

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 15.12.2023

Pronounced on: 22.12.2023

OWP No. 115/2017

IA No. 1/2017

1. Javed Akhter Choudhary

.....Appellant(s)/Petitioner(s)

S/O Mohd. Asghar Choudhary,
R/O H. No 149, Prem Nagar, Jogi
Gate, Jammu

Through: Mr. Sheikh Najeeb, Advocate.

Vs

1. State of Jammu & Kashmir

..... Respondent(s)

Th. Its Commissioner/Secretary, Public
Works Department (R&B), Civil
Secretariat, Jammu.

2. The Chief Engineer,

PWD (R&B), Lok Nirman Bhawan,
Panama Chowk, Jammu.

3. The Superintending Engineer,

PWD (R&B), Panama Chowk, Jammu.

4. The Executive Engineer,

Public Works Department (R&B),
Construction Division-I, Jammu.

Through: Mr. Ravinder Gupta, AAG.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner responded to e-NIT No. CD-I/62 of 2016-17 dated 21.07.2016 floated by the respondent No. 4 for construction of road by way of earthwork in cutting filling, providing and laying shingling in two layers each layer 75 mm thick retaining walls on road from Dera Chowadhi to Kaley Batey.
2. It is stated that the estimated cost of the said work was 88.65 lacs and the petitioner deposited CDR for an amount of Rs. 1,77,320/- with the respondents. The petitioner was declared the lowest bidder, but as claimed

by the petitioner, the tender was not finalized and after a lapse of more than five months, fresh e-NIT No. CD-I/126 of 2016-17 dated 21.12.2016 was issued for the same work by the respondent No. 4 to the utter shock of the petitioner. The petitioner again responded to the subsequent e-NIT. The respondents did not return the cash deposit receipt for an amount of Rs. 1,77,320/- submitted by the petitioner, prompting him to serve a legal notice dated 09.01.2017 upon the respondent No. 4 for release of the above mentioned CDR.

3. The respondent No. 4 responded to the notice vide reply dated 22.01.2017, wherein it was stated that the petitioner was intimated vide notice dated 10.09.2016 to deposit the extra amount in the shape of CDR to the tune of 5 percent of the advertised amount of the work as per the clause 16 of the e-NIT, so as to enable the respondent No. 3 to proceed further and vide communication dated 02.12.2016 the petitioner was again requested to deposit the extra CDR of 5 percent by 07.12.2016. It was also mentioned in the reply that if the petitioner failed to deposit the extra CDR, his CDR deposited earlier shall be forfeited and the work will be handed over to the next lower bidder. It was further stated by the respondent No. 4 that since the petitioner did not respond to both the notices, the respondent No. 3 vide letter dated 24.12.2016 issued instructions to forfeit the CDR of the petitioner and accordingly the CDR of the petitioner was forfeited and the work was put to fresh tender vide e-NIT No. CD/126 of 2016-17 dated 21.12.2016.

4. The contention of the petitioner in the present petition is that the reply submitted by the respondent No. 4 is not correct, as the petitioner did not receive any intimation for depositing the extra amount in the shape of CDR to the tune of 5 percent as per the clause 16 of the e-NIT. It is submitted by the petitioner that the whole story has been concocted by the respondents just to withhold the CDR of the petitioner illegally.
5. The respondents have filed response, objecting to the claim of the petitioner by stating that the petitioner in terms of clause 16 of the e-NIT dated 21.07.2016 was required to deposit additional security deposit in the shape of CDR/FDR at the rate of 5 percent of the advertised amount and the petitioner being the lowest bidder was intimated vide notice dated 10.09.2016 to deposit the extra CDR as mentioned above. Thereafter, the petitioner was again intimated by the Office of the respondent No. 4 vide communication dated 02.12.2016 for depositing the extra CDR at the rate of 5 percent by 07.12.2016 and it was also mentioned in the communication that if the petitioner failed to deposit the extra CDR by 07.12.2016, the earlier CDR deposited by the petitioner will be forfeited. As the petitioner did not respond to both the communications, the respondent No. 4 communicated the second lowest bidder vide letter dated 15.12.2016, to work at the rates quoted by the petitioner, but he refused to work. Accordingly, as per the instructions of the Superintending Engineer, the CDR of the petitioner was forfeited and the work was put to fresh e-NIT dated 21.12.2016.

