, he also gave reminder on 4.4.2003. After the dismissal of the above writ petition on 17.6.2003, the Corporation issued letter dated 19.6.2003 and asked the petitioner to take possession of the allotted stall. Now the grievance of the petitioner is that since he is no longer interested in doing the business after a long lapse of time, he is entitled for the refund of the E.M.D.

4. The learned Counsel for the petitioner contends that the offer was given through proceedings dated 24.10.2002, which was received by the petitioner on 18.11.2002 and the petitioner was required to complete all the formalities like paying the advance rentals and also entering into agreement, on or before 3.12.2002 and on the very same date, this Hon'ble Court granted stay of all proceedings pursuant to the tender notification in W.P.No. 24194/2002 and therefore there was no occasion for the petitioner to complete the other formalities. He further contends that as per Clause 8 of the letter of allotment dated 24.10.2002, the petitioner was entitled to terminate the licence with three months

notice. Therefore, from the date of notice issued on 9.12.2002 after three months the licence of the petitioner should have to be treated as cancelled and he is entitled for the refund of the E.M.D. amount

5. Per contra the contention of the Standing Counsel for the Corporation Sri Posani Venkateskwarlu is that there is no mistake on the part of the Corporation in not entering into the contract and giving the possession of the stall to the petitioner, inasmuch as the writ petition has been filed by the some third party questioning the very same tender notification and this Court granted stay. It is his further submission that the petitioner was not actually put to any loss for the reason that, immediately after the dismissal of the writ petition on 17.6.2003 the petitioner was asked to take possession of the stall through letter dated 19.6.2003.

6. He further fairly conceded that there was no mistake either on the part of the petitioner or on the part of the Corporation.

7. In the light of the above contentions it is to be seen that admittedly the petitioner has to enter into agreement after paying the advance rentals etc., on or before 3.12.2002 i.e,, fifteen days from the date of receipt of the order of licence dated 24.11.2002. It is not in dispute that on 3.12.2002 this Court granted stay of all further proceedings pursuant to the tender notification and, therefore, as pointed out by the learned Counsel for the petitioner even assuming that the petitioner has paid the amount, the Corporation could not have given possession of the stalls.

8. The Counsel for the petitioner showed a further reason in not complying with the requirements of the order of licence dated 24.10.2002, by submitting that the petitioner received the order of licence on 18.11.2002 and that within fifteen days therefrom he has to comply with all the formalities i.e., by 3.12.2002. He submitted that in the meanwhile on 30.11.2002 the petitioner received a telegram stating that a suit in O.S. No. 1707/2002 was filed by some aggrieved person questioning the very same tender notification and the Civil Court has granted stay of allotment in I.A. No. 3345/2002 in O.S. No. 1707/2002.

9. However it is represented by the Standing Counsel for the respondent-Corporation that upon verification, no stay was ever granted and of course the suit

was filed and the same is pending. Therefore, he stated that the ground of pendency of the suit and the alleged injunction granted thereof may not be a valid reason for the petitioner from restraining himself from proceedings further. But it is to be noted that the issuance of the telegram in this regard can certainly be a valid reason for the petitioner for not proceeding further as a prudent person.

10. It is to be further seen that as per Clause 8 of the letter of allotment dated 24.10.2002, the petitioner is always at liberty to terminate the licence with three months prior notice and as admitted in the counter-affidavit, the petitioner had issued first notice seeking refund of E.M.D. on 9.12.2002. The reminder also was given on 4.4.2003. But the Corporation did not respond to the said notices. Again this inaction on the part of the respondents in not answering the notice issued by the petitioner is obvious i.e., pendency of the writ petition filed by some third parties. In this context I am of the view that when there is a specific clause incorporated in the letter of allotment with regard to termination, and when once the petitioner invoked the said clause, the same should have been accepted in strict compliance of the said clause.

11. Furthermore even assuming that no interim directions are granted by the Civil Court, even then the Corporation could not have proceed further inasmuch as admittedly this Court granted interim stay of the tender notification by order dated 3.12.2002 in W.P. No. 24194/2002. Further, it is not in dispute that the petitioner has not entered into any agreement by complying all the formalities and he only received offer in the form of licence order. Until and unless an agreement with specific conditions was entered into, sanction of licence does not have any effect. In other words, the licence would attain efficacy only from the date of entering into the agreement between the parties. Till such time, it is only the procedural formalities that have to be complied with, which are the conditions precedent to enter into an agreement.

12. Further it has to be seen that the issuance of licence without the same being culminating into an agreement, cannot bind the parties and it would only be a paper licence. In other words, as stated above, such a licence is only in the nature of offer. The agreement will be said to be concluded only when the same is

accepted by the petitioner. There are many impeding factors for both the sides to perform their respective obligations.

13. At the cost of repetition it is to be stated that there was no occasion for the petitioner to convey his acceptance because of the intervention of the interim direction of this Court. Therefore, in the meanwhile it is for both the parties to invoke their respective clauses in the order of licence, for getting it cancelled. As per the terms of the offer, the Corporation can evict the licensee, with one month notice and whereas if the petitioner wants to terminate the licence, he can do so by giving three months prior notice.

14. Viewing from any angle, the licence could not result in actual contract, of course as already pointed out, for no fault of either of the parties and in which event the equities should heavily weigh towards the petitioner. The Corporation in such a case cannot have possible objection to refund the E.M.D. and there is no justification in asking the petitioner after a lapse of more than eight months to take possession of the stall after fulfilling other formalities. It would amount to compelling the petitioner to give willingness to the offer of the Corporation, which was given way back on 18.11.2002. When the petitioner is not at fault, it is open for him to withdraw from further course of action.

15. It is also to be noted that there is no condition in the terms and conditions of the order of licence that any violation of the terms and conditions would entail the Corporation to forfeit the E.M.D. amount. However, it is to be seen that there is no violation of any terms and conditions on the part of the petitioner and of course there was also no occasion for him to do so, because of the intervention of the other events, which are beyond the control of either party.

16. Further under similar circumstances the Hon'ble Supreme Court in the decision reported in Mohammed Gazi v. State of M.P., 2000 (5) ALD 14 (SC) = 2000 (4) ALT 51(SC), held as under:

'7. In the facts and circumstances of the cases, the maxim of equity, namely, actus curiae neminem gravabit - an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense, which serves a

safe and certain guide for the administration of law. The other maxim is lex non-cogit ad impossibilia - the law does not compel a man to do, which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey and Ors. v. Tarapada Dey and Ors., : [1988]1SCR118 and Gursharan Singh and Ors. v. NDMC and Ors., : [1996]1SCR1154 .

8. Keeping in view the facts and circumstances of the case we are of the opinion that the Division Bench of the High Court was not justified in directing the deduction of the sum of Rs. 30,000/- from the security amount deposited by the appellant. We find that the learned Single Judge had assigned cogent reasons for return of the earnest money to the appellant and those findings could not be disturbed by the . Division Bench allegedly on the ground of equities'.

17. In view of the above judgment of the Apex Court and also in view of the foregoing reasons, I pass the order as under:

18. The writ petition is allowed and the respondent-Corporation is directed to refund the amount within a period of four weeks from the date of receipt of a copy of this order. No costs.

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