

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4139 of 2013

Rajuram Agrawal @ Raju Ram ***Petitioner***
Agrawala

Mr. D. K. Patra, Adv.

-versus-

State of Odisha and Ors.. ***Opp. Parties***

Mr.J.P. Patnaik, AG.

CORAM:
DR. JUSTICE B.R. SARANGI
MR. JUSTICE S.K. PANIGRAHI

ORDER
06.01.2022

Order No.

07.

1. This matter is taken up through hybrid mode.
2. Heard Mr. D.K. Patra, learned counsel for the petitioner and Mr. J.P. Patnaik, learned Additional Government for the State.
3. The Petitioner has filed this writ petition to quash the letter dated 08.02.2013 under Annexure-6 issued by the opposite party no.4-Executive Engineer, Rural Works Division, Sonapur and to direct the opposite parties to refund him the E.M.D. amounting to Rs.2,54,000/- (rupees two lakhs and fifty-four thousand only) which has been forfeited in connection with the work "PMGSY Package No.29-93/IAP-II in the district of Sonapur".
4. As per the factual matrix available in the case itself, a tender call notice was issued by the opposite parties for the year 2012-2013 in respect of Package No.OR-05/IAP-II in the district of

Bolangir in respect of important road LCD work under Package No.OR-29-93-IAP-II under the Rural Works Division, Bolangir. As per the tender call notice, the procurement officer was indicated as Superintending Engineer, Rural Works Circle, Bolangir; bid identification number was indicated as PMGSY Online-Blgr-02/11-12; the availability of tender online for bidding was prescribed from 07.02.2012 at 11.00 A.M. to 07.03.2012 up to 3.00 P.M; the last date and time of seeking tender clarification was prescribed as 06.03.2012 up to 2.00 P.M. and date and time of opening of tender (Technical Bid) was fixed to 12.03.2012 at 11.00 A.M. and (Financial Bid) was fixed to 17.03.2012 at 11.00 A.M. Pursuant to such tender process, the petitioner participated in the same, but he did not turn up for execution of the agreement as required under law. As a consequence thereof, the opposite party no.4-Executive Engineer, Rural Works Division, Sonapur, vide letter dated 09.07.2012 under Annexure-2, requested the petitioner for drawal of agreement, but no reply had come from the petitioner, thereby, vide letter dated 08.02.2013 under Annexure-6, the EMD amounting to Rs.2,54,000/- of the petitioner has been forfeited.

5. Mr. D.K. Patra, learned counsel for the petitioner contended that while forfeiting the EMD amount, no opportunity of hearing was given to the petitioner and as such it is contended that the forfeiture was made without intimating the petitioner for executing the agreement, thereby, no laches had been caused on the part of the petitioner so as to forfeit the EMD

amount. Therefore, it is contended that the EMD amount which has been forfeited be refunded to the petitioner.

6. Mr. J.P. Pattnaik, learned Government Advocate for the State contended that the petitioner, having participated in the tender process and in opening of tender i.e. Technical Bid on 12.03.2012 and Financial Bid on 17.03.2012, knew his position that he was selected. But he had never turned up to execute the agreement as per law. Since he had not turned up, the opposite parties had given opportunity to him for drawal of agreement, but the same had not been done. Intimation was sent vide letter dated 21.12.2012 under Annexure-4 to the petitioner with regard to forfeiture of the EMD amount, thereby, no illegality or irregularity has been committed by the opposite party no.4 by issuing the letter impugned.

7. Having heard the learned counsel for the parties and upon perusal of the records and on the basis of facts and submissions made above, it is made clear that the petitioner, having participated in the process of tender pursuant to the tender call notice under Annexure-1, no steps had been taken on his behalf for drawal of the agreement as per the terms and conditions of the tender call notice. Instead of doing so, he was consuming time causing hardship to the opposite parties. Even the opposite parties waited for drawal of the agreement with the petitioner, but the petitioner did not turn up within the time stipulated, thereby, intimation was made to the petitioner even after the period of contract was over. But the petitioner had not shown any anxiety with regard to execution of the agreement.

As a consequence thereof, vide letter dated 21.12.2012 under Annexure-4, the Executive Engineer, Rural Works Division, Sonapur intimated the petitioner for forfeiture of the EMD amount. As the same was not responded to, letter dated 08.02.2013 under Annexure-6 was issued by the Executive Engineer, Rural Works Division, Sonapur to the petitioner with regard to forfeiture of the EMD amount.

8. It is also made available on records that vide letter dated 19.05.2012 under Annexure-A/1 to the counter affidavit, the petitioner was intimated with regard to acceptance of tender for the work "PMGSY Package No.29-93/IAP-II in the district of Sonapur which has been disputed by the petitioner stating that he had not received such letter. This being a disputed question of fact, this Court is not inclined to entertain such factual position. But fact remains that the petitioner had participated in the tender process and he knew that he had been selected and, therefore, follow up action had to be taken to produce the draft agreement for execution of final agreement between the parties. But the petitioner having not done so, the EMD money deposited by him had to be forfeited, as such the opposite party no.4 had also intimated the petitioner vide letter dated 21.12.2012 under Annexure-4 that he had failed to draw the agreement. As a result, the letter dated 08.02.2013 under Annexure-6 has been issued for forfeiture of the EMD amount as per Clause-16.6(b)(i) of the Detailed Tender Call Notice (DTCN) which reads as follows:

“The Earnest Money may be forfeited in the case of a successful bidder, if the bidder fails within the specified time limit to (i) sign the agreement.”

In the above mentioned terms and conditions, for non-performance of the petitioner by not executing the agreement, the opposite parties were well within their jurisdiction in forfeiting the EMD amount of the petitioner as per Clause-16.6(b)(i) of the Detailed Tender Call Notice (DTCN) mentioned above.

9. In view of such position, this Court is of the considered view that the action taken by the authorities was well within their jurisdiction and, as such, this Court is not inclined to entertain this writ petition.

10. Accordingly, the writ petition is dismissed.

11. Interim order passed earlier stands vacated.

(Dr. B.R. Sarangi)
Judge

(S.K. Panigrahi)
Judge

BJ