



GAHC010037862022

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : **WRIT PETITION (C) NO. 1367/2022**

Arup Sinha, aged about 37 years, son of Amalendu Sinha, resident of Village – Nakhalagrang, P.O. Jagiroad, District – Morigaon, Assam, Pin – 782410, Assam.

.....Petitioner

-VERSUS-

1. The Power Grid Corporation of India Limited, A Public Sector Enterprise/ Statutory Corporation incorporated under the Companies Act, 1956 as public limited company, majority stake being owned by The Government of India, and represented through its Chairman and Managing Director/CMD, With Its Registered Offices Sited at B-9, Qutab Institutional Area, Katwaria Sarai, New Delhi-110016.
2. The Manager, Power Grid Corporation of India Ltd., NEA HVDC, Monal Tower Building, 6th Floor, Dispur, Guwahati-781006.
3. The Manager, Power Grid Corporation of India Ltd., North Eastern Region, Dongtiah, Lower Nongrah, Lapalang, Shillong-793006, Meghalaya.



4. MSTC Limited, a mini-Ratna Public Sector Undertaking under the administrative control of the Ministry of Steel, Government of India and represented by its Chief Manager, F & A, BSNL Exchange Building, Beltola, Basistha Road, Wireless, Guwahati, Pin-781038.

.....Respondents

Advocates :

Petitioner	: Mr. R.J. Das, Advocate
Respondent nos. 1 – 3	: Mr. N.C. Das, Senior Advocate Mr. A. Das, Advocate
Respondent no. 4	: Ms. P. Baruah, Advocate
Date of Hearing, Judgment & Order	: 18.01.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The petitioner has preferred the instant writ petition under Article 226 of the Constitution of India seeking setting aside and quashing of a Sale Intimation Letter dated 21.02.2022 issued by the respondent no. 4 to the petitioner whereby the petitioner had been informed that the petitioner's bid against the auctioned lot of ACSR Lapwing Conductor, Lot no. 1 containing 1368.66 Metric Tons at his quoted bid value of Rs. 2,00,001/- per metric ton had been accepted, thereby, asking the petitioner to deposit the balance bid value. The



petitioner has also sought for a direction in the nature of Mandamus to the respondent authorities to refund a sum of Rs. 34,49,000/- which the petitioner had deposited as pre-bid Earnest Money Deposit [EMD] to participate in the auction process initiated by an Auction Notice bearing no. MSTC/GHY/POWERGRID CORPORATION OF INDIA LTD/4/Veluguri P.O. Kathiatoli/21-22/30843. The petitioner has also sought for a relief in the form of a direction to restrain the respondent authorities from initiating any further penal action in terms of Clause 2 of the Auction Bid Document.

2. In order to understand the nature of controversy involved in the case, the necessary and relevant facts can be delineated, in brief, as follows :-

3. By an Auction Notice bearing no. MSTC/GHY/POWERGRID CORPORATION OF INDIA LTD/4/Veluguri P.O. Kathiatoli/21-22/30843 [‘the Auction Notice’, for short], the respondent no. 4, M/s MSTC Limited had initiated an auction process for the purpose of auctioning a lot named and styled as Lot no. 1 of ACSR Lapwing Conductor, which was lying at Bihapukhuri I Store, Village – Bihapukhuri, Biswanath Chariali, District – Biswanath, Assam. As per the Auction Notice, Lot no. 1 contained 1368.66 metric tons of ACSR Lapwing Conductor. An Inspection Period from 01.02.2022 to 19.02.2022 was provided for the prospective bidders to inspect Lot no. 1. The proposed auction materials were offered for sale on ‘as is where is’ basis Ex-Works owners. The owners of the proposed auction materials, that is, ACSR Lapwing Conductor was M/s Power Grid Corporation of India Ltd [PGCIL]. The Auction Notice further mentioned that the quantity [Nos., Kg., MT, etc.] indicated against the materials where unit of measurement [UOM] was Lot were purely indicative and without any

guarantee and the seller would not entertain any complaint from the buyer for any deficiency in quantity or for recovery of the whole or part of the money or any loss of profit/interest/damages and otherwise. It was further indicated that the seller was not liable to weigh such items while delivery.

