

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16207 of 2012

Debadutta Pal ***Petitioner***
Mr. Avijit Pal, Adv.

-versus-

State of Odisha and Ors. ***Opp. Parties***

Mr. P.K.Muduli, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. PANIGRAHI

ORDER

10.01.2022

Order No.

08. 1. This matter is taken up through Video Conferencing mode.
2. Heard Mr. Avijit Pal, learned counsel for the petitioner and Mr. P.K. Muduli, learned Additional Government Advocate for the State- opposite parties.
3. The petitioner has filed this writ petition challenging forfeiture of EMD amount of Rs.1,67,000/- in respect of the tender, namely, “Bridge over Junia Nallah on Kalpoi-Balipahad road in the District of Cuttack” issued pursuant to tender call notice dated 17.12.2011 under Annexure-1.
4. The petitioner having participated in the process of tender has been selected and called upon to perform his work. Though the petitioner’s tender has been accepted and communicated to him to discharge his obligation in terms of the tender, he having not discharged the same, the EMD has been forfeited.

Therefore, the petitioner has approached this Court by filing the present writ petition.

5. Mr. A. Pal, learned counsel for the petitioner contended that since the tender was defective one, the same was cancelled and consequence thereof, the forfeiture of EMD amount cannot be sustained in the eye of law and he is entitled to get refund of the EMD amount.

6. Mr. P.K. Muduli, learned Additional Government Advocate for the State contended that since the petitioner has not performed his responsibility in view of the tender allotted in his favour, the same has been cancelled. Therefore, he is not entitled to get refund of the EMD amount.

7. Having heard the learned counsel for the parties and on going through the records, it appears that pursuant to the tender call notice under Annexure-1 in respect of the work mentioned above, the petitioner submitted his tender documents. Clause-1.5 of the tender call notice clearly specifies as follows:

“Upon acceptance of the tender, the successful tenderer shall within a period of 10 days from the date of written intimation of the acceptance of the tender, deposit with the concerned authority a sum of such amount towards initial security as would together with the earnest money make 2% of the work as per the accepted tender excluding the addl. EMD for hiring machineries outside State & sign the agreement in the PWD form-2 (Schedule-XI.V Form No.61) in the office of the concerned Executive Engineer.

Failure to deposit this additional amount towards initial security deposit or to sign the contract within the stipulated time, which shall include any extension granted by the Chief Engineer, Rural Works, Bhubaneswar at his discretion, will make the earnest money deposit of the tenderer liable to forfeiture & acceptance of his tender shall be treated as withdrawn.”

8. In view of the conditions stipulated therein, if the tenderer fails to discharge his duty, his EMD amount is to be forfeited. It has been stated in paragraph-13 of the counter affidavit filed by the opposite party nos.2 and 3 that the cancellation of tender by the opposite parties has no relevance with acceptance of tender. Since the tender of the petitioner was duly accepted and communicated to him much earlier to the cancellation and the petitioner having not discharged his duty in terms of the tender documents, the same was cancelled. Nothing has been placed on records to indicate that because of defective tender, the tender was cancelled nor Mr. Pal, learned counsel for the petitioner has placed on records any document to satisfy the Court that because of the defective tender, the cancellation was made. Therefore, this Court is not inclined to entertain this writ petition, as the authorities have acted in terms of the agreement itself.

9. The writ petition is dismissed, accordingly.

10. As the restrictions due to resurgence of Covid-19 are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at

par with certified copy, subject to attestation by the Advocate concerned with his/her seal, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 and Court's Office Order dated 7th January, 2022.

(Dr. B.R. Sarangi)
Judge

(S.K. Panigrahi)
Judge

BJ

