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IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P.(C) No. 411 of 2020

M/S Gaikhonlung Panmei, aged about 61 years, s/o. (L) Tariang Panmei, a resident of Langol Tarung, Near RNBA House, Imphal West, Manipur – 795004.

... Petitioner

-Versus -

1. The Food Corporation of India through the Chairman and Managing Director, having its office at 16-20, Barakhamba Lane, New Delhi – 110001, India
2. The Food Corporation of India, Regional Office, House No. 105, Bank Colony, Dimapur, Nagaland – 797112.
3. The Food Corporation of India, Regional Office (Manipur) Old Assembly Complex, Imphal – 795001, Manipur.
4. The Executive Director (Zone), Food Corporation of India, Zonal Office (NE), Ulubari, Guwahati – 7.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEMBIMOL SINGH

For the Petitioner	:	Mr.N. Gunedhor, Adv.
For the respondents	:	Mr. W. Darakishwor, Sr. Panel Counsel.
Date of Hearing	:	18.10.2022
Date of Judgment & Order	:	31.01.2023

Judgment & Order

[1] Heard Mr. N. Gunedhor, learned counsel appearing for the petitioner and Mr. W. Darakishwor, learned senior panel counsel appearing for the respondents.

The present writ petition had been filed challenging the legality and sustainability of the order dated 29.06.2020 issued by the authority of the FCI thereby disqualifying the tender bids submitted by the petitioner's firm and forfeiting the EMD amounting to Rs. 20,80,512/- (Rupees Twenty Lakh eighty thousand five hundred and twelve only) and also black listing the petitioner's firm for a period of three years from participating in FCI tenders.

[2] The legal question which has arisen is whether, upon there being a material non-disclosure or a material concealment, the forfeiture clause under Clause No. 13 of the General Information to tenderer can be invoked thereby resulting in issuance of the impugned order.

[3] The relevant facts of the present case in a nutshell is that the FCI issued a notice dated 21.02.2020 inviting E-Tenders from eligible and interested contractors for appointment of contractor for transportation of food grains and alike materials, etc, from FSD/CWC, Dimapur to FSD Bishnupur for a period of two years.

Along with the said NIT, a comprehensive General Information to tenderers containing altogether 15 Clauses was also notified. Under Clause (4) of the said General Information, the conditions for disqualification are given. One of the conditions for disqualification as provided under Clause (4) (III) is that tenderer whose Earnest Money Deposit and /or Security Deposit had been forfeited by the FCI or any

Department of Central or State Government or any other public sector undertaking, during the last five years, will be, ineligible. Under Clause (6) of the said General Information, it is provided that each tender must be accompanied by an earnest money @ 2% value of the contract amounting to Rs. 20,80,512/- (Rupees Twenty Lakh, Eighty Thousand Five Hundred and Twelve Only). Under Clause (11) of the said General Information, it is provided that Food Corporation of India reserved the right to reject any or all tenders without assigning any reason and that the successful tenderer will be intimated of the acceptance of his tender by letter/telegram/fax/e-mail. Under Clause (13) of the said General Information, it is provided that if the information given by the tenderer in the Tender Document and its Annexures and Appendices is found to be false/incorrect or has violated/breached any of the terms & conditions of the contract, at any stage, FCI shall have the right to disqualify/summarily terminate the contract, forfeit the Earnest Money Deposit/SD/BG, make good any other losses caused to the corporation and black list the party for three years without prejudice to any other rights that the Corporation may have under contract and law.