4. The Auction Notice further indicated that a participant bidder had to have a pre-bid EMD amount of Rs. 34,49,000/- and such pre-bid EMD amount was required to be deposited in the pre-bid wallet at least one day prior to the day of e-auction. Meaning thereby, no one was eligible to participate in the said auction process, initiated by the Auction Notice under reference, if he did not have a pre-bid EMD amount of Rs. 34,49,000/- in the pre-bid wallet.

5. The petitioner who has claimed to be a reputed contractor dealing in lifting of scrap materials and selling them thereafter, decided to participate in the auction process initiated by the Auction Notice. In order to be eligible to participate in the auction process for Lot no. 1 which had indicated about the pre-bid EMD amount of Rs. 34,49,000/-, the petitioner transferred an amount of Rs 36,61,000/- to his EMD wallet on 19.02.2022.

6. As per the Auction Notice, the auction process was to commence at 11-00 hours on 21.02.2022 and was to close at 16-30 hours on 21.02.2022.

7. In the writ petition, it has been projected that when the auction process commenced on 21.02.2022, the petitioner took part in the same and at one point of time, he quoted a bid value of Rs. 2,00,001/- per metric ton. The petitioner has claimed that at a later point of time, but during the live auction

process, the petitioner realized that he had mistakenly quoted the bid value, which was not the price he intended to offer for Lot no. 1 containing ACSR Lapwing Conductor. In order to correct the same, the petitioner stated to have informed the Nodal Officer of the respondent no. 4 at exactly 16-30 hours by way of an e-mail stating that a mistake had occurred on his part in that he had mistakenly offered a price of Rs. 2,00,001/- per metric ton instead of Rs. 20,001/- per metric ton. The petitioner has claimed that he had sent the e-mail for the purpose of modification of his offer from Rs. 2,00,001/- per metric ton to Rs. 20,001/- per metric ton. The petitioner has alleged that instead of responding to his said e-mail and subsequent correspondence made with M/s PGCIL authorities immediately thereafter, the respondent authorities, more particularly, the respondent no. 4 by the impugned Sale Intimation Letter dated 21.02.2022, sent at 22-35 hours, had confirmed the auction process arbitrarily and irresponsibly. The petitioner has stated that aggrieved by such action on the part of the respondent authorities, the petitioner is compelled to approach this Court by the instant writ petition seeking the reliefs, mentioned above.

8. I have heard Mr. R.J. Das, learned counsel for the petitioner; Mr. N.C. Das, learned Senior Counsel assisted by Mr. A. Das, learned counsel for the respondent nos. 1 – 3; and Ms. P. Baruah, learned counsel for the respondent no. 4.

9. Mr. Das, learned counsel for the petitioner has submitted that the bid value of Rs. 2,00,001/- per metric ton was quoted by the petitioner mistakenly. It is his submission that the petitioner intended to offer a bid value of Rs. 20,001/- per metric ton. But the bid value got quoted at Rs. 2,00,001/- per metric ton

erroneously. By referring to the e-mail, shown to be sent on 16-30 hours on 21.02.2022 to the respondent no. 4, Mr. Das has submitted that as soon as the petitioner realized the mistake, claimed to be *bona fide*, he had immediately informed the respondent no. 4 that his bid should be considered at Rs. 20,001/- per metric ton. Mr. Das has further submitted that the matter was also brought to the notice of the authorities in M/s PGCIL by another e-mail of even date, sent at 07-16 p.m. The petitioner had also requested the respondent authorities to look into the matter and to take necessary steps to invalidate and cancel his offer/bid for the said auction process because of the mistake in quoting the bid value. Mr. Das has further submitted that if the impugned Sale Intimation Letter is given effect to, the petitioner would be visited with severe adverse consequences in the form of forfeiture of the pre-bid EMD amount of Rs. 34,49,000/- as he had not deposited the EMD amount within a period of 7 [seven] days from 21.02.2022, as stipulated in the impugned Sale Intimation Letter dated 21.02.2022. Mr. Das has submitted that the fact that the bid value quoted by the petitioner at Rs. 2,00,000/- per metric ton was unreasonable, irrational and abnormally high would be evident merely by making a comparison with the market prices of identical materials.

