

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 9906 of 2012

And

W.P. (C) No.3501 of 2014

W.P (C) No. 9906 of 2012

***M/s. Hindustan Dorr-Oliver
Public Ltd.***

.....

Petitioner

Mr. B.K.Sharma, Advocate

Vs.

***General Manager (E & M),
Mahanadi Coal Field Ltd. and
others***

.....

Opposite parties

*Mr. T.K.Pattanaik, Advocate
(for O.P. Nos.1 and 2)*

W.P (C) No. 3501 of 2014

***M/s. Hindustan Dorr-Oliver
Public Ltd.***

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Petitioner

Mr. B.K.Sharma, Advocate

Vs.

***General Manager (E & M),
Mahanadi Coal Field Ltd.***

.....

Opposite party

Mr. T.K.Pattanaik, Advocate

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

ORDER

09.03.2022

Order No.

05.

These matters are taken up through hybrid mode.

2. Heard learned counsel for the respective parties.
3. W.P. (C) No.9906 of 2012 has been filed seeking to quash the letter dated 10/14.05.2012 under Annexure-5 issued by opp. party No.2 to opp. party No.3 in respect of NIT-69 dated 14.10.2010, by which instruction has been given requesting the Branch Manager, Bank of India, Andheri (opp. party No.3) to send the encashment proceeds immediately failing which legal action shall be taken against the opp.

party No.3. Similarly, W.P. (C) No.3501 of 2014 has been filed with a prayer to quash the letter dated 08.02.2014 under Annexure-13 issued by the opp. party No.1 to opp. party No.2 for encashment of bank guarantee on behalf of the petitioner in respect of NIT-95 dated 14.10.2011.

4. Mr. B.K.Sharma, learned counsel for the petitioner contended that the petitioner participated in the tender process in connection with NIT-69 by submitting bid on 27.12.2010. On 7.3.2011, the technical bid was opened by opp. party Nos.1 and 2. Subsequently, on opening of the technical bid, the said opp. parties made several correspondence/communication with the petitioner in order to confirm/qualify/submit certain points as required in notice inviting tender. Thereafter, the price bid was opened on 13.06.2011, but the petitioner was not called for price bid opening. Therefore, the petitioner approached this Court by filing W.P. (C) No.17039 of 2011 seeking for a direction to the opp. parties to open the price bid of the petitioner and thereafter to take a final decision relating to the said tender, i.e., NIT-69. This Court passed a detailed judgment on 29.11.2011 and dismissed the writ petition holding that the action of the opp. party No.1 in not opening the price bid of the petitioner, finding its bid in part II to be non-responsive, requires no interference. In that view of the matter, since the petitioner was unsuccessful in the said bid is entitled to get refund of the amount but, instead of refunding the amount, instruction had been issued by the opp. parties 1 and 2 to the Bank vide Annexure-5 for encashment of the bank guarantee in connection with NIT-69 dated 14.10.2010 by impugned order dated 10/14.05.2012 (Annexure-5) and at that stage the petitioner approached this Court in the present writ petition.

5. This Court vide order dated 29.05.2012 in Misc. Case No.8590 of 2012 passed an interim order to the extent that there shall be interim stay of operation of the letter dated 10/14.05.2012 under Annexure-5 till the next date.

6. It is contended that when the matter was sub-judice before this Court in W.P.(C) No. 9906 of 2012, a second tender was issued by the opp. party No.1-MCL on 14.10.2011, i.e. NIT-95. The petitioner participated in the said tender process and also submitted bank guarantee, the validity of which was extended from time to time. However, on being unsuccessful in the said tender, the petitioner is entitled to refund of that bank guarantee amount, but opp. party No.1 did not refund the same to the petitioner and on the other hand encashed the same as the opposite parties could not be able to implement the order dated 10/14.05.2012 (Annexure-5) in connection with NIT-69. Therefore, the petitioner has approached this Court by filing W.P.(C) No. 3501 of 2014.

