

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.9001 of 2020

ORDER:

The petitioner prays for mandamus declaring the action of 4th respondent in cancelling the tender vide proceedings in Ref.No.1.9.08/CUS/81 p padu/2020 dated 07.05.2020 for collection of cashew usufruct from 1981 CP Pullalapadu (146-13 Hectares) forfeiting his tender amount in favour of APFDC Ltd. and proceeding further for recovery of loss of amount to the corporation inspite of COVID-19 lockdown as illegal and arbitrary and also the orders passed by this Court in W.P.No.8130/2020 dated 26.03.2020 and for a consequential direction to the respondents to allow the petitioner to collect the said cashew usufruct for the next season i.e., from November 2020 to July 2021 by setting aside the said tender cancellation order dated 07.05.2020.

2. The case of the petitioner succinctly is thus:

(a) The 3rd respondent has issued notification for conducting of auction for collection of cashew usufructs from 1981 CP Pullalapadu (146-13 Hectares) vide proceedings in Ref.1375/2019/CS/981 dated 30.11.2019 with a condition to deposit EMD of Rs.1.00 lakhs by way of DD in favour of APFDC Ltd. on or before 12.12.2019. Certain terms and conditions were incorporated in the said auction schedule regarding depositing of sale value towards security deposit by way of demand draft. The condition No.33 of the agreement is that the period of contract shall be upto 30.06.2020 and the contractor shall collect the entire produce on or before 30.06.2020 after making payment of due amount in full. No one came forward to participate

in the auction on earlier occasion and no one expressed their willingness to collect the cashew produce on different reasons as the yielding capacity as well as climate was unfavourable. Finally at the request of the department officials, the petitioner participated in the auction held on 06.02.2020 and was declared as highest bidder for Rs.24.00 lakhs for collection and removal of cashew usufruct from 1981 CP Pullalapadu cashew plantation.

(b) The petitioner paid Rs.2.00 lakhs on 06.02.2020 and Rs.4.00 lakhs on 07.02.2020 totaling Rs.6.00 lakhs towards 1/4th of sale / bidding amount. The petitioner has to deposit 10% of sale value of Rs.24.00 lakhs towards security deposit in the form of DD or FDR besides 5% of GST on the bid amount within a period of 50 days from the date of auction and remaining balance amount of 50% has to be deposited on or before 18.04.2020.

(c) It is submitted that unless the petitioner paid the amount within 50 days from the date of auction, the corporation will not execute agreement in his favour. In the middle of February 2020, COVID virus started spreading in India and lockdown was imposed from 25.03.2020. However, the petitioner has time to pay the entire amount with interest on or before expiration of lease period i.e., on or before 30.06.2020. Due to COVID lockdown the petitioner could not pay the amount within 50 days time. As such he addressed a letter to extend the time or return his EMD amount deposited. Consequently he could not enter into agreement with Corporation due to non-availability of money in the lockdown period. Thereafter, the respondent-Divisional Manager issued notices repeatedly for payment of balance amount on 14.04.2020 and 18.04.2020 and the 4th respondent also issued notice to petitioner demanding the balance amount as per the

conditions mentioned in tender notification. The petitioner submitted representation dated 17.04.2020 to respondent to grant time upto 03.05.2020 for balance payment and also extend auction period for the next year, as he did not collect any cashew from the plantation. The said representation was rejected and the respondents issued another notice dated 18.04.2020 and directed to pay the entire amount, otherwise they will cancel the tender besides forfeiture of amount already paid and unit will be resold at the risk and loss of purchaser as per the sale notice conditions. It is contended that due to lockdown the police have not allowed the petitioner to come out of home and petitioner faced lot of problems in getting money. The yielding of plantation was only 40% and entire crop was drastically damaged due to insects and no worker came forward to collect the cashew from the fields. Thereafter, the 3rd respondent cancelled the tender granted in favour of petitioner vide the impugned proceedings in Ref.No.1.9.08/CUS/81 p padu/2020 dated 07.05.2020 which was received by petitioner on 14.05.2020. The said action was illegal and arbitrary and violation of the orders passed by this Court in W.P.No.8130/2020 dated 26.03.2020. The lockdown period was later extended upto 17.05.2020 and in the meanwhile the respondents have cancelled the tender of petitioner. It is further submitted that one O.Yesu Varaprasad filed W.P.No.8587/2020 before this Court and interim order was granted by this Court, and the petitioner stands on similar footing and sought for protection from this Court.

