

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10328 of 2017

Date of Decision: 18.10.2019

M/s Kisan Construction Company

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

Mr. Saurabh Mohunta, DAG, Haryana.

RAJIV NARAIN RAINA , J. (ORAL)

1. The instant writ petition has been filed by the petitioner firm for quashing the impugned order dated 05.07.2016 (Annexure P-3) passed by respondent No.2 as well as order dated 19.04.2017 (Annexure P-9) passed by respondent No.4, whereby request for refunding the earnest money was declined.

2. The tender process was online. The petitioner is a construction company, which entered its bid on 10.02.2016 at 2.59 PM, but failed to quote any figure. In other words, it left the column blank when it was the most important one. The department accepted this as a '0'. As per Clause 12.2 of the Instructions to the Bidder (Annexure P-1), the contract was awarded to the lowest bidder. The department has forfeited the earnest money amounting to ₹ 2,58,300/-.

3. Against the decision, the petitioner firm has approached this Court for directions by way of a mandamus to the respondents to refund its earnest money and for a certiorari to quash the forfeiture.

4. In my view, no fault can be found in any of the actions of the

department in forfeiting the earnest money of the petitioner firm. When the petitioner failed to enter the bid amount in the online process, it may be that he furnished hardcopy of the tender documents thereafter. Be that as it may be, it is a little consequence as the entire process was completed online.

5. Mr. Khatri argues that the amount in question be refunded to the petitioner firm on the principle of equity.

6. I find no occasion to apply the principle in commercial bids. He refers to the compliance letter dated 11.7.2016 to the Executive Engineer, Nehrana Water Services Division, wherein it is pleaded that due to some technical problem the firm may not have been properly uploaded on the web site of the department. There was no intention of the firm not to upload its tender rates. Had there been any intention of the firm not to upload the tender rates on web-site, then it would not have submitted the bid document physically in the office. By this explanation, they pass the blame on the department on the pretext of a flaw on the web site. This averment has not been substantiated by any dependable evidence. The tender rates in the tender form was the heart of the matter. If that is missing, the government cannot be blamed. The petitioner has made lame excuses. This Court does not find it a fit case on the principle of equity or any other ground in the absence of any Rule or clause in the terms and conditions which govern forfeiting the earnest money and how it will be regulated in the case of the present kind.

7. For these reasons, I find no reason to interfere in the impugned orders and would dismiss the petition.

18.10.2019

dinesh/Vimal

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No