

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

202-1

**CWP-792-2014 (O&M)
Date of Decision: 27.10.2022**

M/S VKJ SEW SB

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Amit Arora, Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G., Punjab.

Mr. Saurabh Garg, Advocate
for respondent No.2.

None for respondent No.3.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed under Articles 226/227 of the Constitution of India, 1950 seeking issuance of a writ in the nature of Certiorari for quashing the impugned orders dated 12.09.2012 (Annexures P-18 and P-19) vide which the bid security amount submitted by the petitioner has been ordered to be forfeited.

Briefly summarized, the facts of the present case are that the petitioner, which is a joint venture of three firms namely M/s Verender Kumar Jain; M/s Sudarshan Engineering Works and M/s Singh Brothers, is involved in conservation and restoration of monuments and buildings. The respondent-Department had called for the tender for adaptive reuse of historic buildings for interpretation and visitor facilities including museum interpretative

galleries, restaurants etc. A technical and financial bid was submitted by the petitioner-joint venture on 02.12.2011 and as per the terms and conditions of the tender, the bid validity period was 120 days. Thus, the validity of the bid was to expire on 01.04.2012, however, vide letter dated 29.03.2012, the respondents prayed for extension of the bid validity, which was extended by the petitioner vide letter dated 13.04.2012 (initially the extension was conditional, however, the said conditions were thereafter withdrawn and it was advised to extend bid validity unconditionally). The deliberations are stated to have taken place in the meeting held on 28.04.2012 and a letter of acceptance was to be issued shortly thereafter to the petitioner. The said acceptance letter was e-mailed on 13.06.2012, wherein it was specified that a letter of acceptance was conveyed to the petitioner on 27.04.2012. Despite a delayed communication of the letter of acceptance, the bid security amount deposited by the petitioner was forfeited by the respondents for non-submission of Performance Guarantee, although there was no prior occasion for the same. The decision is thus assailed on the ground that bid validity period being upto 28.04.2013, the petitioner was under no obligation to comply with the requirement of bid document since communication of letter of acceptance is after the bid validity period.

Written statement on behalf of the respondent No.2 has been filed wherein the following stand has been adopted by the respondent-Department:-

“That the petitioner is guilty of concealment of material facts from this Hon'ble Court Hence the present petition is liable to be dismissed. The facts concealed are:

- (i) That the petitioner unconditionally extended the validity of the bids for Lot I and Lot II of Package 2, vide letter dated 30.03.2012 However, thereafter, on 13.04.2012, the petitioner wrote a different letter. Even that letter was*

withdrawn vide letter dated 19.04.2012 and validity of bids for Lot I and Lot II of Package 2 was extended. Copies of letters dated 30.03.2012 and 19.04.2012 are annexed as Annexure R-2/1 and Annexure R-2/2 respectively.

- (ii) *That the petitioner has also concealed the fact that the letter of acceptance was issued to the petitioner vide letter dated 27.04.2012. The letter dated 27.04.2012 was duly received by Sh. Vipin Kumar Goel, representative of the petitioner, on the same day. Photocopies of letter of acceptance which are duly signed (acknowledged) by Sh. Vipin Kumar Goel, who is signatory to this court case, are attached as Annexure R-2/3 and Annexure R-2/4 Therefore, it is wrong on the part of the petitioner to assert that the acceptance was conveyed vide email dated 13.06 2012. In fact, after the receipt of the letter of acceptance, petitioner requested the answering respondent to send another copy through email, which was duly sent.*
- (iii) *That the petitioner has further not disclosed the fact that now, pursuant to the fresh Notice inviting Tender, the work has been allotted to Singh Bros Heritage Conservators - JV, which was one of the partners of the petitioner itself at a much higher rate. The petitioner is a consortium of V.K. Jain, Sudarshan Engineering Works, and Singh Brothers. It is thus clear that the writ petitioner initially opted for the work and thereafter, refused to carry out the work, resulting into huge delay, due to which the answering respondent had to re-invite the bids and after following the correct procedure, allot the work to SBHC - JV consisting of Singh Bros. Heritage Conservators – JV. It is pertinent to state here that all official communication on behalf of the petitioner was exchanged only with M/s Singh Brothers who are also one of the partners of M/s SBHC-JV who are allotted the same work at much higher rate after rebidding.*
2. *That the present petition is further not maintainable as it involves disputed questions of fact. Petitioner is disputing the date*

of receipt of letter dated 27.04.2012. According to the answering respondent, the letter of acceptance was duly received by the representative of the petitioner - Sh Vipin Kumar Goel on the same date i.e. 27.04.2012, whereas the petitioner is asserting that the letter was received through email dated 13.06.2012 Therefore, the writ petition involves disputed questions of fact which cannot be conveniently determined by this Hon'ble Court, in exercise of writ jurisdiction.

3. That the petitioner in the present writ petition is only claiming refund of the earnest money which has been forfeited in terms of the Tender document in humble submission of the answering respondent, forfeiture of the earnest money is a pure and simple money claim, for which a writ petition is not maintainable. Still further, the claim of the petitioner is arising out of a contractual obligation and hence also, the writ petition is not maintainable.”

REPLY ON MERITS:

1-9. XXX XXX XXX

10. That the contents of Para 10 of the writ petition are wrong and hence denied. The letter of acceptance was issued on 27.04.2012 which was duly received on the same date itself, by the representative of the petitioner - Sh. Vipin Kumar Goel. Therefore, it is wrong to state that the letter of acceptance, for the first time, was sent to the petitioner vide email dated 13.06.2012.

11. That in reply to Para 11 of the writ petition, it is submitted that the letter of acceptance was issued and duly received on 27.04.2012. Letter of Acceptance was issued by the desk office or the respondent no. 2 and this was not brought to the notice of the persons attending the meeting The representative of the contractor also did not share the information about receipt of Letter of Acceptance in person on 27.04.2012.”

Learned counsel for the petitioner has vehemently argued that the orders passed by the respondents on 12.09.2012 directing forfeiture of the bid security amount is on the premise that the petitioner did not submit the

Performance Guarantee despite opportunity for which the respondent department has relied upon a claimed issuance of letter of acceptance on 27.04.2012. He contends that no such letter was, however, communicated to the petitioner at any point in time and as such, the foundation of the order is unsustainable. Reference has also been made to Annexure P-10, which is minutes of the meeting held on 28.04.2012. The operative part relied upon by the counsel for the petitioner reads thus:

"S. No.	Item	Issues/Observations	Present status	Decision taken	
1.		IDIPT Project status updates – relevant portion of meeting on 28.04.2012			
	XXX	XXX	XXX	XXX	XXX
	Package 2	Adaptive reuse of historic buildings for interpretation and visitor facilities including museum, interpretative galleries, restaurant, parking etc. at Govindgarh fort Lot 1: (i) Entrance Gate (ii) Detention Centre Lot 2: i) Nalwa Gate ii) Stable	CE PMU informed that as approval of PBERs has been received for lots 1 and 2 from ADB and Letters of Acceptance being issued to the firm M/s V.K. Jain and partners Representative of firm M/s V.K. Jain and partners informed that on receipt of LoA, they will complete the necessary formalities to commence the work immediately. Works are already in progress on	<u>LoA should be issued to the firm and the firm should submitted the Performance Security immediately.</u>	CE PMU/ Firm M/s V.K. Jain and partners.

			lots 3 & 4 by M/s V.K. Jain and partners.”		
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By making a reference to the above, learned counsel for the petitioner contends that as per the aforesaid minutes of the meeting that were released on 13.06.2012, the letter of acceptance was yet to be issued to the petitioner firm and the Performance Guarantee was to be furnished only thereafter. Hence, there was no occasion for the letter to have been sent to the petitioner on 27.04.2012 and that invariably the said letter is ante-dated.

No other point has been raised.