Hence, the writ petition.

3. It should be noted that this Court, on 30.11.2021, passed an interim order directing that the respondent authorities may proceed with the auction as proposed; however, so far as the writ petition mentioned cashew units are concerned, the respondents shall not finalize the auction until further orders.

4. The respondents 2 to 4 filed counter and contending thus:

(a) The 3rd respondent issued the tender notification for conducting auction for collection of cashew usufructs from 1981 CP Pullalapadu (146-13 Hectares) vide proceedings in Ref.1375/2019/CS/981 dated 30.11.2019 with a condition to deposit EMD of Rs.1.00 lakhs by way of DD in favour of APFDC Ltd. on or before 12.12.2019. Petitioner was the highest bidder in the auction held on 06.02.2020 for Unit No.VI (1981) Pullalapadu (146-13 Hectares) by paying Rs.6.00 lakhs (Rs.2.00 lakhs on 06.02.2020 and Rs.4.00 lakhs on 07.02.2020) towards 1/4th of sale amount. Subsequently confirmation orders were issued to him on 29.02.2020 by accepting his bid and directed him to pay balance 3/4th sale amount, 5% GST and 10% of total sale amount as Security Deposit within allowable time of 50 days and enter into agreement with Divisional Manager, Eluru for handing over the unit to carry cashew seed collection as per sale conditions. The due date fixed for payment of all amounts was 18.04.2020.

(b) The petitioner has to pay 10% of sale value towards security deposit and GST @ 5% on sale value from the date of confirmation and the amount towards 2nd instalment of sale value i.e., 25% as per condition No.18(b) and was required to enter into agreement. The petitioner did not comply with the terms and conditions of sale, and did not collect the cashew usufructs. Then the 4th respondent issued notice dt. 14.04.2020 demanding

the petitioner to pay balance amount. Thereafter the petitioner submitted representation dated 17.04.2020 to the respondents to grant time upto 03.05.2020 for balance payment and also extend auction period for next year as he did not collect any cashew from the plantation. The respondents did not consider the said representation and directed the petitioner to pay the entire amount as per the tender conditions vide notice dated 18.04.2020.

(c) The 2nd respondent granted time to all the cashew contractors and given instructions to allow time for payment of dues considering the lockdown situation and instructed to follow the tender conditions if anybody fails to remit the amounts. Since the petitioner has not availed the opportunity of extended time given to him i.e., upto 06.05.2020, as per sale condition No.39, proceedings were issued by the Divisional Manager, Eluru on 07.05.2020 informing that all amounts paid by the petitioner earlier were forfeited and APFDC was going for cashew seed collection departmentally in Unit No.VI and necessary instructions were issued to staff for carrying the work. The petitioner has not complied with the agreed terms and conditions of the tender notification. It is submitted that claiming any undue advantage under the guise of COVID-19 situation is offence punishable under the provisions of the Disaster Management Act, 2005 which was time and again mentioned in the guidelines issued by the Government of India from time to time and also by the Government of A.P. through various Government Orders.

(d) It is submitted that the petitioner is trying to take shelter on the plea of COVID-19 situation which is untenable. The plea of petitioner that the respondent corporation has not taken any effective steps to safeguard the

crop is untenable as it is the property of the corporation which will be collected departmentally in the event of failure of highest bidder to collect the crop. The Government of India have permitted Forestry operations during lockdown period by observing certain protocols and laid down certain standing operating procedures during the lockdown period to prevent the spread of COVID-19 which were all followed by respondent Corporation and relevant office orders are filed. The respondent corporation will not be responsible for any loss or damage caused to the contractor (petitioner) due to any unforeseen calamities.

