

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

106

LPA-868-2021 & CMS-2089 & 2090-LPA-2021

DATE OF DECISION: JUNE 01, 2022

M/s Kisan Construction Company, District Hisar

.....Appellant

VERSUS

State of Haryana and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

**Present: Mr. Vivek Khatri, Advocate,
for the appellant.**

**Ms. Rajni Gupta, Addl.Advocate General, Haryana,
for the State.**

AUGUSTINE GEORGE MASIH, J.

CM-2089-LPA-2021

Prayer in this application is for condonation of delay of 120 days in filing the appeal.

The only explanation, which has been mentioned in the application, is that the applicant-Company had applied before the authorities under the Right to Information Act to get the status of the tender involved in the present case, which is relevant for adjudication of the case. On receipt of the said information, the present appeal has been filed, resulting in delay of 120 days in filing the appeal.

A perusal of the application would indicate that no date has

been mentioned as to when the applicant-appellant had applied under the Right to Information Act as also the date on which the said information was supplied to it. In the absence of these vital aspects, it cannot be said that the delay in filing the appeal has been effectively explained. The applicant-appellant had not taken all proper and effective steps to obviate and explain the delay in filing the appeal. The application, therefore, deserves dismissal.

LPA-868-2021

In any case, we have heard counsel for the appellant on merits as well, who asserted that the appellant-Company had no intention to participate in the tender process and furthermore if the 'rate column' had not been filled up by the appellant-Company, the same was nothing else but a bonafide human mistake. It is on this basis submitted that forfeiture of earnest money of the appellant-Company was illegal and amounted to unjust enrichment on the part of the respondents and, thus, a prayer has been made for refund of the same.

We have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the pleadings as also the judgment passed by learned Single Judge.

Appellant had participated in the tender process, which was online. A bid was entered by the appellant-Company on 10.02.2016 but it failed to quote any figure. The respondent-Department, as per Clause 12.2 of the instructions to the bidders (Annexure P-1) treated and accepted it as '0' and awarded the contract to the appellant Company, being the lowest bidder. A communication was sent to the appellant Company to enter into the contract, which it failed to respond within the time stipulated, leading to forfeiture of the earnest money amounting to ₹2,58,300/-.

Clause 16.1 deals with forfeiture of the earnest money and as per the instructions to the bidder, the amount of earnest money was to be forfeited in various contingencies. Clause 16.1 (ii), which is applicable to the facts of this case reads as under:-

“16.1 – The Earnest money will be forfeited:

(i)xx xx xx xx

(ii) In case the successful Contractor/agency fails within the specific time limit, to sign the agreement or furnish the required performance security.”

A communication to this effect i.e. with regard to forfeiture of the earnest money was sent to the appellant, which was challenged before the learned Single Judge. Counsel for the appellants has not been able to wriggle out of the terms and conditions of the tender, especially the instructions to the bidder, Annexure P-1. The only plea, which is being sought to be pressed into service, is that the appellant should not be penalized for an inadvertent error, which had occurred due to some technical problem because of which the appellant had not been able to properly upload the bid form on the website of the Department. The said plea has been dealt with by the learned Single Judge in Para 6 of the order, which reads as under:-

“I find no occasion to apply the principle in commercial bids. He refers to the compliance letter dated 11.7.2016 to the Executive Engineer, Nehrana Water Services Division, wherein it is pleaded that due to some technical problem the firm may not have been properly uploaded on the web site of the department. There was no intention of the firm not to upload its

tender rates. Had there been any intention of the firm not to upload the tender rates on web-site, then it would not have submitted the bid document physically in the office. By this explanation, they pass the blame on the department on the pretext of a flaw on the web site. This averment has not been substantiated by any dependable evidence. The tender rates in the tender form was the heart of the matter. If that is missing, the government cannot be blamed. The petitioner has made lame excuses. This Court does not find it a fit case on the principle of equity or any other ground in the absence of any Rule or clause in the terms and conditions which govern forfeiting the earnest money and how it will be regulated in the case of the present kind.”

We are in agreement with the above observations of learned Single Judge and, thus, do not find any merit in the present appeal. The same, therefore, stands dismissed both on the question of delay as well as on merits.

As the main appeal stands dismissed, no orders are required to be passed on CM-2090-LPA-2021, which is an application for stay of the judgment of the learned Single Judge.

(AUGUSTINE GEORGE MASIH)
JUDGE

June 01, 2022
khurmi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No