Per contra, learned counsel for the respondents contends that the aforesaid submission is fallacious and is misleading. Material facts have been concealed. The letter dated 27.04.2012 was infact specifically delivered to the petitioner and had been received by Vipin Kumar Goel, Representative of the petitioner. Reference in this regard was also made to the letter of acceptance dated 27.04.2012, appended alongwith the written statement as Annexures R-2/3 and R-2/4 that is duly countersigned. It is also stated that there was no date put up by the petitioner at the time of the receiving of the aforesaid letter of acceptance and further that the letter of acceptance was received by them during the period of bid validity itself. He contends that as on the date when the meeting in question was held i.e. 28.04.2012, the aforesaid aspect could not be brought to the notice of the participants in the meeting and was also not pointed out by the petitioner. Resultantly, the same was not reflected correctly. The factual aspect, however, cannot be denied or disputed by referring to the minutes of meeting especially when acknowledgement of receipt of letter dated 27.04.2012 is beyond conflict. He further contends that there was no representation submitted ever by the petitioner that the letter of acceptance was

not received on the said date or that it does not bear signatures of representative of petitioner and that no rejoinder or replication controverting the specific stand adopted by the respondents has been filed, despite the response having been submitted on 23.05.2014 and a period of more than 08 years has elapsed since then. He further submits that the minutes of the meeting dated 28.04.2012 were duly countersigned by the representatives of the petitioner himself and that it was incumbent upon the petitioner to have disclosed that the letter of acceptance has already been received by him. Hence, he was himself guilty of non-disclosure of the essential facts at the time when the minutes of the meeting were being recorded and no benefit of such material concealment can be extended.

Learned counsel for the petitioner, however, controverts the submissions made by learned counsel for the respondents by making reference to the letter dated 29.06.2012 (Annexure P-12), wherein an averment has been made disputing the letter of acceptance having been conveyed to the petitioner on 27.04.2012.

I have heard the learned counsel for the respective parties and have gone through the documents appended alongwith the instant petition and also the submissions advanced during the course of the hearing.

The entire controversy in this petition pertains to the fact as to whether the letter of acceptance was received by the petitioner and/or the authorized representative of the petitioner on 27.04.2012 or not. In this regard, the reliance has been placed by the respondent on the acknowledgement/receipt of the aforesaid letter of acceptance by the representative of the petitioner, while the petitioner disputes the same and relies upon the letter dated 29.06.2012 (Annexure P-12) as well as the minutes of the meeting dated

28.04.2012 to contend that the letter of acceptance has been ante-dated. It is the specific stand of the respondents in the written statement so filed by them that the letter of acceptance was duly received by petitioner on 27.04.2012 and there was no objection raised regarding receipt of the aforesaid letter of acceptance. As a matter of fact, issuance of the letter of acceptance and its receipt by the representative of the petitioner is done by the desk office. It was thus not in the knowledge of the persons participating in the meeting itself. However, the said fact by itself would not render the issuance and acceptance of the letter of acceptance by the petitioner invalid.

Even otherwise, reliance placed on letter dated 27.06.2012 to portray that the letter of acceptance was never served upon the petitioner makes an interesting reading inasmuch as the petitioner, even though, disputes the contents of the letter dated 27.06.2012 (Annexure P-11), however, he does not dispute the signatures appended on the letter of acceptance dated 27.04.2012. Rather, he conveys that it cannot be legally construed as acceptance. There is also no supporting affidavit of the recipient of the letter of acceptance to the effect that he had either appended the signatures on the asking or that the letter in question was ante-dated. The specific stand taken by the respondent-Department was also not controverted by filing of any rejoinder and/or replication, hence, stand of the respondent-Department has remained uncontroverted and unrebutted through the pleadings on record. Consequently, there is no basis for this Court to assume that the acceptance of the bid was not conveyed by the respondent-Department to the petitioner during the bid validity period. As per bid, upon communication of letter of acceptance, the bidder was required to furnish a Performance Guarantee and it is the case of the petitioner itself that the Performance Guarantee was never furnished.

Failure of submission of performance bank guarantee in terms of DNIT entailed the consequence of forfeiture of the bid security amount under Clause 42.2 of the Bid Document, Instructions to Bidders. Resultantly, there is no illegality, perversity or impropriety in the orders passed by the respondent-Department directing the forfeiture of the bid security amount and the action of the respondents is as per the Bid document.

The present petition is accordingly, dismissed.

27.10.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No