6. Mr. Sheikh Najeeb, learned counsel for the petitioner submitted that the petitioner was never intimated to deposit additional amount in the form of CDR to the tune of 5 percent of the advertised amount in terms of clause 16 of the e-NIT dated 21.07.2016 through the medium of communications dated 10.09.2016 and 02.12.2016 and the whole story has been concocted by the respondents to deprive the petitioner of his hard earned money and to hide their own wrong doings. He further submits that the petitioner is interested only in getting his hard earned money back and he does not want any interest over the same for the period the amount has been illegally retained by the respondents.
7. Per contra, Mr. Ravinder Gupta, learned AAG appearing on behalf of the respondents argued that the petitioner was duly intimated vide communications dated 10.09.2016 and 02.12.2016 to deposit the extra amount in the shape of CDR but he failed to deposit the same, as a result of which the respondents were left with no other option but to forfeit the CDR deposited by the petitioner. Mr. Ravinder Gupta has also produced the record for perusal of this Court.
8. Heard and perused the record.
9. The deposit of an amount of Rs. 1,77,320/- in the form of CDR by the petitioner has been admitted by the respondents. The respondents have claimed that the petitioner was served with two communications to deposit the extra amount in the form of CDR to the tune of 5 percent of the advertised amount in terms of clause 16 of the e-NIT dated 21.07.2016 but the petitioner did not respond to the said communications. The

petitioner on the other hand has contended that he never received the notices as relied upon by the respondents for defeating the claim of the petitioner.

10. The Coordinate Bench of this Court vide order dated 05.12.2022 directed the respondents to produce the postal receipts of registered post in respect of sending the notices to the petitioner on the next date of hearing. Learned counsel for the respondents produced the dispatch register on 08.12.2022 before the Coordinate Bench and it was observed by the Bench that the insertion appears to be fake and needs to be verified to determine the legitimacy. The respondent No. 4 was also directed to remain present before the Court on the next date of hearing i.e. 15.12.2023.
11. This Court has examined the dispatch register produced by the respondents. A perusal of the same reveals that though the name, parentage and address of the petitioner have been mentioned in the register and a sum of Rs. 5.00/- has been mentioned at the place against his name on 21.09.2016 and 02.12.2016 but notices were not sent to the petitioner through registered post.
12. In the dispatch register, the date of sending of communicated dated 10.09.2016 has been mentioned as 21.09.2016 and the communication dated 02.12.2016 has been shown to be sent on the same day but the fact remains that the petitioner was not intimated to deposit additional security deposit in the shape of CDR to the tune of 5 percent of the advertised amount of the work as per the clause 16 of the e-NIT dated 21.07.2016

through the registered post. This Court would not like to comment as to whether the insertions with regard to the notices shown to have been issued to the petitioner have been made subsequently in the register or not, but this Court is satisfied that the petitioner was not intimated in a proper manner for depositing the additional security deposit in the shape of CDR to the tune of 5 percent of the advertised amount of the work as per the clause 16 of the e-NIT dated 21.07.2016.

13. In view of what has been discussed above, the present petition is allowed and the respondents are directed to release an amount of Rs. 1,77,320/- in favour of the petitioner within a period of 30 days from the day a certified copy of this order is served upon the respondents. In the event the amount is not released in favour of the petitioner within the above mentioned period, the petitioner shall be entitled to interest at the rate of 6 percent per annum from the date of filing of the writ petition till the amount is paid to the petitioner.
14. **Disposed of.**
15. Record be returned back to the learned AAG.

(RAJNESH OSWAL)
JUDGE

Jammu
22.12.2023
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.