

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1623 of 2015

Kheduram Sahu S/o Late Bhaw Singh Sahu, Aged About 49 Years R/o Village Dhanapuri, Post Sonai Dongri, Tahsil Gurur, District Balod, (Chhattisgarh)

---- Petitioner

versus

1. State of Chhattisgarh Through The Secretary Rural Engineering Services, Mahanadi Bhavan, Mantralaya, New Raipur, (Chhattisgarh)
2. Collector, Balod, District Balod, (Chhattisgarh)
3. Executive Engineer, R. E. S. Department Region Balod, District Balod, (Chhattisgarh)
4. Chief Executive Officer, Janpad Panchayat Gurur, District Balod, (Chhattisgarh)
5. Piman Sahu, S/o Lakhan Lal Sahu, Aged About 40 Years R/o Village And Post Tengana Barpara, Tahsil Gurur, District Balod, (Chhattisgarh)
6. Goukaran Sahu, S/o Amol Sahu, Aged About 50 Years R/o Village Chulapathra, Tahsil Gurur, District Balod, (Chhattisgarh)
7. Kishore Sahu, S/o Late Santram Sahu, Aged About 34 Years R/o Village Sarabada, Post Darra, Tahsil Gurur, District Balod, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri B.P. Singh, Advocate
For State/Respondents No.1 to 3	:	Shri Prafull N. Bharat, Additional Advocate General
For Respondent No.4	:	Shri Ajit Singh, Advocate
For Respondents No.5 to 7	:	Shri V.A. Goverdhan, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

Per Navin Sinha, Chief Justice

22/2/2016

1. The Rural Engineering Services Department published tender notice dated 31.7.2014 for supply of construction materials to different Panchayats in Janpad Panchayat, Gurur. The District Level Committee found the Petitioner most competitive for specified articles and issued work order to him on 28.8.2014. The materials were to be supplied within a period of six months, i.e., till 28.2.2015. The earnest money deposited as mentioned in Form C was Rs.50,000/-.

2. Learned Counsel for the Petitioner submitted that notwithstanding his status as L1 and award of works to him, the Petitioner was neither asked to make supply nor supplies from him were accepted by the Sarpanch of different Village Panchayats in Janpad Panchayat, Gurur. The Petitioner represented to the Executive Officer, Janpad Panchayat, Gurur, who on 26.3.2015 reiterated that supplies were to be obtained only from those who had been found eligible in response to the tender notice. Notwithstanding the same, the Petitioner was not allowed to make any supplies. The Petitioner further represented on 2.7.2015 also but to no avail. Learned Counsel for the Petitioner further sought to persuade us with regard to more than one illegality for the manner in which the supplies have been obtained violating the conditions of the tender notice from persons outside the same. We do not consider the present a fit case to go into those questions and leave them open for consideration in an appropriate case for reasons discussed hereinafter.

3. Learned Additional Advocate General for the State submitted that if the works were awarded to the Petitioner on 28.8.2014 and supplies were to be effected in six months, i.e., till 28.2.2015, time has run out for the Petitioner and no relief can be granted to him today even if any wrong was committed as alleged. The period of contract having expired before the writ petition was filed 9.9.2015, it was infructuous at the time of institution itself. The Petitioner ought to have been more vigilant in protection of his interest and should have approached the Court in time. He relies upon an order in Writ Petition (C) No.382 of 2016 that there is always an urgency in commercial matters and the aggrieved must approach the Court in time.

4. We have considered the submissions on behalf of the parties and find substance in the submissions of the Learned Additional Advocate General that the writ petition instituted belatedly was infructuous on the date of

institution itself. Assuming though not accepting that the Petitioner may have been wronged, the period of the contract having run out, no substantive relief can be granted to the Petitioner. However, we are of the considered opinion that the Petitioner had submitted the EMD of Rs.50,000/- keeping in mind commercial considerations with a hope of earning profit. The Respondents appear to have acted completely arbitrarily in denying him participation for award of works by not placing orders and accepting supplies from him. For this wrong committed to the Petitioner, it is considered appropriate to direct that the earnest money deposited be refunded to him along with interest at the Bank rate within a maximum period of two months from the date of receipt and/or production of a copy of this order before Respondent No.2. It shall be open for Respondent No.2 to recover the interest amount from the concerned who did not abide by the allotment of work order to the Petitioner. The recovery will have to be made in accordance with law.

5. The writ petition is disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(Chandra Bhushan Bajpai)
JUDGE