

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 13547 of 2013

Sk. Abdul Halim

.....

Petitioner

Mr. G.M. Rath, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

12.09.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Nath, learned Counsel for the Petitioner and Mr. S. Rath, learned Additional Standing Counsel for the State.
3. The Petitioner has filed this Writ Petition seeking to quash the letter of Opposite Party No.3 addressed to the Opposite Party No.4 under Annexure-6 dated 19.06.2013 by which it was instructed to the bank to release Rs.9,91,000.00 and hand over the said amount in shape of cheque in favour of Executive Engineer, Baitarani Division, Salapada payable at SBI Andapur.
4. As it appears that a tender was invited by the Opposite Parties 1 to 3 in which the Petitioner participated and became single bidder. For the purpose of participating in the bid, he has deposited the amount as per the tender document, but the same has not been refunded to him. Therefore, he has approached in the present Writ Petition.

5. Mr. S. Rath, learned Additional Standing Counsel for the State contended that since the Petitioner did not respond to the correspondences made by the Opposite Party Nos. 1 to 3 and he did not adhere to the tender documents, therefore, the amount has been forfeited. Accordingly, instruction was issued to the bank to release Rs.9,91,000.00 and hand over the said amount in shape of cheque in favour of Executive Engineer, Baitarani Division, Salapada payable at SBI Andapur. It is also contended that since it is single bidder and the Petitioner did not carry out the instructions issued by the Opposite Parties, for which, the amount has been forfeited, which is in terms of Clause-34 of the DTCN applicable to the Petitioner.

6. Having heard learned Counsel for the Parties and after going through the record, though the bid was invited for construction of flood protection embankment on Baitarani right from Batto to Ranapur under NABARD Assistant RIDF-XVIII, in that case since the Petitioner participated in the proceeding itself, and as such, the Petitioner being a single bidder, he has been called upon to comply certain documents, but fact remains once the Petitioner was declared as a single bidder, the Opposite Parties are to cancel the same to go for fresh tender. Therefore, question of forfeiting the EMD amount does not arise.

7. In that view of the matter, the direction given by the Opposite Party No.3 to the bank to release the amount in favour of Executive Engineer, Baitarani Division, Salapada under Annexure-6 cannot sustain in the eye of law. Contention was made that since the Petitioner did not comply the condition stipulated, the opposite Parties have gone for fresh tender and allocated the work in favour

of new bidder. In view of such position, the forfeiture of the EMD amount submitted by the Petitioner being a single bidder is not justified. Therefore, this Court quashes the order dated 19.06.2013 under Annexure-6 and directs the Opposite Parties to refund such amount to the Petitioner within a period of four months from the date of communication of the order.

8. Accordingly, the Writ Petition stands disposed of.

Arun

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

