

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 4755 of 2022

Raghumani Sethi

.....

Petitioner

Mr. L. Kanungo, Adv.

Vs.

State of Odisha and another

.....

Opposite Parties

Mr. T.K. Pattnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

15.03.2022

Order No.

1.

This matter is taken up through hybrid mode.

2. Heard Mr. L. Kanungo, learned counsel for the petitioner and Mr. T.K. Pattnaik, learned Addl. Standing Counsel.

3. The petitioner has filed this writ petition seeking to quash the government memorandum dated 05.04.2021 under Annexure-6, and to issue direction to the opposite parties to refund 50% excess deposited APS amount and 1% ISD deposits taken from the petitioner, as the same is violative of conditions stipulated in the agreement itself.

4. Mr. L. Kanungo, learned counsel for the petitioner contended that the petitioner, being a B-Class contractor, pursuant to tender call notice, by following due procedure of tender conducted by opposite party no.3, executed contract for repair work of quarters along with sewerage system at Daitary township in the district of Keonjhar. It is contended that the petitioner has approached this Court by filing the present writ petition assailing the condition imposed for 2% initial security deposit so also 150% towards additional performance security deposit against the differential/lessor cost put by the petitioner in his bid. It is contended that such imposition of condition by the authority, cannot sustain in the eye of law.

5. Mr. T.K. Pattnaik, learned Addl. Standing Counsel contended that the petitioner, being aware of the condition of the contract itself, submitted his tender and when he became successful, entered into an agreement and executed the work and, as such, time limit for completion of the said work was fixed for ten months. But in the midst of such work, the petitioner has approached this Court challenging the terms and conditions of the contract and, thereby, the claim of the petitioner cannot sustain in the eye of law and the writ petition should be dismissed in limine. It is further contended that if at all the petitioner has any grievance, he may approach the appropriate forum in terms of the agreement itself.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that opposite parties invited tender vide NIT No.41/OMC/Civil/2021 for the work “special repair to 4 nos. of D-type, 25 nos. of E-type and 4 nos. of F-type quarters along with sewerage system at Daitary township in the district of Keonjhar”. In pursuance thereof, the petitioner participated in the process of tender by putting his bid amount of Rs.1,80,37,843.23 against the estimated cost/tender price as fixed at Rs.212.19 crores. As such, following due process of selection, the petitioner was found to be the successful bidder, for which his bid was accepted and he was intimated by opposite party no.3, vide letter dated 21.02.2021, to deposit initial security deposit and additional performance security deposit of Rs.3,60,800/- and Rs.47,71,000/- respectively within a period of 15 days towards execution of tender work. The petitioner, having complied with such condition, entered into an agreement and discharged his obligations in terms of such contract. But at the midst of execution of contract work, the petitioner has approached this Court stating

that the direction given for depositing APS as well as initial security deposit amount, is contrary to the provisions of law. Needless to say, the petitioner, being well aware of the terms and conditions stipulated in the tender document, applied for the same and having participated in the process of selection, he was selected and executed the agreement. Therefore, in the midst of work, he could not have approached this Court stating that he is not liable to deposit the APS as well as initial security deposit amount, as per the terms and conditions of the contract itself. As it reveals, the petitioner having been selected, entered into an agreement and, therefore, any violation thereof, it is open to him to approach the appropriate forum in terms of the agreement itself. Instead of doing so, the petitioner has approached this Court by filing the present writ petition.

7. In the above view of the matter, this Court is not inclined to entertain this writ petition. However, liberty is granted to the petitioner to pursue his remedy before the appropriate forum in terms of the agreement itself.

8. With the aforesaid liberty, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Ashok/Puspa

(SAVITRI RATHO)
JUDGE