[4] Pursuant to the said NIT, the petitioner's firm submitted its tender bids along with a forwarding letter marked as Appendices-II and a Tender Submission Undertaking dated 13.03.2020. In the said forwarding letter, the petitioner stated that he had thoroughly examined and understood all

the terms & conditions as contained in the Tender Document, invitation to tender/information to tender and its annexure and appendices and agreed to abide by them and that he had deposited EMD amounting to Rs. 20,80,512/- (Rupees Twenty Lakh Eighty Thousand Five Hundred and Twelve Only). In the said letter, the petitioner also made a declaration that no Earnest Money Deposit and/or Security Deposit had been forfeited or adjusted against any compensation payable, in a case of any contract entered into by him with the Food Corporation of India for any other public sector undertaking or any Government during the last five years. In the said letter, the petitioner also made a declaration that all information furnished by him was correct and true and in the event that the information was found to be incorrect/untrue, the FCI shall have the right to disqualify without giving any notice or reason therefore or summarily terminate the contract. In the said Tenders Submission Undertaking, the petitioner also gave an undertaking that in case any provisions of the tender are found violated, then the FCI has the liberty to reject his tender bid including the forfeiture of the full Earnest Money Deposit.

[5] During the evaluation of the tender bids submitted by the petitioner, the authorities of the FCI came to have knowledge that the Engineering Department of the FCI forfeited the Security Deposit and performance guaranty deposited by the petitioner in connection with the failure to complete the execution of a contract work awarded to him in 2019. On

coming to know about such information, the FCI issued the impugned order dated 29.06.2020 thereby disqualifying the petitioner's firm and forfeiting the Earnest Money Deposit amounting to Rs. 20,80,512/- (Rupees Twenty Lakh Eighty Thousand Five Hundred and Twelve Only) and also black listing the petitioner's firm for a period of three years from participating in FCI tenders by invoking the forfeiture clause as provided under clause (13) of the General Information.

Having been aggrieved, the petitioner approached this Court by filing the present writ petition for redressing his grievances.

[6] Mr. N. Gunedhor, learned counsel appearing for the petitioner submitted that under Clause (13) of the General Information to tenderers, it is clearly provided that if the information given by the tenderer in the Tender Documents and its Annexures and Appendices is found to be false/incorrect or has violated/breached any of the terms & conditions of the contract, at any stage, FCI have the right to summarily terminate the contract and forfeit the EMD and to black list the party for three years. The learned counsel submitted that in terms of the words employed in the said clause (13), the forfeiture clause can be invoked only after the parties entered into a contract and not before. It has also been submitted by the learned counsel that if the FCI intend to invoke the forfeiture clause as provided under Clause (13) of the General Information to tenderers, it naturally implies that the FCI has accepted the fact that the FCI have

entered into a contract with the petitioner and accordingly, the provisions of Section 73 and 74 of the Contract Act, 1872 is attracted while invoking the said forfeiture clause.

[7] The learned counsel for the petitioner submitted that Section 73 & 74 of the Contract Act provides that the party which has suffered due to the breach of the contract is liable to be compensated by the party which has broken the contract by way of compensation for any loss or damage and that damage or loss is the sine qua non for payment of compensation for breach of contract. It has also been submitted that in a claim for damages there is first the factum that has to be established before the quantum of damages can be assessed and that in the present case, the breach is only of non-disclosure of material facts or concealment thereof. It has also been submitted that as the impugned order had been issued during the evaluation of the tender bids submitted by the petitioner, the FCI did not suffer any loss or damage and accordingly, the forfeiture of a large amount of money and black listing the petitioner without indicating any corresponding loss or damage of commensurate value is arbitrary, unreasonable and illegal and as such, the same is not sustainable in the eye of law.

