

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 218 of 2017

- Shivnath Sah S/o Late Shri Mahavir Sah, Aged About 56 Years, R/o Baramkela, Chandarpur Road, Tah Baramkela, Distt Raigarh, Civil And Revenue Distt Raigarh (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Collector, Raigarh, Distt. Raigarh, (Chhattisgarh)
2. Additional Collector, Raigarh, District Raigarh, (Chhattisgarh)
3. Chief Municipal Officer, Nagar Panchayat, Baramkela, Distt. Raigarh, (Chhattisgarh)
4. Tahsildar, Baramkela, District Raigarh, (Chhattisgarh)
5. Ganesh Ram, Baramkela, Nagar Panchayat, Baramkela, Distt. Raigarh, (Chhattisgarh)

---- Respondents

And

WPC No. 220 Of 2017

- Ashok Kumar Sah S/o Shri Shivnath Sah, Aged About 23 Years, R/o Baramkela, Chandarpur Road, Tah Baramkela, Distt Raigarh, Civil And Revenue Distt Raigarh (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through Collector, Raigarh, District Raigarh (Chhattisgarh)
2. Additional Collector, Raigarh, District Raigarh, (Chhattisgarh)
3. Chief Municipal Officer, Nagar Panchayat, Baramkela, Distt.

Raigarh, (Chhattisgarh)

4. Tahsildar, Baramkela, Distt. Raigarh, (Chhattisgarh)

5. Om Prakash Sahu, Baramkela, Nagar Panchayat,
Baramkela, Distt. Raigarh, (Chhattisgarh)

---- Respondents

For Petitioners

Shri M. K. Sinha, Advocate

For Respondent-State

Shri U. N. S. Deo, GA

For Respondent No.3

Shri Sushobhit Singh, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

03/03/2017

1. WPC No.218/2017 pertains to contract of daily market awarded to the petitioner by the Nagar Panchayat, Baramkela, but the same stood cancelled on 01.10.2016 and thereafter the petitioner's appeal has been dismissed by the Additional Collector, Raigarh.
2. WPC No.220/2017 pertains to weekly market contract under the same Nagar Panchayat, wherein the contract was cancelled on 15.09.2016 and thereafter the appeal has been dismissed by the Additional Collector, Raigarh.
3. While the contract for daily market was awarded to the petitioner for a sum of Rs. 1,71,000/-, the contract for weekly market was awarded for a sum of Rs.5,02,000/-. Under the

terms of the contract, the petitioners were required to pay 25% of the contract amount on the date of auction which the petitioners complied with. The remaining amount was to be paid in three equated installments to be paid in June, September and December, 2016. The petitioners paid the first installment in July 2016 instead of June 2016, however, thereafter they did not deposit the amount under the second installment by end of September 2016, therefore, show cause notice was issued to them, but despite service of notice the petitioners failed to pay the installments, therefore, in exercise of its right under the terms of the contract, the petitioners' contract has been cancelled.

4. Referring to the receipt issued by the Nagar Panchayat, Baramkela, learned counsel for the petitioners would submit that in the receipt issued on 27.07.2016, it is mentioned that the petitioners have deposited the second installment but thereafter the show cause notice was issued for deposit of second installment, therefore, the petitioners were under impression that since they had already paid the second installment, they are not required to pay any other amount during the relevant period.
5. The terms of the contract are not required to be read as statute. They are required to be read and understood as a whole by which the rights and liabilities of the parties are

governed. Under the agreement, the petitioners were required to pay 25% of the contract amount on the date of auction and the remaining amount was required to be paid in three equated installments payable in June, September and December, 2016, therefore, whether it be second installment or third installment, the petitioners were required to pay one of the installments by September 2016, which they failed to deposit. Under Clause 5 of the agreement, it is provided that the amount is to be paid in three equated monthly installments payable in June, September and December, 2016 and if the amount is not paid by 10th day of the concerned month, the contractor would be liable to pay interest @ 6.25%, but if the amount is not paid by end of the month, the contract shall stand cancelled. It is thus apparent that when the petitioners failed to pay the installments by 30th September 2016, the contract stood cancelled on and from 1st of October 2016.

6. It is also informed that since thereafter the Nagar Panchayat has conducted fresh auction or fresh arrangements, wherein the respondent No.5 has been allotted contract of weekly market and daily market for the remaining period.
7. Insofar as the forfeiture of the Earnest Money Deposit (EMD) is concerned, Clause 9 of the agreement would provide that in the event, the auction purchaser fails to sign

the agreement or indulges in making recovery contrary to rules, the contract shall be cancelled and the EMD shall be forfeited. Since the petitioners' contract has been cancelled for non payment of installments and not on account of their failure to execute the agreement or making recovery contrary to rules, the EMD could not have been forfeited, therefore, this Court is of the considered opinion that the petitioners are entitled to refund of the security amount.

8. Accordingly, the writ petitions are allowed in part. While refusing to interfere with the order concerning cancellation of petitioners' contract, the order forfeiting the EMD is set aside and the Nagar Panchayat, Baramkela is directed to refund the amount of EMD to the petitioners.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA