

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.2418 of 2013

Musha Bisoyi

....

Petitioner

Mr.S.K. Rout, Adv.

-versus-

State of Odisha and Ors.

....

Opp. Parties

Mr. T. Pattnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. PANIGRAHI

ORDER

10.01.2022

Order No.

04.

1. This matter is taken up through Video Conferencing mode.
2. Heard Mr. S.K. Rout, learned counsel appearing for Mr. S.K. Sangneria, learned counsel for the petitioner and Mr. T. Pattnaik, learned Additional Standing Counsel for the State-opposite parties.
3. The petitioner has filed this writ petition seeking direction to the opposite party no.3-Executive Engineer, Rural Works Division, under R.D. Department, Rayagada to refund the earnest money deposited in respect of the tender work "Improvement to Roads and C.D. Works including maintenance under PMGSY Package No.OR-27-109/IAP-I in Rayagada District".
4. Mr. S.K. Rout, learned counsel for the petitioner contended that since no work order was issued in favour of the petitioner nor any agreement was executed between the petitioner and the

opposite party no.3 till 12.07.2012 for commencement of the more work, but the EMD has been forfeited.

5. Mr. T. Pattanaik, learned Additional Standing Counsel for the State contended that due to non-furnishing of the construction programme, as per Clause-21.1 of the General Condition of Contract that after execution of agreement, the employer shall hand over the complete or part possession of the site of the Contractor seven days in advance of the construction programme, even after acceptance of the tender, the EMD has been forfeited.

6. Having heard the learned counsel for the parties and on going through the records, it appears that the tender was accepted by the competent authority on 01.08.2012 and, thereafter, the petitioner was asked by the opposite party no.3 vide letter no.3905 dated 13.08.2012 to execute the agreement to which the petitioner has never responded to and, accordingly, as per Clause-16.6(b) read with 32.3 of the Instructions to Bidders (I.T.B.), the opposite party no.2 vide order dated 07.12.2012 cancelled the award of the package with forfeiture of EMD.

7. In view of such position, since the opposite parties have acted upon in terms of conditions of the contract itself, it cannot be said that forfeiture of the EMD is illegal or unjustified so as to warrant interference of this Court.

8. Accordingly, this writ petition stands dismissed.

9. As the restrictions due to resurgence of Covid-19 are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at

par with certified copy, subject to attestation by the Advocate concerned with his/her seal, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 and Court's Office Order dated 7th January, 2022.

(Dr. B.R. Sarangi)
Judge

(S.K. Panigrahi)
Judge

BJ