In support of his contentions, the learned counsel relied on the judgment rendered by the High Court of Calcutta in the case of **“MBL**

wherein, it has been held as under:-

“16. In the present case, a notice inviting tender was issued by Rites. On the basis of the terms of the tender documents, the joint venture bidder made a bid. Though the primary objective of the process was to identify a person who would be awarded the substantial contract, upon a person inviting tenders and another making of a bid pursuant thereto, there is an agreement in place. To boot, in this case there was also a declaration which was furnished by the bidder certifying, inter alia, that it had disclosed all that was necessary in accordance with the tender terms and had not concealed any relevant material. Even if such a declaration had not been furnished by the bidder in this case, there was an agreement between the parties which involved a basic promise on the part of Rites that it would consider the bid fairly and award the contract to the bidder if found eligible and the financial terms were the best. The corresponding promise that the bidder made while submitting the bid was that the bid conformed to the terms and conditions of the tender documents. Since the tender documents required disclosures to be made regarding the previous poor performance of the bidder, the non-disclosure of an instance of poor performance by the bidder was a breach of the agreement. There is no reason why the agreement between the parties that came about upon the bidder putting in the bid may not be enforceable by law. There is, therefore, clearly a breach of contract by the bidder in this case in not disclosing the material fact while submitting its bid.”

“26. In a claim for damages there is first the factum that has to be established before the quantum of damages can be assessed. When the breach is of the kind as complained in the present case - of non-disclosure of material facts or concealment thereof - the extent of damages that may have been suffered would depend on how far the bid had progressed and at what stage the discovery of the breach was made or at what stage such discovery could be made upon exercise of ordinary diligence. The legal issue has to be answered with reference to 73 and 74 of the Act of 1872 and cannot be seen to be beyond the pale of such provisions. Notwithstanding the stray lines in some of the judgments cited that there may not have been any concluded contract for Section 74 of the Act of 1872 to come into play, it has already been discussed above that there was an enforceable agreement in place upon there being a notice inviting tender and a bid being deposited in terms thereof. The breach is established and unquestionable but it would not necessarily follow that the breach would result in the entire quantum of the earnest deposit being forfeited. If such interpretation were to be given, the clause would be penal and fall foul of Section 74 of the Act.

“27. It is, thus, that the quantum of damages suffered has to be assessed with reference to how the bid was received, how it was processed, the extent to which it progressed, the nature of the work involved and like factors. It is inconceivable that in processing the bid, the respondents here would have expended an amount of Rs. 50 lakh or even a substantial part of such amount. It would seem that it is for such reason that the respondents suggest at paragraph 20 of their affidavit that once the amount was quantified they were not required to prove the quantum of loss actually suffered.

“28. Several principles must be kept in mind while making the assessment. Merely because such a clause is included in the tender documents does not attach any level of sanctity to it than any other clause which is required to pass the test of reasonableness in the context in which it is applied. That a sum is specified as security deposit or earnest deposit does not imply that upon the breach, such amount is liable to be forfeited and the party forfeiting is entitled to the windfall without there be any loss or damage suffered by such party. Indeed, that is the exact reasoning in Kailash Nath where the court was satisfied that DDA did not suffer any loss since the subsequent auction fetched a price of more than three times what the previous auction had. If, on the other hand, the subsequent auction had fetched a lower price, the previous highest bidder could have been proceeded against for the difference as that would have been the quantum of damages suffered as a consequence of the previous bidder failing to honour its bid.

“30. While it is salutary to introduce clauses that provide for forfeiture in the case of non-disclosure or concealment of facts or for corrupt or fraudulent practices being adopted, if a nominal amount is fixed, the court may not frown upon the same, depending on the value of the work proposed to be awarded, the degree of specialization involved in undertaking the work and others similar factors. In addition to the imposition of a penalty being impermissible, when the employer or the person inviting tender is a State or a statutory body, it is expected to act reasonably and rationally and such an entity cannot be permitted to unjustly enrich itself merely on the basis of a clause that may be altogether unreasonable. Contractors have, per force, to apply for obtaining work from government employers. There is always a degree of inequality involved in the bargain. While, theoretically, it can be said that a person is not obliged to participate in a tender process when it does not like the terms stipulated therein, government agencies cannot be permitted to incorporate unreasonable terms or take advantage thereof.