(e) The respondents have only acted as per the terms and conditions of the sale notice which is binding on the parties. It is clearly laid down in condition No.39 that in case the successful bidder/tenderer fails to enter into agreement, the EMD, security deposit and instalment paid will be forfeited and sale will be cancelled and will be put to resale or go for departmental collection. Hence, the petitioner having failed in his legitimate duty cannot question the action of respondents in issuing the said proceedings and seek any relief from this Court. Therefore, the respondents cancelled the tender of petitioner by issuing the impugned proceedings, which was received by him on 14.05.2020. The respondents thus prayed the Court to vacate the interim order dated 21.05.2020 granted in I.A.No.1/2020 and prayed to dismiss the writ petition.

5. Heard Sri Mangena Sree Rama Rao, learned counsel for the petitioner, and learned Assistant Government for Forests representing 1st respondent, and Sri Ambati Satyanarayana, Standing Counsel for the respondents 2 to 4.

6. Both the learned counsel reiterated their pleadings in the respective arguments. The petitioner's contention is that the cashew collection contract for the year 2020 will be end by June 2020 and the petitioner was the highest bidder for the area 1981 CP Pullalapadu (146-13 Hectares). He paid initial 1/4th of the sale amount in two instalments i.e., Rs.2.00 lakhs on 06.02.2020 i.e., date of auction and Rs.4.00 lakhs on 07.02.2020. The balance amount has to be paid as per the conditions stipulated in the tender. However, from the middle of February 2020, COVID virus started spreading in the entire world including India and consequentially lock down was imposed from 25.03.2020. The petitioner had time to pay the amount till 30.06.2020 with interest and penalty. Due to COVID lockdown the petitioner could not pay amount within 50 days as stipulated. As such he addressed a letter to extend time or return his EMD amount deposited. Without considering the request of the petitioner, the 4th respondent issued notices repeatedly on 14.04.2020 and 18.04.2020 demanding the petitioner to pay the balance amount as per the conditions. The petitioner submitted representation dated 17.04.2020 to grant time till 03.05.2020 and also extend auction period for the next year as it will be difficult for him to collect the cashew from the plantation. The said representation was unduly rejected and finally the impugned proceedings were issued on 07.05.2020 cancelling the confirmation order. The action of the respondent is arbitrary and illegal and violative of the provisions of the Disaster Management Act, 2005. Learned counsel vehemently argued that in the entire process there was no fault of the petitioner and he was forced to confine to home in view of the continuous lockdown imposed by the Central and State Governments throughout the

cashew season and beyond that period. He thus prayed to allow the writ petition.

7. Per contra, while admitting that the petitioner is the highest bidder for 1981 CP Pullalapadu in respect of 146-13 Hectares in the auction held on 06.02.2020 and paid 1/4th amount, learned Standing Counsel Sri Ambati Satyanarayana argued that subsequently the petitioner committed default in payment of the balance amount and he also committed default in making 10% security deposit and in payment of applicable taxes. The respondents have addressed letters demanding him to pay the amount and time was also extended on his request, but he did not honour the terms. Therefore, following the terms and conditions, the confirmation order was cancelled on 07.05.2020 and the said order is valid in the eye of law. He thus prayed to dismiss the writ petition.

8. The point for consideration is whether the petitioner has deliberately violated the terms and conditions stipulated in the tender notification dated 30.11.2019 and thereby disentitled himself to get any relief in this writ petition?

9. **Point:** Admittedly, the petitioner participated in the auction sale to collect the cashew usufruct during 2020 season pursuant to the notification No.1375/2019/CS981 dated 30.11.2019 issued by 3rd respondent and stood as highest bidder for an amount of Rs.24,00,000/- for Hectares 146.13 of cashew plantation for 1981 CP Pullalapadu and the season ends by 30.06.2020. It is also an admitted fact that the petitioner paid the initial 1/4th

sale amount of Rs.6,00,000/- on the date of sale. To this extent there is no demur.