10. The respondent sides have submitted in similar lines. Mr. Das, learned Senior Counsel appearing for the respondent nos. 1 – 3 has submitted that the auction process initiated by the Auction Notice was conducted by the respondent no. 4 as the Selling Agent of M/s PGCIL pursuant to an Agreement executed on 30.11.2019 between M/s PGCIL on one part and M/s MSTC Ltd. on the other part. By the said Agreement, the respondent no. 4, M/s MSTC Ltd. has been engaged as the Selling Agent for sale of all movable/immovable items and

all surplus, condemned/scrap/obsolete materials etc. as well as equipments, plants, machineries, properties and miscellaneous articles, etc. of M/s PGCIL through the website of the respondent no. 4. Mr. Das has submitted that the terms and conditions as regards engagement of the respondent no. 4 as a Selling Agent have been clearly mentioned in the said Agreement, which is valid for a period of 5 [five] years. It is his contention that the plea raised by the petitioner that he had, by mistake, quoted the price of the Lot at Rs. 2,00,001/- per metric ton is not acceptable in view of the then prevailing market rates of such kind of ACSR Lapwing Conductor [scrap]. By referring to the various figures/rates which were fetched in a nos. of auction processes conducted and concluded either prior to 21.02.2022 or subsequent to 21.02.2022, he has submitted that the rate at Rs. 2,00,001/- per metric ton was not an unreasonable, irrational and abnormally high figure. The learned counsel for the respondents have submitted that sufficient safeguards were provided in the auction website of the respondent no. 4 for the bidders in that even after quoting a bid value, the bidders gets another message in the form of a pop-up displaying the offered bid value in figures as well as in words and the bidder has to confirm in the system thereafter that he would want to proceed with the said offered bid value. It is only after the bidder gives a confirmation to the bid value he had quoted earlier, the system records the figure. The petitioner after quoting the bid value at Rs. 2,00,001/- per metric ton at the first instance, had confirmed the same bid value when the bid value was shown again in figures as well as in words in the system. Thus, the question of *bona fide* mistake or unintentional mistake cannot be a factor in the case in hand as after confirmation a bidder was not permitted to withdraw his offer.



11. Mr. Das, learned counsel for the petitioner has submitted, in reply, that it is imperative in an auction process to have a reserved price and such reserved price is to be fixed prior to commencement of the auction process and also has to be intimated to the proposed bidders. In support of his such contention, Mr. Das has referred to two Judgments of the High Court of Judicature at Madras in W.P. No. 29701 of 2012 [M/s Hameed Enterprises vs. the Registrar, Indian Institute of Technology and another], decided on 18.09.2014, and W.A. no. 1378 of 2014 [The Registrar, Indian Institute of Technology vs. M/s Hameed Enterprises], decided on 28.01.2015 and arising out of W.P. no. 29701 of 2012.

12. I have duly considered the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. I have also gone through the afore-mentioned two decisions referred by the petitioner's side.