7. Pursuant to notice issued by this Court on 26.02.2014 in W.P. (C) No.3501 of 2014, the opp. party No.1 entered appearance and filed counter affidavit. In paragraph-14 of the counter affidavit, it has been specifically admitted that the management decided to consider and release the bank guarantee against NIT-95 i.e., Tender of CHP with SILO Loading Arrangement at Bhubaneswari OCP, only after disposal of W.P. (C) No.9906 of 2012 filed as against NIT-69.

8. Having heard learned counsel for the parties and after going through the record, this Court finds that since the petitioner is an unsuccessful bidder in NIT-95, the authority could not have encashed the bank guarantee, as because protection was given to the petitioner by this Court by passing interim order dated 29.5.2012 in W.P. (C) No.9906 of 2012. Merely because W.P.(C) No. 9906 of 2012 in respect of NIT-69 is subjudice before this Court, the bank guarantee furnished by the petitioner in respect of NIT-95 should not have been encashed and rather the same should have been returned to the petitioner, as he was an unsuccessful bidder in NIT-95. Furthermore, encashment of bank guarantee furnished in connection with NIT-95 on the plea that the amount shall be refunded after disposal of W.P. (C) No.9906 of

2012 of NIT-69 clearly indicates the high handed action of the authority concerned, particularly when this has nothing to do in connection with NIT-69, which is the subject matter of consideration in W.P.(C) No. 9906 of 2012.

9. Thereafter, vide order dated 03.03.2022 passed in W.P. (C) No.3501 of 2014, this Court called upon the authority to file an affidavit to explain under what circumstances he has directed for encashment of bank guarantee furnished in connection with NIT 95. To that extent the opp. party No.1-MCL has filed an affidavit stating that letter dated 8.2.2014 under Annexure-13 was issued in relation to NIT-95. The bank guarantee was extended by the petitioner from time to time up to 23.05.2018. Before 23.05.2018, the petitioner e-mailed regarding extension of Bank Guarantee. Having said so, it is further stated that since the petitioner had not extended the validity of bank guarantee after 23.05.2018, the bank guarantee was encashed on 25.05.2018. It is further contended, vide letter dated 5.6.2018 (Annexure-K/1), that the bank guarantee which was to be encashed against NIT-69, has been considered as due for adjustment against any outstanding amount payable to the petitioner. That itself indicates the autocratic attitude of the authority concerned and as such, the conduct of the authority is absolutely deplorable and this Court takes a serious view on the issue. Since the petitioner is the tenderer in respect of two separate bids, if any lapses have been pointed out in respect of one bid, action is to be taken in accordance with law in respect of that bid only. But in the instant case, the opposite parties have acted in a prejudicial manner by encashing the bank guarantee furnished in respect of subsequent tender and not refunding the amount thereof to the petitioner for the alleged lapses in respect of a previous tender.

10. Be that as it may, since the bank guarantee in respect of NIT-95 has already been encashed and the opp. party undertakes to refund the amount of the bank guarantee, let him refund the same by 11th March,

2022.

11. Needless to say so far as W.P. (C) No.9906 of 2012 is concerned which has been filed in respect of NIT-69, since show cause was called for from the petitioner and he has given the reply, but without considering the same, the letter dated 10/14.05.2012 under Annexure-5 having been issued, the same cannot be sustained in the eye of law. Thus, this Court quashes the letter dated 10/14.05.2012 under Annexure-5 and directs the opp. parties 1 and 2 to consider the show cause reply submitted by the petitioner vide Annexure-4 dated 6.2.2012 and proceed in accordance with law, if so advised.

11. In view of the above, both W.P. (C) No.9906 of 2012 and W.P. (C) No.3501 of 2014 stand disposed of.

12. Needless to say that for illegal withdrawal of bank guarantee if any interest is accrued thereon, that should also be paid to the petitioner in accordance with law.

13. The personal appearance of the officer concerned as directed vide order dated 03.03.2022 in W.P. (C) No.3501 of 2014 is dispensed with.

Urgent certified copy of this order be granted as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE