NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 3162 OF 2016

M/s Shri Krishna Infra Developer A Partnership Firm Registered Under The Indian Partnership Act 1932, Having Its Registered Office At Flat No 313, Kusum Villa Opposite Airtel Office Ring Road, No 1, Telibandha Raipur, Chhattisgarh Through Its Partner Shri Rahul Somani, S/o Shri Pawan Kumar Somani, Aged About 32 Years.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Department Of Water Resources, Mahanadi Bhawan, Mantralaya New Raipur, Raipur Chhattisgarh.

2. Engineer In Chief, Water Resources Department Sihava Bhawan, Civil Lines, Raipur Chhattisgarh.

3. Chief Engineer, Hasdev Basin, Water Resources Department Bilaspur Chhattisgarh.

4. Superintendent Engineer, Circle Bilaspur, Bilaspur, Chhattisgarh

5. Executive Engineer, (E & M) Light Machinery Tubewell & Gate Division Sakari, Bilaspur Chhattisgarh.

------Respondents

For Petitioner	:	Mr. Harsh Wardhan, Advocate
For Respondent/State	:	Mr. Y.S. Thakur, Additional Advocate General

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Order on Board

Per Deepak Gupta, Chief Justice

11/01/2017

1. The petitioner, by means of this petition, has challenged the order dated

15.11.2016 whereby his bid has been cancelled, the earnest money forfeited and the petitioner has been treated as a defaulter.

2. The respondent No.5 issued Notice Inviting Tenders (NIT) for Supply Installation & Testing of Arrangements for Remote Control Operation & Lighting for all the gates of Salka Diversion Scheme. The probable amount of contract was Rs.58,83,500/- The earnest money amount was Rs.44,500/-. It is not disputed that the petitioner was the lowest bidder and he made a bid for Rs.42,06,114/- which was 28.51 per cent below the estimated cost, therefore, the petitioner was asked to deposit Rs.10,89,036/- as F.D.R. in terms of clause 2.8.1 of the terms and conditions of Notice Inviting Tender, which reads as follows:

> "2.8.1. Additional performance security (APS) shall be deposited by the successful bidder at the time of signing of agreement when the bid amount is seriously unbalance i.e. less than the estimated cost by more than 10%. In such and envent the successful bidder will deposit the additional performance Security (APS) to the extent of difference of 90% of the PAC and bid amount in the shape of FDR, in favour of the Executive Engineer before signing the agreement. The same shall be refunded along with the normal S.D. after completion of the work. If the contractor fails to complete the work or left the work incomplete, this Additional Performance Security (APS), shall be forfeited by the department and the agreement shall be terminated and action shall be taken in accordance with clause 4.3.3 of the agreement."

3. A letter was issued to the petitioner on 1st November, 2016, asking him to deposit Rs.10,89,036/- within 7 seven days. According to the petitioner, this letter was received by his Aunt in the Flat, which is a registered office, on 4th November, 2016. Further, according to the petitioner, due to some mis-communication, he was not apprised of this letter by his Aunt. We are not impressed by this argument because the address given by the petitioner himself is that of the registered office of the petitioner-firm and it was the petitioner to maintain the office affairs properly for ensuring that letters are delivered to him.

4. Be that as it may, another letter was issued to the petitioner on 9th November, 2016 and this time he was given 3 days further time to deposit the Additional Performance Security amount. He did not do so and on 15.11.2016 his tender was

cancelled, earnest money was forfeited and the petitioner was treated to be a defaulter. Thereafter, the petitioner sent a letter to respondent No.5 and in its letter it was stated that due to the demonetisation of currency notes of Rs.1000/- and Rs.500/-, there was heavy rush in the Banks and he could not arrange the F.D.R. and this F.D.R. was submitted on 29.11.2016. with a request that it may be accepted. This prayer was not accepted. The F.D.R. is shown to be dated 28.11.2016, therefore, obviously, letter could not have been sent prior to the said date and in fact it seems that this letter was dispatched on 29.11.2016.

5. Before us, it is contended by the learned counsel for the petitioner that as per the terms and conditions of the agreement, 15 days time was to be granted to execute the agreement, and therefore, minimum time of 15 days must have been granted. It is submitted that since the first letter was received on 04.11.2016, 15 days time would expire on 19.11.2016. Further it is submitted that the tender could not have been cancelled before 19.11.2016. We are not at all in agreement with this argument. A person, who is to be awarded the tender must know that he is the successful tenderer and thereafter within 10 - 15 days he will be expected to enter into the agreement. The period of 15 days mentioned is not the minimum period. Period of 15 days only depicts the outer limit and the agreement must be entered within 15 days. It may be entered within 1 or 2 days of the bid being accepted. Therefore, to claim that 15 days time should have been given, according to us, is not correct. For the same reason, we are also not inclined to interfere with the cancellation of the tender or forfeiture of the earnest money.

6. However, we do feel that a case has been made out by the petitioner for not treating the petitioner to be a defaulter. We say this because if the petitioner is treated to be a defaulter and there is another default, later on he will be debarred from submitting any tenders. This would be very serious repercussion. The petitioner, who is a contractor, should not be visited with such civil consequences which would amount to

a punishment. Such an order cannot be passed in a mechanical manner. More importantly, this Court can take judicial note of the fact that on 08.11.2016 an announcement was made whereby currency notes of Rs. 1000/- and 500/- were denotified to be legal currency w.e.f. the intervening night of 8th and 9th, November, 2016. The petitioner is a contractor. We can understand his predicament where he would not have been able to arrange that much money in cash even if he was having that much money in his account. We are also in agreement with the learned counsel for the petitioner that during this period the banks were over worked dealing with the exchange of notes and all other banking practices were sidelined by the officials of the concerned banks. Therefore, the petitioner may have had that much cash but firstly he would have to deposit the amount in his bank account and then prepare the F.D.R.

7. In this view of the matter, though we are not in agreement with the legal submission made by the learned counsel for the petitioner, we feel in equity that the petitioner may be entitled to one relief and the fault of the petitioner in not depositing the tender amount shall not be treated as default for any purposes whatsoever. We however, make it clear that the petitioner shall not be entitled for award of this contract. This itself, in our opinion is sufficient punishment.

8. In view of the above, the writ petition is disposed of.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE

Anjani/
yogesh