(a) Then the bone of contention is that according to the petitioner, due to the prevalence of COVID-19 pandemic from March 2020 onwards, the petitioner could not move out of his home to visit the office of 4th respondent to enter into an agreement and also the plantation area in Pullalapadu to safeguard the crop by applying the pesticides etc. and therefore, he informed the authorities that it would not be possible for him to collect the seed during 2020 season and his case may be considered for the next season i.e., 2021 cashew season. However, the authorities issued notices after notices making demand to pay the balance amount and ultimately set aside the confirmation letter on 07.05.2020. His plea is that he was not at fault and due to *force majeure* he could not move out of his home to honour the terms of the tender notification.

10. Per contra, the contention of the respondents is that the petitioner did not pay the balance amount and did not execute the agreement and therefore, notices were issued to him and in spite of the same, he did not approach the 4th respondent office to pay the balance amount and to execute the agreement. Hence, confirmation letter was rightly cancelled.

11. I gave my anxious consideration to the above rival contentions. It is apposite at this juncture to peruse the important terms and conditions stipulated in the auction notification vide Ref.No.1375/2019/CS981 dated 30.11.2019 issued by 3rd respondent, a copy of which is enclosed to the material papers and filed along with counter. The Notification

No.1375/2019/CS981 dated 30.11.2019 was issued by the 3rd respondent declaring that the auction sale of right to collect and removal of cashew usufruct during 2020 season from cashew plantation of Rajamahendravaram region would be held on 12.12.2019.

- i. Condition No.15 says that the highest bidder, at the conclusion of the sale of each unit shall either immediately or on the next working day deposit the difference between the initial deposit of EMD and 25% of bid amount offered by him.
- ii. Condition No.18(b) says that the successful bidder shall within 50 days from the date of confirmation orders, deposit security deposit of 10% of the sale value in the form of DD/FDR and taxes if any in cash/DD and execute the agreement with the Divisional Manager of the Corporation /4th respondent on Non-Judicial Stamp Paper of proper value.
- iii. Condition No.18(c) r/w Condition No.38 says that before executing agreement the 2nd installment of 25% of the sale amount plus other taxes if any should be paid and the balance 50% of the sale amount shall be paid either in cash or DD. Instead of cash or DD he can also submit bank guarantee for the balance 50% amount. However out of the said 50%, 25% which is the 3rd installment shall be paid within 80 days from the date of confirmation of auction sale and remaining 25% within 95 days from the date of confirmation order. For delayed payment interest of 18% p.a will be charged.
- iv. Most importantly, the condition No.19(a) says that no extension of time for signing the agreement will be permitted in normal circumstances. However, the Regional Manager, APFDC Limited / 3rd respondent under special circumstances, may extend the time for good and sufficient reasons with extension fee at his discretion. The extension period shall however does not exceed 15 days.
- v. Condition No.21 says that the successful tenderer/ bidder shall be allowed to start collection of cashew only after executing an agreement. The actual quantity will be weighed by the Director in the presence of the concerned officer of the Corporation every day.
- vi. Condition No.22 says that the contractor shall be present in the contract area during the currency of the contract. In case he is unavailable, he may appoint an agent approved by the respective Divisional Manager, APFDC Ltd., provided the contractor furnishes a power of attorney on the stamped paper of required value. Most importantly collection in the

contract area shall not be allowed in the absence of the contractor or his approved agent.