“31. A balance has to be struck in every case, when the assessment of the quantum becomes a difficult or an impossible task; to allow the forfeiture in principle, but to limit the quantum so as not to make it punitive or extortionist. Indeed, there is always an element of approximation and guesswork involved in assessing the quantum of damages even after receipt of the best evidence possible. After all, the court is trying to put a person in the position as if the breach had not happened, though the breach has, in fact, happened.

“32. Considering the nature of the contract in this case and the value of the work, the offer made by the appellant for Rs. 2 lakh to be forfeited in either case appears to be reasonable and appropriate. Indeed, the quantum of loss that may have been suffered by the respondents in either case may not be Rs. 2 lakh; but since the appellant has fairly offered that such should be the amount that the forfeiture should be restricted to, this court perceives a sum of Rs. 2 lakh in either case to be appropriate compensation for the respondents having received the applications, processed the same and proceeded therewith for some time before discovering the non-disclosure and concealment of material facts.”

[8] Mr. W. Darakishwor, learned senior panel counsel appearing for the respondents submitted that the FCI issued the NIT dated 21.02.2020 inviting tender bids for appointment of contractor for executing the contract work of transportation of food grains and alike materials, etc., from FSD/CWC, Dimapur to FSD Bishnupur for a period of two years. Along with the said NIT, a General Information to tenderers containing certain conditions for acceptance or rejection of the tender bids submitted by the bidders was also notified. It has also been submitted that under Clause (13) of the said General Information to tenderers, it is specifically provided that if the information given by the tenderer in the Tender Documents and its Annexures and Appendices is found to be false or incorrect, the FCI has the right to disqualify the bidder and to forfeit the EMD and also to

black list the party for three years. It has also been submitted that at the time of evaluation of the tender bids submitted by the petitioner, the authorities of the FCI found out that the petitioner had given false or incorrect information in the Tender Documents submitted by him and accordingly, the FCI issued the impugned order dated 29.06.2020 disqualifying the petitioner's firm and forfeiting his EDM as well as black listing him for a period of three years. It has also been submitted by the learned counsel for the respondents that as the tender bids submitted by the petitioner had been rejected by disqualifying him at the time of evaluation of his tender bids, no contract had been entered into between the FCI and the petitioner and accordingly, there is no question of violation or breach of any terms & conditions of the contract and as such, the provisions of Section 73 and 74 of the Contract Act, 1872 are not at all attracted. The learned counsel further submitted that the forfeiture of the petitioner's EMD and his black listing had been carried out by invoking the forfeiture clause provided under Clause (13) of the General Information to tenderers as the petitioner had given false or incorrect information in his Tender Documents submitted by him and that such forfeitures are permissible under law and the FCI did not commit any illegality in issuing the impugned order.

In support of his contention, the learned counsel relied on the following judgments:-

(i) “National Highway Authority of India Vs. Ganga

Enterprises and Another” reported in (2003) 7 SCC 410 wherein, it has been held as under:-

“9. In our view, the High Court fell in error in so holding. By invoking the bank guarantee and / or enforcing the bid security, there is no statutory right, exercise of which was being fettered. There is no term in the contract which is contrary to the provisions of the Indian Contract Act. The Indian contract Act merely provides that a person can withdraw his offer before its acceptance. But withdrawal of an offer, before it is accepted, is a completely different aspect from forfeiture of earnest/security money which has been given for a particular purpose. A person may have a right to withdraw his offer but if he has made his offer on a condition that some earnest money will be forfeited for not entering into contract or if some act is not performed, then even though he may have a right to withdraw his offer, he has no right to claim that earnest/ security be returned to him. Forfeiture of such earnest/security, in no way, affects any statutory right under the Indian Contract Act. such earnest /security is given and taken to ensure that a contract comes into existence. It would be an anomalous situation that a person who, by his own conduct, precludes the coming into existence of the contract is then given advantage or benefit of his own wrong by not allowing forfeiture. It must be remembered that, particularly in government contracts, such a term is always included in order to ensure that only a genuine party makes a bid. If such a term was not there even a person who does not have the capacity or a person who has no intention of entering into the contract will make a bid. The whole purpose of such a clause i.e. to see that only genuine bids are received would be lost if forfeiture was not permitted.