13. The Auction Notice was published by the respondent no. 4, M/s MSTC Ltd. From the Agreement dated 30.11.2019, enclosed to the affidavit-in-opposition of the respondent nos. 1 – 3, it is noticed that the same is a Selling Agency Agreement having a validity period of 5 [five] years from the date of signing of the Agreement. As per the said Selling Agency Agreement, M/s MSTC Ltd. has been engaged as the Selling Agent for sale of the PGCIL's movable/immovable items and all surplus, condemned/scrap/ obsolete materials and secondary arising [ferrous and non-ferrous] as well as equipments, plants, machineries, properties and miscellaneous articles, etc. through MSTC's Auction website : www.mstcecommerce.com. As per the Agreement, M/s PGCIL is the Principal and M/s MSTC Ltd. is the Selling Agent. It has been further laid down that M/s

MSTC has to arrange disposal of the materials primarily through e-auction via their website : www.mstcecommerce.com. According to Clause 7.6., a reserve price is to be fixed and entered by the Principal [with its secret password] in the website, which is accessible only by the designated authorised officer of the Principal and none else, for the disposable material. In case the reserve price is not entered by the Principal prior to commencement of the auction, the lots for which the reserve price have not been entered shall stand automatically withdrawn by the system. In the case in hand, the auction process had commenced, meaning thereby, a reserve price had been fixed for Lot no. 1 prior to commencement of the auction process. Other than bald contention, the petitioner has not been able to bring anything on record to indicate that an obligation was cast on the Principal/Selling Agent to disclose the reserve price to the intending bidders.

14. The Auction Notice had provided for an Inspection Period, which was from 01.02.2022 to 19.02.2022, for the intending bidders to inspect the materials of Lot no. 1 containing about 1368.66 Metric Tons of ACSR Lapwing Conductor, which were to be auctioned on 'as is where is' basis. It was mentioned in the Auction Notice that the seller would not entertain any complaint from the buyer for any deficiency in quantity and the auction was on no complaint basis. It was further indicated that the materials were to be sold on the assumption that the bidders had inspected the same and were in the know how about what they were buying, irrespective of whether they had first inspected the materials or not.

15. From the bid history of the auction process, held and concluded on

21.02.2022, placed before the Court by Mr. Das, learned Senior counsel appearing for the respondent M/s PGCIL authorities, it is noticed that Auction process started with receipt of the first bid of Rs. 1/- at 11-35-01 hours. The e-auction process was forward auction in which bidding started with the lowest possible offered bid value and the bid value increased gradually. Subsequent to the first bid, seven more bids were received. The petitioner entered into the bidding process as 9th bidder at 13-27-52 hours by quoting the bid value of Rs. 2,00,001/- per metric ton. The bid previous to the petitioner was at Rs. 1,000/- per metric ton at 13-27-49 hours. Ms. Barua, learned counsel appearing for the respondent no. 4 has also placed a document dated 27.03.2023 issued by the Branch Manager, M/s MSTC Ltd., Guwahati which also indicates that the bid previous to the petitioner was received on 13-27-49 hours and the bid value of offered by the said bidder was Rs. 1,000/- per metric ton.

16. In order to examine as to whether the bid value quoted by the petitioner at Rs. 2,00,001/- per metric ton of Lot no. 1 containing ACSR Lapwing Conductor can be termed as unreasonable, irrational and abnormally high or not, the prices fetched in the auction processes held for identical material i.e. ACSR Lapwing Conductor can be looked into as the same can be a safe guide. ACSR stands Aluminum Conductor Steel Reinforced. From the case papers, more particularly, Annexure-III of the counter affidavit of the respondent nos. 1-3, the details of three other auction processes, held and concluded for identical materials i.e. ACSR Lapwing Conductor can be noticed. One of such auction processes was held on 03.12.2021, that is, prior to the auction process in the case in hand, for 273 MT of ACSR Lapwing Conductor. The said auction process fetched a price of Rs. 1,91,000/- per metric ton. Another auction process for

identical materials i.e. ACSR Lapwing Conductor for 243.41 metric ton was held and concluded on 22.02.2022, that is, just one day after the auction process in the case in hand and the said auction process fetched a price of Rs. 2,00,004/- per metric ton, which is slightly higher than the price quoted by the petitioner herein. In another auction process held and concluded on 24.02.2022 for ACSR Lapwing Conductor, the price fetched was Rs. 1,91,148/- per metric ton and the auction process was for 1452.56 metric ton.