- vii. Condition No.26 says that notwithstanding anything contained in the preceding conditions, in case where it is established to the satisfaction of Regional Manager, APFDC Limited / 3rd respondent that failure to work out the commitments under contract was due to the causes beyond the purchaser's control, the Regional Manager/3rd respondent may at his discretion grant extension of time subject to payment of extension fee as contained in Condition No.38. The same will not apply to payment of Kist amount.
- viii. As per Condition No.33, the period of contract shall be upto 30.06.2020 and the contractor shall collect the entire produce on or before 30.06.2020 after making payment of due amount in full.
- ix. **Condition No.39 says that if the successful bidder fails to enter into agreement within stipulated time of 50 days plus extension period of 15 days [vide condition No.19(a)], the Divisional Manager shall cancel the sale/lease and forfeit the EMD, Security Deposit and all the installment amounts paid by that time.**
- x. Condition No.43 says that the Corporation will not be responsible for any loss or damage caused to the contractor due to any unforeseen calamities such as floods, gales, fires or failure of crop after the issue of confirmation orders.

12. In the light of the above conditions, the respective contentions of either side shall be scrutinized. It should be noted that as per Condition No.18 r/w 38, time stipulation has been made for payment of the bid amount in installment wise. The petitioner has admittedly paid 1/4th amount, but could not pay the balance amount. Therefore, it has now to be seen what are the relevant conditions governing the time stipulation for entering into agreement.

13. In this regard, Condition No.18(b) says that the successful bidder shall within 50 days from the date of confirmation orders, deposit security deposit of 10% of the sale value and taxes and execute an agreement with the

Divisional Manager of the Corporation /4th respondent on Non-Judicial Stamp Paper. Then Condition No.19(a) says that no extension of time for signing the agreement will be permitted in normal circumstances. However, the Regional Manager, APFDC Limited / 3rd respondent under special circumstances, may extend the time not exceeding 15 days for good and sufficient reasons. Further, Condition No.39 says that in case successful bidder fails to enter into agreement within stipulated time of 50 days plus extended time of 15 days the Divisional Manager/4th respondent shall cancel the sale/lease and forfeit the EMD, Security Deposit and all the installment amounts paid by that time.

14. Admittedly, the petitioner did not pay the balance amount in spite of the letters addressed by the respondents. However, his main plea is that he was restrained from moving outside the house due to COVID-19 pandemic. Therefore, the point to determine is whether on that ground the petitioner can seek for permission to collect the seed in future cashew seasons or refund of the amount deposited by him and whether the respondents can reject his claim on the ground that he did not pay the balance amount and enter into formal agreement?

15. It is known fact that since March, 2020 the entire world was shuddered and fear stricken due to Covid-19 pandemic. In order to take effective measures to prevent spread of Covid-19 pandemic, Home Secretary, Ministry of Home Affairs, Government of India issued the following order on 24.03.2020:

“Whereas, the National Disaster Management Authority (NDMA), is satisfied that the country is threatened with the spread of COVID-19 epidemic, which has already been declared as a pandemic by the World Health Organization, and has considered it necessary to take effective measures to prevent its spread across the country and that there is a need for consistency in the application and implementation of various measures across the country while ensuring maintenance of essential services and supplies, including health infrastructure;

Whereas in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, the National Disaster Management Authority (NDMA), has issued an order no.1-29/2020-PP (Pt.II) dated 24.03.2020 (Copy enclosed) directing the Ministries / Departments of Government of India, State/Union Territory Governments and State/ Union Territory Authorities to take effective measures so as to prevent the spread of COVID-19 in the country;

Whereas under directions of the aforesaid Order of NDMA, and in exercise of the powers, conferred under Section 10(2)(I) of the Disaster Management Act, the undersigned, in his capacity as Chairperson, National Executive Committee, hereby issues guidelines, as per the Annexure, to Ministries / Departments of Government of India, State/Union Territory Governments and State/ Union Territory Authorities with the directions for their strict implementation. This Order shall remain in force, in all parts of the country for a period of 21 days with effect from 25.03.2020”