(ii) “State of Haryana and Others Vs. Malik Traders”

reported in (2011) 13 SCC 200 wherein, it has been held that:-

“11. In taking the above view, we are supported by the decision of this Court in [National Highways Authority of India v. Ganga Enterprises & Anr](#), which was rendered in a similar case. In the said case, the appellant, National Highways Authority of India, by a notice, called for tenders by 31.7.1997 for collection of toll on a portion of a particular highway. The notice provided that toll plazas would be got completed by the appellant and handed over to the selected enterprise. The notice required the bidders to furnish: (i) a bid security in a sum of 50 lakhs in the form of a bank draft or bank guarantee, and (ii) a performance security in the form of a bank guarantee of 2 crores. The bid security was liable

to forfeiture in case the bidder withdrew his bid during the validity period of the bid or failed within the specified period to furnish the performance security and sign the agreement. The bid was to remain valid for a period of 120 days after the last date of bid submission. In terms of the tender document, the respondent firm gave its bid or offer and furnished a bank guarantee in a sum of 50 lakhs. It was an "on-demand bank guarantee" stating that it could be enforced on demand if the bidder withdrew his bid during the period of bid validity or failed to furnish the performance security or failed to sign the agreement. While the validity period of the bid was to end on 28.11.1997, the respondent withdrew its bid on 20.11.1997 and did not furnish the performance guarantee. Therefore, the appellant although found the respondent to be the highest bidder and accepted its offer on 21.11.1997, encashed the bank guarantee for 50 lakhs. The respondent then filed a writ petition in the High Court for refund of the amount. The High Court formulated two questions viz.: (a) whether the forfeiture of security deposit was without authority of law and without any binding contract between the parties and also contrary to [Section 5](#) of the Contract Act; and (b) whether the writ petition was maintainable in a claim arising out of a breach of contract. Without considering Question (b), the High Court allowed the writ petition on the ground that the offer was withdrawn before it was accepted and thus no completed contract had come into existence. The High Court observed that in law a party could always withdraw its offer before acceptance. Therefore, it held that the invocation and encashment of the bank guarantee was illegal and void and was liable to be set aside. The appellant then approached the Supreme Court. Allowing the appeal, this Court held as follows:

"In our view, the High Court fell in error in so holding. By invoking the bank guarantee and/or enforcing the bid security, there is no statutory right, exercise of which was being fettered. There is no term in the contract which is contrary to the provisions of the [Indian Contract Act](#). [The Indian Contract Act](#) merely provides that a person can withdraw his offer before its acceptance. But withdrawal of an offer, before it is accepted, is a completely different aspect from forfeiture of earnest/security money which has been given for a particular purpose. A person may have a right to withdraw his offer but if he has made his offer on a condition that some earnest money will be forfeited for not entering into contract or if some act is not performed, then even though he may have a right to withdraw his offer, he has no right to claim that the earnest/security be returned to him. Forfeiture of such earnest/security, in no way, affects any statutory right under the [Indian Contract Act](#). Such earnest/security is given and taken to ensure that a contract comes into existence. It would be an anomalous situation that a person who, by his own conduct, precludes the coming into existence of the contract is then given advantage or benefit of his own wrong by not allowing forfeiture. It

must be remembered that, particularly in government contracts, such a term is always included in order to ensure that only a genuine party makes a bid. If such a term was not there even a person who does not have the capacity or a person who has no intention of entering into the contract will make a bid. The whole purpose of such a clause i.e. to see that only genuine bids are received would be lost if forfeiture was not permitted."

We respectfully agree with the above view of this Court."

