

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4705/2016

(M/s Creative Construction Co. and 11 others vs. State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri B.G.Kulkarni, Adv. for petitioners
Shri J B Kasat, Adv. for respondent no.2

CORAM : B.P. DHARMADHIKARI &
MRS. SWAPNA JOSHI, JJ.

DATED : 3rd March, 2017.

1. Heard.
2. 12-registered contractors with respondent no.2- Corporation are before this Court complaining that enforcement of a condition to furnish performance security at the threshold i.e. while submitting the bid is creating practical problems. They have no objection if earnest money deposit is demanded and paid/deposited at that stage. However, as amount of performance security has got a definite proportion with the sum by which the bid is below the estimated/offset price, online disclosure of amount of performance security clearly makes others aware of the bid amount and therefore destroys secrecy.
3. Adv. Kulkarni is seeking time to place on record the demand drafts, as downloaded, furnished towards performance security by rival bidders. He states, upon instructions, that this downloading has been done before opening of concerned bids.

4. Adv. Kasat appearing for respondent no.2 disputes this. According to him, the documents online submitted are accessible only to authorised Officer of respondent no.2 who has a specified digital key for that purpose and hence the amount of performance security cannot be ascertained by any rival bidder.

5. Adv. Kulkarni disputes this. He submits that he has got demand draft downloaded and therefore any bidder can access that information by using his key.

6. We find in present petition, the challenge is only to procedure being followed. There is no challenge to any particular tender process but effort is only to ensure transparency to the extent possible. Adv. Kulkarni pointed out that in terms of the policy of State Government as contained in Government Resolution dated 12.2.2016, performance security should be demanded only after bids are opened and the tender amount is known to everybody. According to him, before that stage there is no scope for demanding such security. We find that if anybody who has got digital key can access and ascertain the amount offered by rival bidder, the transparency to the extent desired, may not be available.

7. We, therefore, direct petitioners to make an appropriate representation with copies of demand drafts downloaded by them, before opening of concerned tender. If such a representation is made within two weeks from today, the respondent no.2 shall examine it in accordance with law, within next four weeks.

8. With these directions, we dispose of th Writ Petition. No costs.

JUDGE

JUDGE

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