

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11080 of 2013

Sasanka Sekhar Mohanty

....

Petitioner

Mr. R. Singh, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. J.P. Pattnaik, Government Advocate

CORAM:

DR. JUSTICE DR. B.R. SARANGI

MR. JUSTICE S.K. PANIGRAHI

ORDER

07.01.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. Heard Mr. R. Singh, learned counsel appearing for the petitioner and Mr. J.P. Pattnaik, learned Government Advocate.
3. The petitioner files this writ petition seeking direction to the opposite parties to refund EMD amount of Rs.2,32,000/- to him, which was pledged in favour of opposite party No.4 in FDR No.B/S/HO-8018115 dated 16.12.2006 and to pay interest @ 18% per annum on the EMD amount from 27.08.2010 till the date of payment.
4. Mr. R. Singh, learned counsel for the petitioner contended that the petitioner is entitled to get refund of the EMD amount, which has been forfeited by the authority, therefore, he has approached this Court by filing the present writ petition.
5. Mr. J.P. Pattnaik, learned Government Advocate contended that since the petitioner has violated the terms and conditions of clause

32.1 of the Instructions to Bidders (ITB) in Annexure-3, the amount has been forfeited in terms of clause 32.3 of the ITB, thereby question of refund does not arise. Accordingly, he states that the writ petition should be dismissed.

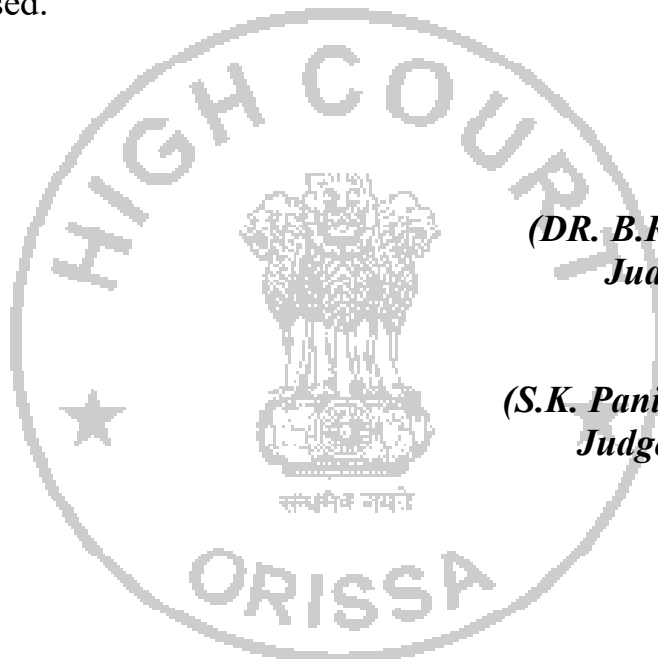
6. Having heard learned counsel for the parties and after going through the record, it appears that the opposite party no.2 floated a tender call notice for the work "Construction/Up-gradation and maintenance of rural Roads under Pradhan Mantri Gram Sadak Yojana" vide tender call notice no.24395/PMGSY-2/2005 dated 12.11.2006 with approximate cost of Rs.2,52,54,620/-. The period of sale of tender paper was from 27.11.2006 to 19.12.2006 and last date of receipt of tender was 19.12.2006. The intending bidder should have accompanied Rs.10,400/- of demand draft of any Nationalized Bank towards cost of the bid/tender document and also accompanied Rs.2,32,000/- of fixed deposit receipt of a Scheduled Commercial Bank duly pledged in favour of opposite party No.4 towards the earnest money deposit. In compliance to the same, the petitioner submitted his tender document. He having been found suitable was issued with a letter on 15.01.2007 for negotiation of the work. But, as per clause 32.1 of "Instructions to Bidders" (ITB) vide Section -2 of the "Standard Bidding Document" being followed in the case of PMGSY works in the State of Odisha, the successful bidder shall have to deliver to the employer, a performance security of five percent of the contract price and sign the contract within 10 days of receipt of the letter of acceptance. But, the petitioner, being a successful bidder, failed to comply the said requirement of clause 32.1 of the ITD, and as

such, earnest money was forfeited in terms of clause 32.3 of the ITB.

7. In that view of the matter, this Court does not find any irregularity or illegality in forfeiting the earnest money deposit of the petitioner, as he failed to comply with the terms and conditions of the ITB.

8. Accordingly, there is no merit in the writ petition and the same is dismissed.

pcd



(DR. B.R. Sarangi)
Judge

(S.K. Panigrahi)
Judge