(iii) "National Thermal Power Corporation Ltd. Vs. Ashok Kumar Singh and Others) reported in **(2015) 4 SCC 252** wherein, it has been held that:-

"12. Reference may also be made to a decision of this Court in Malik Traders (supra). Even in this case this Court was dealing with the effect of withdrawal of a bid before acceptance in the context of [Section 5](#) of the Contract Act, 1872. Rejecting the submission that the bid can be withdrawn without any forfeiture in view of [Section 5](#) of the Contract Act, this Court observed:

... .. Thus, even though under [Section 5](#) of the Act a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, the respondent was bound by the agreement contained in its offer/bid to keep the bid open for acceptance up to 90 days after the last date of receipt of bid and if the respondent withdrew its bid before the expiry of the said period of 90 [pic]days the respondent was liable to suffer the consequence (i.e. forfeiture of the full value of bid security) as agreed to by the respondent in Para 10 of the offer/bid. Under the cover of the provisions contained in [Section 5](#) of the Act, the respondent cannot escape from the obligations and liabilities under the agreements contained in its offer/bid.

The right to withdraw an offer before its acceptance cannot nullify the agreement to suffer any penalty for the withdrawal of the offer against the terms of agreement. A person may have a right to withdraw his offer, but if he has made his offer on a condition that the bid security amount can be forfeited in case he withdraws the offer during the period of bid validity, he has no right to claim that the bid security should not be forfeited and it should be returned to him. Forfeiture of such bid security amount does not, in any way, affect any statutory right under [Section 5](#) of the Act. The bid security was given by the respondent and taken by the appellants to ensure that the offer is not withdrawn during the bid validity period of 90 days and a contract comes into existence. Such conditions are included to ensure that only genuine parties make

the bids. In the absence of such conditions, persons who do not have the capacity or have no intention of entering into the contract will make bids. The very purpose of such a condition in the offer/bid will be defeated, if forfeiture is not permitted when the offer is withdrawn in violation of the agreement."

"13. The upshot of the above discussion is that it is no longer possible for the respondents to contend that the right to withdraw the bid in terms of [Section 5](#) of the Contract Act, 1872 would entitle them to withdraw without suffering forfeiture of the earnest money even in cases where the submission and receipt of bids is itself subject to the condition that in the event of a withdrawal of the bid the earnest money stand forfeited. Inasmuch as the High Court remained totally oblivious of the true legal position while directing refund of the earnest money, it committed an error."

[9] I have heard the rival submissions advanced by the learned counsel appearing for the parties at length and also carefully examined the materials available on records. Basically the arguments of the learned counsel for the petitioner is that there is a contract between the petitioner and the FCI and that forfeiture clause under Clause (13) can be invoked or enforced only when any of the terms & conditions of the contract is violated or breached and that if the forfeiture clause is invoked, then the provisions under Section 73 and 74 of the Contract Act, 1872 is attracted.

On the other hand, the arguments of the learned counsel for the respondents is that there is no contract between the FCI and the petitioner and the forfeiture of the EDM of the petitioner and his black listing had been effected only on the ground that the information given by the petitioner in his Tender Documents are found to be false or incorrect and not for violation or breach of any of the terms & conditions of the

contract and accordingly, the provisions of Section 73 and 74 of the Contract Act are not attracted at all.

[10] In view of the rival arguments advanced by the learned counsel appearing for the parties, this Court is of the considered view that the question as to whether there is any contract between the petitioner and the FCI needs to be settled first.

In the present case, the NIT was issued for selecting an appointment of a contractor for execution of the contract work for transportation of food grains of the FCI. Along with the said NIT, a General Information to tenderers containing certain conditions like qualification conditions for bidding, disqualification conditions, submissions and rejection of tender, etc., was also notified. Under Clause (13) of the said General Information to tenderers, it is specifically provided as under:-

“Clause (13)”

“13. If the information given by the tenderer in the Tender Document and its Annexures and Appendices is found to be false/incorrect or has violated/breached any of the terms & conditions of the contract, at any stage, Food Corporation of India shall have the right to disqualify/summarily terminate the contract, forfeit EMD/SD/BG, make good any other losses cause to the Corporation and black list the period for three years, without prejudice to any other rights that the Corporation may have under the Contract and law.”

