

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18992 of 2015

Akshaya Kumar Pujari

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Petitioner

*Mr. L.K. Moharana,
Advocate*

Vs.

***Odisha Bridge & Construction
Corporation Ltd. & Ors.***

.....

Opposite parties

*Mr. S.R. Mohanty, Advocate
(O.Ps.1 & 2)*

*Mr. M.B. Rao, Advocate
(O.P.4)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S. K. MISHRA

ORDER

30.06.2022

Order No.

09

This matter is taken up through hybrid mode.

2. Heard Mr. L.K. Moharana, learned Counsel for the Petitioner; Mr. S.R. Mohanty, learned Counsel appearing for Opposite Parties No.1 & 2, and Mr. M.B. Rao, learned Counsel for Opposite Party No.4-Bank.

3. The Petitioner has filed this Writ Petition seeking to declare the fresh e-tender floated by Opposite Party No.1 as illegal and direct opposite party no.1 not to encash the EMD deposited by the petitioner by pledging his Term Deposit Receipts and further direct opposite party no.4-Bank not to transfer the amount claimed by opposite party no.1 to its account and also further direct Opposite party no.1 to issue work order in favour of the petitioner by proportionately extending the time to complete the work or in alternative to direct it to compensate the petitioner suitably.

4. Mr. L.K. Moharana, learned Counsel for the Petitioner contended that vide Annexure-1 dated 12.02.2015, the

Petitioner submitted his bid through e-Procurement System and accordingly, deposited EMD amount of Rs.14,52,000/-, which was pledged in favour of Opposite Party No.1 vide Annexure-2 with validity for a period of three months w.e.f. 12.02.2015 to 12.05.2015. After the said period was over, without assigning the work to be done by the Petitioner, the Authority passed order dated 17.08.2015 under Annexure-14 forfeiting the EMD amount, as per Condition No.15.6.2 of procedure to participate in on-line bidding “e-Procurement” of DTCN due to non-furnishing of required documents. It is contended that the office order dated 17.08.2015 has been passed without assigning any reason and as such, the same has been passed beyond the period of 90 days. Therefore, the order so passed cannot sustain in the eye of law.

5. Mr. S.R. Mohanty, learned Counsel appearing for Opposite Parties No.1 & 2 contended that the Petitioner having found technically qualified, his price bid was opened. But due to non-furnishing of required documents for the work, his EMD amount furnished against the works was forfeited, vide order dated 17.08.2015 under Annexure-14. It is contended that because of interim order dated 17.02.2016 passed by this Court in M.C. No.17827 of 2015, the EMD of the petitioner has not been encashed.

6. Mr. M.B. Rao, learned Counsel appearing on behalf of Opposite Party No.4-Bank contended that since the EMD amount was pledged in the Bank, pursuant to letter issued by opposite party no.1, it has been forfeited. Therefore, no illegality has been committed at the level of the Bank.

7. Considering the contentions raised by learned Counsel

for the Parties and after going through the records, it appears that admittedly the petitioner was the participant in tender process, for which he had deposited EMD amount of Rs. 14,52,000/- and the same was pledged in favour of Opposite Party No.1 in the Bank. But the validity of the work was specified for the period from w.e.f. 12.02.2015 to 12.05.2015 and that period has been over. As such, the petitioner was not allowed to discharge his obligation in terms of the contract to perform the same. As a consequence thereof, for non-performance of the contract, after the period is over, on 17.08.2015, the EMD amount was directed to be forfeited as per Condition No.15.6.2 of procedure to participate in on-line bidding "e-Procedure" of DTCN due to non-furnishing of required documents. While forfeiting the EMD amount, the Petitioner has not been given opportunity of hearing and nothing has been placed on record to indicate that the petitioner was given opportunity. Therefore, the order dated 17.08.2015 passed in Annexure-14 has been passed without compliance of the Principle of Natural Justice. Thereby, the same cannot sustain in the eye of law. Needless to say, since Opposite Parties No.1 & 2 made claim for encashment of the EMD amount, on 12.05.2015 after the tender validity period. More so, the direction for encashment of EMD amount, having not been given in consonance with the Principles of Natural Justice, the same cannot sustain in the eye of law.

8. In view of such position, the order so passed on 17.08.2015 forfeiting the EMD amount under Annexure-14 cannot sustain in the eye of law and the same is hereby quashed. The matter is remitted back to opposite party no.1

to pass appropriate order, by giving opportunity of hearing to the Petitioner before the EMD amount is either forfeited or refunded to the petitioner in terms of the agreement. Needless to say, till the matter is reconsidered, opposite party no.1 is restrained from encashing the bank guarantee.

9. With the above observation and direction, the writ petition stands disposed of.

10. Issue urgent certified copy as per rules.

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(DR. B.R. SARANGI)
JUDGE

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(S. K. MISHRA)
JUDGE

Alok/Ananta