16. Pursuant to the above order, various consolidated guidelines have been issued from time to time of which guideline No.6 relates to suspension of all transport services – air, rail, roadways with certain exceptions. Again the Ministry of Home Affairs issued another order on 17.05.2020 as per directions of the National Disaster Management Authority, that lockdown measures to contain the spread of Covid-19 will continue for a period upto 31.05.2020. In pursuance of the above orders, the Government of Andhra Pradesh issued G.O.Rt.No.262, Health, Medical & Family Welfare (B2) Department, dated 03.05.2020 and G.O.Rt.No.274, Health, Medical & Family Welfare (B2) Department, dated 17.05.2020 extending the lockdown till 31.05.2020. Later the Government of Andhra Pradesh issued

G.O.Rt.No.951, General Administration (Political A) Department, dated 05.06.2020 extending the lockdown till 30.06.2020 in the State of Andhra Pradesh. Therefore, it is clear that till the end of cashew season 2020 and even beyond that period, the lockdown was continued, due to which, as rightly argued, the petitioner could not move out to enter into the agreement with the 4th respondent. The above guidelines and lockdown orders were issued by the National Executive Committee exercising powers under section 10 of the Act, 2005. At this juncture, it is apposite to peruse Section-72 of the Act, 2005 which reads thus:

“72. Act to have overriding effect.—The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. ”

17. Therefore it is pellucidly clear that that the guidelines and consequent lockdown imposed under the Act, 2005 will prevail over the other enactments and instruments. In that view, the respondents’ contention that the petitioner’s request cannot be considered since he has not entered into formal agreement as he committed breach of auction notification cannot be countenanced. As already stated supra, the guidelines issued in exercise of powers under the provisions of the Act, 2005 will prevail over the auction conditions. It goes without saying that in the entire process, there was no willful default on the part of the petitioner.

18. In **Devashree Ispat Private Limited v. State of Telangana**¹, in similar circumstances, having regard to Section-72 of the Act, 2005, a learned Judge of High Court of Telangana held that the provisions of the said

¹ 2021(5) ALD 659 = MANU/TL/0402/2021

Act have overriding effect and thereby the contention of the respondent – TSSPDCL that the petitioners were bound to pay power consumption charges as per Twin Part Tariff System (TPTS) i.e., maximum demand charges and energy charges instead of pro-rata basis i.e., working and non-working period is unsustainable. It is held that Covid-19 pandemic is a *force majeure* and the provisions of the Act, 2005 are having overriding effect to the provisions of the Electricity Act, 2003 and GTCS terms and conditions of the agreement for supply of power entered into by the petitioners and respondents.

19. In the light of the above jurisprudence, in my considered view, the respondents cannot take shelter under Condition No.38 as well as 43. Since the petitioner has paid 1/4th of sale amount within time and the respondents accepted the same, mere failure to enter into formal agreement that too due to *force majeure* the respondents cannot refuse petitioner's request. It is true that in Condition No.43 it is mentioned as if the corporation will not be responsible for any loss or damages caused to the contractor due to any unforeseen calamities such as floods, gales, fires or failure of crop after the issuance of confirmation orders. However, in my considered view Covid-19 pandemic is not of such a nature. It is wide spread disease of pandemic nature due to which the movement of public was restricted by lockdown. Hence, condition No.43 cannot be resorted to by the respondents.

20. Coming to the reliefs claimed by the petitioner, since the petitioner has not paid the full amount and paid only 1/4th of the auction sale amount, in my considered view, his request for permission to collect the seed for

future years cannot be accepted. However, since he is a victim of lockdown and *force majeure*, in the interests of justice, the amount deposited by him can be ordered to be returned to him.

21. In the result, this Writ Petition is disposed of directing the respondent authorities to return the amount of Rs.6.00 lakhs (Rupees six lakhs only) paid by the petitioner towards 1/4th of the auction sale amount within six (6) weeks from today, failing which the authorities liable to pay interest @ 6% p.a. from the date of filing of the writ petition till the date of realization. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

11.03.2022
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U.DURGA PRASAD RAO, J