17. During the pendency of the writ petition and after disinclination on the part of petitioner to deposit the balance EMD amount within the period stipulated in the impugned Sale Intimation Letter, another auction process for auctioning the Lot no. 1 was undertaken on 14.09.2022. The respondent nos. 1-3, by their additional affidavit, have brought to the notice of the Court that by issuance of another Auction Notice, the Lot no. 1 containing the quantity of 1368.66 metric tons of ACSR Lapwing Conductor was made part of another auction process, subsequent to disinclination on the part of the petitioner to deposit the balance EMD and initiated during the pendency of the writ petition. The said auction process was closed after receipt of the highest bid at Rs. 1,70,002/- per metric ton. Subsequent to the conclusion of the said auction process, the highest bidder deposited the entire amount of Rs. 27.37 crores for the materials for Lot no. 1, which was earlier part of the auction notice where the petitioner took part.

18. By looking at the prices fetched for identical materials i.e. ACSR Lapwing Conductor in the three auction processes held on 03.12.2021, 22.02.2022 and 24.02.2022 and in the subsequent auction process held on 14.09.2022 in

respect of Lot no. 1 after non-conclusion of the auction process initiated by the Auction Notice under reference, it is not possible, by any stretch, to take a view that the bid value quoted by the petitioner, allegedly by mistake, at Rs. 2,00,001/- per metric ton was unreasonable, irrational and abnormally high one. Rather, the figure at Rs. 20,001 per metric ton which the petitioner has claimed that he intended to offer for ACSR Lapwing Conductor, is an unreasonable, irrational and abnormally low one and by no stretch, it can be said that the said figure quoted is relatable to the ACSR Lapwing Conductor, contained in Lot no. 1.

19. There is another aspect which does not go to support the plea raised by the petitioner that his quoting of the figure at Rs. 2,00,001/- per metric ton was due to a *bona fide* mistake. The stand taken by M/s MSTC Ltd. is to the effect that the auction portal provides a completely automated, transparent and unbiased platform for the bidders buying auction items. As per the system installed for the auction processes, which are stated to be automated, as soon as a participant bidder quotes a bid value during the live auction process, the said bidder gets a message in the form of a pop-up displaying the bid value in words as well as in figures. After display of the pop-up, a bidder has to confirm in the system that he wants to proceed further with the said bid value. It is only after confirmation of the bid value, quoted and displayed in the system both in words as well as in figures, by the bidder the system registers the same. Once the bid gets registered in the system it is treated that the bidder is ready to pay the bid value entered by him. It is the further stand of the respondents that once registered, a bid cannot be withdrawn/modified by sending any e-mail or correspondence either to M/s MSTC Ltd, the Selling Agent or to M/s PGCIL, the

Principal within the live auction period or any period thereafter. From the above, it is evident that the auction portal has provided sufficient safeguards to a bidder to ascertain about the bid value offered by him and thereafter, the bidder gets another opportunity either to confirm the pop-up message generated automatically by the auction portal or not to confirm. Therefore, it was not a single opportunity for the petitioner as a bidder to quote a bid value. Rather, there were two opportunities for the petitioner as a bidder in the said auction process – firstly, to offer a bid value at the first instance; and secondly, after the pop-up message, showing the bid value both in words and in figure, to confirm or not to confirm the bid value he had offered at the first instance.

20. It was one of the conditions in the Auction Notice that a bidder who had been successful in the auction process, had to submit the Earnest Money Deposit within a period of 7 [seven] days from the date of Sale Intimation Notice for accepted lots. It was further stipulated that in case of failure to pay the EMD amount within the stipulated period for an auction process in case of lots for which a deposit of a pre-bid EMD amount was a condition precedent such pre-bid EMD amount would be forfeited. By the impugned Sale Intimation Letter dated 21.02.2022, the petitioner was informed that the material value of Lot no.1 for the Auction Notice dated 17.02.2022 for which he had emerged successful was Rs. 2,73,73,337/- and he was required to deposit the said amount as per the terms and conditions of the Auction Notice. The petitioner has sought relief in the form of refund of the pre-bid EMD amount of Rs. 34,49,000/- on the ground of equity and *bona fide* mistake. It is well settled that equity follows the law and where a mistake might have been avoided by the exercise of ordinary care and diligence on the part of the bidder and where

