

W.P. No.10226/2015**(Manish Kumar Gupta vs. State of M.P. & others)****05.08.2015**

Shri R.S. Jaiswal, Advocate with Shri Pradeep Banerjee, Advocate for the petitioner.

Shri Amit Seth, Government Advocate for the respondents/State.

Heard counsel for the parties on admission.

Two reliefs have been claimed in this writ petition filed under Article 226 of the Constitution of India. The first relief is to quash the auction process initiated by respondent No.2 for re-auctioning the area which was subject matter of previous auction conducted in the year 2013. The petitioner had participated in the previous auction and was the highest bidder. He deposited the bid amount on 19th March 2013. The bid was accepted on the understanding that agreement in favour of petitioner could be executed only after the petitioner obtains all environmental clearances. The contract period was for two years from the date of tender notice. Almost until the fag end of two years' period, the petitioner was not in a position to obtain environmental clearance from the appropriate Authority which is necessary as per law. Since the two years' period was about to expire, in anticipation, the Authorities decided to initiate fresh tender process in January, 2015. It is only thereafter the petitioner

submitted his representation to the Authority to refund security amount deposited by him in furtherance of the previous auction process on 19th March, 2013. It is not in dispute that the said amount has been refunded to the petitioner soon thereafter.

2. Petitioner, however, is claiming relief of interest at the rate of 18% on the security amount of Rs.59,47,000/- which was lying deposited with the Authorities for almost two years and forty-six days. Indeed, the amount is quite substantial, but, the question is: whether relief as claimed can be granted to the petitioner. It is fairly accepted by the petitioner that there is nothing in the tender notice pursuant to which the petitioner participated in the auction process in the year 2013, to indicate that if agreement cannot be executed for whatever reason, the amount deposited by the petitioner would be refunded to him along with interest at the rate of 18% p.a. or any other rate of interest.

3. In the present case, as noticed earlier, it was due to the inability of the petitioner to obtain environmental clearance from the appropriate Authority, the execution of agreement in favour of the petitioner could not be effectuated. Had the petitioner obtained such clearances, within the time specified in the tender notice, issued in the year 2013, the

Authorities would certainly have favoured the petitioner by execution of agreement for the lease period specified in the tender notice.

4. According to the respondents the environmental clearance request was rejected vide Annexure P-9 dated 20.08.2014. According to the petitioner, however, the order passed by the appropriate Authority was set aside by the Green Tribunal with direction to the appropriate Authority to reconsider the proposal vide order dated 18.09.2014. The fact that the appropriate Authority thereafter did not take decision, therefore, does not create any right in favour of the petitioner for execution of the agreement. Notably, the term of contract specified in the auction notice was extinguished on expiry of two years from the date of auction notice issued in the year 2013, as held in the unreported decision of this Court dated 26.06.2015 in W.P.No.3854/2015.

5. The fact remains that the petitioner applied for refund of amount only in May, 2015 for the first time. The amount now demanded towards interest at the rate of 18% p.a. by the petitioner was not the condition referred to in the tender notice nor at the time of accepting the amount from the petitioner by the Authority pursuant to finalization of the bid in favour of the petitioner, being the highest bidder in

the year 2013. Thus, it is not a contractual obligation at all. Secondly, agreement could not be executed for the reasons attributable to the petitioner and not the Authority. The Authority, who was to execute the agreement was not responsible to obtain environmental clearance from the appropriate Authority. But, it was for the petitioner to do so. Due to failure of the petitioner, the Authority cannot be made liable to pay interest to the petitioner on the security amount deposited by him that too at the staggering rate of 18% p.a. as claimed. No express provision either in the Act or Rules or for that matter in the tender notice much less the security deposit receipt issued to the petitioner refers to liability of the State Government to refund the amount with interest inspite of failure of the petitioner to obtain environmental clearance for such a long time.

6. Suffice it to observe, that in such a situation the relief in exercise of writ jurisdiction, as claimed, cannot be countenanced. The petitioner is free to take recourse to any other appropriate remedy for damages/compensation and including interest in common law, if permissible in law.

7. The counsel for the petitioner invited our attention to the decision of Division Bench of the Bombay High Court reported in **(2004) 106 (1) Bombay Law Reporter 343** in the case of **Andhra Pradesh Paper Mills Ltd. Vs. State of**

Maharashtra. The observations in that case are essentially on the assumption that the Authority was liable to pay the deposit amount along with interest in the fact situation of that case. Inasmuch as, the petitioner in that case had withdrawn from the auction process because of refusal by the Collector to confirm the bid within reasonable time. It is in that context the Court proceeded to examine the quantum of interest to be awarded to the petitioner before the Court.

8. In the present case, the first question that State Authorities are liable to pay interest in the fact situation, as contractual or statutory obligation, is not established by the petitioner. In absence thereof, the question of considering the quantum of interest, does not arise. Somewhat similar contention had been considered and rejected recently by the Division Bench of this Court in W.P. No.3854/2015 dated 26.6.2015.

9. Taking any view of the matter, therefore, the petitioner is not entitled for the relief of interest.

10. Reverting to the relief of quashing of auction notice, unless the petitioner is in a position to substantiate that he is entitled for the relief of execution of agreement in his favour on the basis of the auction process conducted in the year 2013, the relief claimed by the petitioner in terms of relief clause 7(i) cannot be taken forward. The petitioner

has not asked for direction to the Authorities to execute agreement in his favour on the basis of auction conducted in the year 2013. Such direction, in any case, cannot be issued in absence of environmental clearance by the appropriate Authority and more so because the tenure specified in the auction notice conducted in the year 2013 has since expired. This aspect has been considered in the aforesaid unreported decision dated 26th June, 2015.

11. Taking any view of the matter, therefore, this petition is **dismissed**, being devoid of merits.

(A. M. Khanwilkar)
Chief Justice

(J.K. Maheshwari)
Judge