

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 8319 of 2022

M/s. KBM Construction, Puri

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Petitioner

Mr. S.K. Dalai, Advocate

Vs.

State of Orissa & Ors.

.....

Opposite parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

04.04.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Dalai, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Standing Counsel for the State.

3. The petitioner has filed this writ petition seeking direction to opposite party no.2 to consider its representation forthwith and extend the benefits thereof in terms of office memorandum dated 27.04.2021 & 31.12.2021 for the work “Widening and strengthening of Nimapada, Kakatpur & Astaranga Road from 0/00 km. in the district of Puri under CRF”.

4. Mr. S.K. Dalai, learned counsel for the petitioner contended that opposite party no.1 issued office memorandum dated 27.04.2021 under Annexure-1 that to ensure due performance of contract, performance security is to be obtained from the successful bidder, who is awarded the contract as per codal provision under Rule-13 of Appendix-VIII of OPWD Code, Volume-II. But, on account of slowdown in economy due to the

Pandemic COVID-19, the State Government received many representations that there was acute financial crunch among many commercial entities and contractors, which in turn is affecting timely execution of the contracts. It was also represented that the same may affect the ability of the contractors to bid in tenders and hence reduce competition. Requests were also received for reduction in quantum of security deposit in the Government contracts. Besides, Government of India had also reduced the rate of performance security from five to ten percent to three percent of the value of the contract. Thereby, the Government of Odisha also decided in all the contracts where performance security has been reduced to 3 %, the reduced percentage of performance security shall continue for the entire duration of the contract and there should be no subsequent increase of performance security even beyond 31.12.2021. Similarly, in all contracts entered into with the reduced percentage of performance security of 3%, there will be no subsequent increase in performance security even beyond 31.12.2021 and wherever, there is compelling circumstances to ask for performance security in excess of three percent, as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalize the particular tender and specific reasons justifying the exception shall be recorded. It is further contended that vide office memorandum dated 31.12.2021 under Annexure-5, opposite party no.1 extended the period to 31.03.2022. Therefore, the petitioner is liable to pay 3% performance security, but the same has not been acceded to. More so, there is no compelling circumstances to ask for performance security in excess of three percent as stipulated in the office memorandum

and no reasons have been assigned for justifying the exception for payment of excess amount. It is also contended that the petitioner is only liable to pay 3% performance security. For that, the petitioner has made representation to opposite party no.2 vide Annexure-6 series, which are still pending for consideration.

5. Mr. P.P. Mohanty, learned Additional Standing Counsel for the State contended that if the petitioner has already made grievance, direction may be issued to the authority to apply his mind and pass appropriate order in terms of the office memorandum.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, this Court, without expressing any opinion on the merits of the case, disposes of the writ petition directing opposite party no.2 to consider the representation filed by the petitioner vide Annexure-6 series and pass appropriate order in accordance with law as expeditiously as possible, preferably within a period of six weeks from the date of production of certified copy this order.

5. The writ petition stands disposed of accordingly.

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

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(DR. B.R. SARANGI)
JUDGE

Alok/Puspa

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(SAVITRI RATHO)
JUDGE