the bidder can by exercise of ordinary care and diligence could have avoided the mistake, such a bidder is not entitled for any relief on the ground of equity. Any mistake such as the one projected by the petitioner, should have been discovered with exercise of ordinary care and diligence.

21. The petitioner has also contended that by abandonment of the auction process initiated by the Auction Notice under reference which had been abandoned due to disinclination on the part of the petitioner to deposit the EMD amount and by the conclusion of the subsequent auction process for the same Lot no. 1, held and concluded on 14.09.2022, the respondent authorities did not suffer any loss. The respondents have taken a stand that had the auction process initiated by the earlier Auction Notice been concluded on the basis of the bid value offered by the petitioner at Rs. 2,00,001/- per metric ton the same would have fetched a higher differential amount of Rs. 1.4 crore. Such a plea of the petitioner that the respondent authorities have not suffered any loss is not to be countenanced as it is due to the action on the part of the petitioner, as have been delineated hereinabove, the auction process initiated by the earlier Auction Notice could not be brought to a logical conclusion. By quoting a bid value of Rs. 2,00,001/- per metric ton at 13-27-52 hours, the petitioner had, on one hand, stopped the other bidders from taking further part in the auction process and thereafter, by his failure to deposit the balance amount as per the Sale Intimation Letter and his failure to abide by the terms and conditions of the Auction Notice, had compelled the respondents to initiate a fresh auction process for the same Lot no. 1 after a period of about 7 [seven] months. It was condition of the Auction Notice that failure to deposit the balance EMD amount would lead to forfeiture of the pre-bid EMD amount. The petitioner had failed to

deposit the balance EMD amount and any order to refund of the pre-bid EMD amount would not only amount to rewarding a defaulting bidder but would also affect the aspects of certainty, definitiveness and transparency, required to be maintained in an auction process.

22. The two decisions of the High Court of Judicature at Madras relied on by the petitioner's side is in respect of an e-Auction process wherein the petitioner after depositing a pre-bid EMD participated in the said auction process. The petitioner therein has contended that he quoted a bid value of Rs. 1,22,42,002/-, instead of Rs. 12,24,202/-, mistakenly in the said auction process. It was contended that the same had resulted into quoting an astronomically high figure as the same materials were sold through a subsequent E-auction process for Rs. 45.52 lakhs. On perusal of the decisions, it is noticed that the Selling Agent had no independent power to confirm the bid of the petitioner and its action was subject to approval of the Principal, that is, the owner of the materials auctioned. The Court had found that there was no approval to the bid of the petitioner by the Principal, after it was provisionally accepted by the Selling Agent. In the intra-court appeal directed against the judgment of the learned Single Judge, the Division Bench had considered the aspect as to whether the price quoted by the petitioner therein was abnormally high and whether the said price was much more than the value of the scraps in comparison to the prices quoted by other bidders and fetched in the subsequent auction process and as to whether the price quoted by the writ petitioner/appellant therein was a genuine mistake. In the case in hand, the figures fetched in four other auction processes for identical materials, that is, ACSR Lapwing Conductor have already been found to be nearer to the bid value



quoted by the petitioner herein @ Rs. 2,00,001/- per metric ton. The fact situation obtaining in the said two decisions relied on by the petitioner's side, are not found applicable to the case in hand and as such, the said two decisions are of no assistance to the case of the petitioner.

23. In view of the discussion made and for the reasons assigned above, this Court is not persuaded to arrive at a view that the petitioner is entitled to any of the reliefs, sought for in the writ petition. Consequently, the writ petition is found to be bereft of any merits and is liable to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant