

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 6664 of 2007

Mahipal Lal Patel

.....

Petitioner

Mr. S.K. Sangneria, Advocate

Vs.

State of Orissa and others

.....

Opposite parties

Mr. T. Pattnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. PANIGRAHI

ORDER

07.01.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. None appears for the petitioner at the time of call.
3. Heard Mr. T. Pattnaik, learned Addl. Standing Counsel for the State.
4. Perused the record. The petitioner has filed this writ petition seeking to quash the decision of opposite party no.3 under Annexure-5, and to issue direction to the opposite party no.3 to release the earnest money amounting to Rs.4,50,000/- deposited by him in shape of bank draft of State Bank of India, Nuapada.
5. Mr. T. Pattnaik, learned Addl. Standing Counsel appearing for the State opposite parties contended that since the petitioner has failed to comply the letters of the authority as per the terms and conditions prescribed in the agreement itself, the EMD of the petitioner has been forfeited in accordance with law. As such, the relief sought by the petitioner cannot be granted.
6. Having heard learned Addl. Standing Counsel and after going through the records, it appears that the petitioner having failed to comply the letters of opposite party no.3 inasmuch as Annexure-G/3 dated 23.02.2007, whereby opposite party no.3 issued a telegram on 19.03.2007 followed by post confirmation copy, requesting the petitioner to sign the agreement by 26.03.2007. In spite of such request,

the petitioner failed to appear before the authority on the stipulated date. Therefore, opposite party no.3 had no other alternative than to resort to clause-16.6 of the Standard Bid document submitted by the petitioner. Clause-16.6 of the Standard Bid Document reads as under:-

“16.6. The earnest money may be forfeited.

- a) if the Bidder withdraws the Bid after bid opening (technical bid) during the period of Bid validity;*
- b) in the case of a successful Bidder, if the Bidder fails within the specified time limit to:*
 - i. sign the agreement; and/or*
 - ii. furnish the required Performance Security.”*

7. In view of the above, it appears that Clause-16.6(a) clearly specifies that earnest money may be forfeited, if the bidder withdraws the Bid after opening (technical bid) during the period of bid validity. In the present case, the technical bid was opened on 10.11.2006 and, therefore, since that date the petitioner bound himself with the opposite parties and was liable under this clause. In addition to the above clause, the petitioner, being a successful bidder, having failed to sign the agreement, is also incurred liability under the said clause. Further, the petitioner having quoted the price 22.20% less than the estimated value, he had to furnish the performance security as per clause-32 of the Standard Bidding Document. The petitioner having failed to do so, as per clause-16.6 of the Standard Bidding Document, the EMD has been forfeited. Thereby, no illegality or irregularity has been committed by the authority.

8. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. PANIGRAHI)
JUDGE