[11] On careful examination of the above quoted clause (13), this Court is of the considered view that the forfeiture clause can be invoked or enforced in two situations. Firstly, when a bidder is disqualified by rejecting the tender bids submitted by him at the time of evaluation of the tender

bids on the ground that the information given by him in the Tender Documents are found to be false or incorrect, the forfeiture clause can be invoked or enforced before there were any contract or agreement between the parties. Secondly, the FCI can summarily terminate the contract and the forfeiture clause can be invoked or enforced at any time after the parties have entered into a contract or agreement on the ground for breach or violation of any of the terms & conditions of the contract.

In the present case, as the petitioner's firm was disqualified by rejecting its tender bids at the stage of evaluation of the tender bids and before entering into any contract or signing any agreement on the ground that the information furnished by the petitioner in his Tender Documents was found to be false or incorrect, in my considered view, the FCI invoked the forfeiture clause before there was any contract or agreement between the FCI and the petitioner and accordingly, the provisions of Section 73 and 74 of the Contract Act are not at all attracted. In this regard, we can gainfully referred to the judgment rendered by the Hon'ble Apex Court in the case of ***"Kailash Nath Associates Vs. Delhi Development Authority &Anr."*** reported in (2015) 4 SCC 136 wherein, it has been held as under:

"41. It must, however, be pointed out that in cases where a public auction is held, forfeiture of earnest money may take place even before an agreement is reached, as DDA is to accept the bid only after the earnest money is paid. In the present case, under the terms and conditions of auction, the highest bid (along with which earnest money has to be paid) may well have been rejected. In such cases, [Section 74](#) may not be attracted on its plain language because it applies only "when a contract has been broken".

“43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, [Section 74](#) would have no application.”

[12] In the present case, the FCI disqualified the petitioner's firm at the time of evaluation of the Tender Documents and before there were any agreement or contract between the two parties and only on the ground that at the time of submitting their Tender Documents, the petitioner had given false or incorrect information. The petitioner did not deny or dispute such facts and there is also no material available on record to come to any other finding or conclusion. In the case laws cited by the counsel for the respondents, the Hon'ble Apex Court has categorically held that :-

“A person may have a right to withdraw his offer but if he has made his offer on a condition that some earnest money will be forfeited for not entering into contract or if some act is not performed, then even though he may have a right to withdraw his offer, he has no right to claim that earnest/ security be returned to him. Forfeiture of such earnest/security, in no way, affects any statutory right under the Indian Contract Act. such earnest /security is given and taken to ensure that a contract comes into existence. It would be an anomalous situation that a person who, by his own conduct, precludes the coming into existence of the contract is then given advantage or benefit of his own wrong by not allowing forfeiture. It must be remembered that, particularly in government contracts, such a term is always included in order to ensure that only a genuine party makes a bid. If such a term was not there even a person who does not have the capacity or a person who has no intention of entering into the contract will make a bid. The whole purpose of such a clause i.e. to see that only genuine bids are received would be lost if forfeiture was not permitted.”

In view of the undisputed facts narrated hereinabove and in view of the principle of law laid down by the Hon'ble Apex Court in the case

of (i) “National Highway Authority of India” (Supra), (ii) “State of Haryana and Others” (Supra) and (iii) “National Thermal Power Corporation Ltd.” (Supra), this Court did not find any ground or reason for interfering with the impugned order.

In the result, this Court did not find any merit in the present writ petition and accordingly, the same is hereby dismissed.

Parties are to bear their own costs.

JUDGE

FR/NFR

Lhaineichong