

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Regular Second Appeal No.1906 of 2012 (O&M)
Date of decision: 09.03.2015**

Amphibious Divers Private Limited

.....Appellant

Versus

C.C.S.H.A.U. & others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vivek Khatri, Advocate,
for the appellant.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Additional Civil Judge (Senior Division), Hisar and the Additional District Judge, Hisar, whereby his suit has been dismissed.

Plaintiff-appellant filed a suit for recovery of Rs.4 lacs on account of the loss suffered by him along with payment of Rs.30,000/- as earnest money deposited by the plaintiff, which had been forfeited arbitrarily. Further prayer has been made for issuance of directions to the defendants-respondents to withdraw the letter dated 20.09.2003 blacklisting the plaintiff company arbitrarily and payment of Rs.20,000/- on account of mental harassment suffered by the plaintiff-appellant.

Plaintiff-appellant company is a B-Class Contractor approved by the Haryana Government. In July, 2003, the defendants-respondents invited tenders for allotment of four works, as mentioned in para No.2 of the plaint,

from the contractors enlisted with the CCS HAU, Hisar. On 08.08.2003, the plaintiff-appellant was called upon for negotiation. After negotiation, the plaintiff agreed to reduce the scheduled and non scheduled rates by 1%. Thereafter, the plaintiff-appellant was orally confirmed allotment of all the four tenders in its favour. Upon this assurance, the plaintiff-appellant spent huge amount to start the construction work. However, on 22.08.2003, the plaintiff-appellant received letters from the defendant-respondents in respect of allotment of three works i.e. the works mentioned at serial (a), (b) and (c) and the work mentioned at serial (d) was allotted to a third person, due to which the plaintiff-appellant had suffered a huge loss. In this regard, many letters/requests were sent to the concerned authorities, but to no avail. Hence, the suit.

Upon notice, defendant-respondents filed written statement, stating therein that works mentioned at Sr. No. (a), (b) and (c) related to Executive Engineer C-I (XEN C-I) and rates given by the plaintiff-appellant qua these works were lowest, therefore, the said works were allotted to the plaintiff. The work mentioned at Sr. No. (d) was related to XEN C-II. Though the rates given by the plaintiff-appellant with regard to this work were lowest, but the authorities considered the said rates on higher side. Thereafter, they called the plaintiff for negotiation on 08.08.2003, whereupon the plaintiff reduced its rates to some extent, but the same were still considered to be on the higher side. Therefore, the work relating to item No. (d) was allotted to another company by the competent authority being the next lowest quottee. It was further stated that despite sending many letters to the plaintiff-appellant to take up the work allotted to it, nothing was done. Thereafter, the amount was forfeited and the plaintiff firm was black listed for two years.

The trial Court, after going through the evidence led by the parties, dismissed the suit filed by the plaintiff-appellant. The lower appellate Court affirmed the findings recorded by the trial Court and dismissed the appeal.

The plaintiff-appellant was allotted three works, which were under the XEN C-I. The fourth work, which was under the control of XEN C-II, was allotted to another construction company. Both the tenders were floated separately by separate Execution Engineers i.e. XEN C-I and XEN C-II. The dispute arose with regard to allotment of work mentioned at Sr. (d), tenders regarding which were invited by XEN C-II. The plaintiff-appellant was allotted the construction work as mentioned at Sr. No. (a), (b) and (c), but he refused to execute the work despite repeated requests made by the defendant-university. Thereafter, the earnest money deposited by the plaintiff, was forfeited and the plaintiff-firm was debarred from executing the work for two years as per Ex.D9. With regard to allotment of work mentioned at Sr. No. (d), tenders were invited by XEN C-II. The said tenders were opened on 22.07.2003 and negotiations were held with the plaintiff-appellant on 08.08.2003. During negotiations, rates lowered by the plaintiff-appellant were found excessive. Thereafter, the defendants-respondents negotiated with the second lowest quottee and the fourth work was allotted to another construction company i.e. K.P. Construction Company. As per Rule 7.32, the tender other than the lowest, can be accepted after approval from the competent authority. The post tender negotiations came up for consideration before this Court in **Raj Singh Vs. State of Haryana and others**, 2006 (1) RCR (Civil) 335. In this case, the lowest tenderer did not participate in post negotiation proceedings. The department proceeded to allot the tenders to a candidate, who had participated in post negotiation proceedings.

In the present case, when the plaintiff-appellant did not lower his rates the defendant-university proceeded to allot the work to other construction company as per Rule 7.32. No contract was given to the plaintiff-appellant with regard to the work mentioned at Sr. No. (d) which related to the XEN C-II. Hence, there was no question to grant any damage to the plaintiff-appellant. Moreover, the earlier allotment made in favour of the plaintiff-appellant with regard to the works mentioned at Sr. No. (a), (b) and (c), as offered by XEN C-I, were not carried out by the plaintiff despite repeated requests made by the defendant-department vide Ex.D7, Ex.D8. Therefore, the earnest money of Rs.30,000/- deposited by the plaintiff-appellant was forfeited and he was blacklisted for two years.

After going through the judgments passed by both the Courts below, this Court is of the view that the procedure for allotment of work mentioned at Sr. No. (d) was adopted by the defendant-respondents in accordance with the rules. The suit of the plaintiff-appellant has been rightly dismissed and there is no dispute with regard to the concurrent findings of fact recorded by both the Courts below.

No substantial question of law arises for consideration.

Dismissed.

09.03.2015
ajp

(RITU BAHRI)
JUDGE