

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

224-A

CWP-29039-2022 (O&M)
Date of decision: 02.05.2024

Gurjant Singh

...Petitioner

VERSUS

The State of Punjab and others

...Respondents

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

Present :- Mr. R.K. Girdhar, Advocate and
Mr. Chirag Girdhar, Advocate for the petitioner.

Ms. Arundhati Kulshreshtha, AAG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 13.04.2022 whereby the claim of the petitioner for refund of the earnest money has been rejected and the same has been ordered to be forfeited in exercise of the power under Clause 17 of the Detailed Notice Inviting Tender (for short 'the DNIT') alleging that the petitioner did not deliver the Water meters and other required material upto 15 days from the date of the contract i.e. delivery period.
2. Learned counsel for the petitioner contends that the petitioner is a Govt. Contractor and has executed various works assigned to him from time to time without any complaint. During the year 2021, the petitioner submitted bids for various works and also deposited the earnest money for

the same, the details thereof are given as under:-

<i>Sr. No.</i>	<i>Tender ID</i>	<i>Earnest money</i>
<i>1</i>	<i>2021_WB_63810_82</i>	<i>Rs.20000.00</i>
<i>2</i>	<i>2021_WB_63810_75</i>	<i>Rs.16000.00</i>
<i>3</i>	<i>2021_WB_63810_74</i>	<i>Rs.15000.00</i>
<i>4</i>	<i>2021_WB_63810_72</i>	<i>Rs.15000.00</i>
<i>5</i>	<i>2021_WB_63810_81</i>	<i>Rs.20000.00</i>
<i>6</i>	<i>2021_WB_63810_76</i>	<i>Rs.16000.00</i>
<i>7</i>	<i>2021_WB_63810_55</i>	<i>Rs.44000.00</i>
<i>8</i>	<i>2021_WB_63810_57</i>	<i>Rs.42000.00</i>
<i>9</i>	<i>2021_WB_63810_9</i>	<i>Rs.60000.00</i>
<i>Grand Total</i>		<i>Rs.248000.00</i>

3. The tender validity of the works was only for 30 days, which expired on 30.05.2021 but these works were not allotted to the petitioner. Respondent No.4 sent a letter for seeking extension of bid validity period and with an assurance that the work shall be allotted to the petitioner whereupon the bid validity period was extended upto 15.08.2021, however, despite such extension no letter of allotment of works was issued to the petitioner. He thereafter visited the office of respondent No.4 on 17.08.2021 and made a request about issuance of letter of allotment, if any, however, no such letter of allotment was issued to the petitioner or handed over to him. Since the petitioner was suffering financial hardships on account of the earnest money being deposited with the respondent, he submitted a letter dated 02.10.2021 for refund of the earnest money after pointing out that the

letter of allotment had not been issued to him till then, however, instead of making a refund, respondent No.4 sent a letter dated 20.12.2021 calling upon the petitioner to execute the works after the expiry of the bid validity period. The said request was declined by the petitioner, who refused to execute the works.

4. A request for release of earnest money was thereafter sent by the petitioner, however, as no action was taken by the respondents, the petitioner approached this Court vide CWP-5183-2022 which was disposed of vide order dated 15.03.2022 with a direction to the respondents to decide the legal notice dated 14.02.2022 and that if the petitioner was found entitled to the same, return the same along with interest @ 6% per annum. In compliance to the order dated 15.03.2022, the office of the respondents passed an order dated 13.04.2022 directing forfeiture of the earnest money.

5. Hence, the present petition.

6. Learned counsel for the petitioner contends that the respondents have invoked Clause 17 of the DNIT which provides for forfeiture of earnest money in an event the supplies are not made within a period of 15 days of issuance of letter of allotment-commencement of the contract. He contends that the respondents never issued the letter of allotment of contract to the petitioner as such, the necessary ingredient for invoking power under Clause 17 of the DNIT did not arise. He submits that any communication/letter of allotment issued post the bid validity period does not bind the petitioner to make the supplies in terms of the DNIT. It is further submitted that the communication of material to be supplied was sent by the respondent for the first time in the month of December, 2021 and that two months prior to the

same, the petitioner had already intimated to the respondents that he wants refund of his earnest money being no more interested in executing the work for them.

7. Learned counsel for the respondent on the other hand does not dispute that the work was allotted to the petitioner and that the bid validity period was upto 15.08.2021 or that the period for completion of works was of one and half months from the date of supply order. It is submitted that the supply order for the above works were sent through post vide office letters No.3592 dated 09.09.2021 and 3929 dated 24.09.2021 and the petitioner was requested to start the work at site, however, he did not start the work and instead sent a letter on 02.10.2021 informing about non-receipt of any letter of allotment which is an after-thought, false and frivolous plea raised by the petitioner. She further submits that the respondent-department requested the petitioner to start the work at site vide communication dated 13.10.2021, however, he neglected the requests again and again and all requests went in vain. Consequently, Clause 17 of the DNIT was rightly invoked for the default committed by the petitioner and the earnest money deposited by him has been ordered to be forfeited.

8. I have heard the learned counsel for the respective parties and have gone through the documents appended with the petition.

9. It is not in dispute that the bid validity period was extended upto 15.08.2021. For binding the petitioner to execute the contract, it was essential for the respondents to establish that the work allotment letter was issued to the petitioner on or before 15.08.2021 i.e. the bid validity period.

Even though the case of the respondents is that the supply order was sent to

the petitioner, however, there is no mention of any date, mode or manner of supply order with respect to the above said works even in the written statement filed by the respondents. A reference to the letters dated 09.09.2021 and 24.09.2021 could not be given much weightage, even if the same had been sent to the petitioner since the said letters had been issued after the expiry of the bid validity period. It is also not in dispute that the petitioner had submitted a letter on 02.10.2021 calling upon the respondent-department that no supply order had been given to him till 15.08.2021 or even on 17.08.2021 when he visited the office. He thus sought refund of his earnest money and conveyed his inability to execute the work on the earlier dates. The receipt of the said letter and the averments contained in it is not disputed or denied.

10. Further, the entire case of the respondents hinges upon the issuance of the letter of allotment, however, the said letter has neither been appended along with the reply nor any mode of delivery of such letter has been explained by the respondents in their written statement. The best evidence which could have established the case of the respondents has thus been withheld

11. Under the given circumstances, this Court cannot accept the plea raised by the respondents that the letter of allotment/supply order was actually served upon the petitioner on 03.08.2021. In the event the respondent-department intended to invoke a jurisdiction under the contract on account of failure on the part of the petitioner in fulfilling his obligation, the primary burden lay on the respondent-department to establish that the supply order had actually been served upon the petitioner before the date of

expiry of bid validity. There can be no presumption of such a fact and failure of the respondent to establish communication of the supply order would lead to an inference against the respondent-department. The petitioner could not hence thereafter be held liable to execute the said work on the basis of the bid submitted by him, the validity of which had already come to an end.

12. I find that the stand of the respondents is unsubstantiated and is not corroborated by any objective or admissible material available on record on the basis whereby the stand could even be *prima facie* accepted. The plea in reply appears to this Court to be an after-thought, only to wriggle out of the obligation to pay interest as directed by this Court in its order dated 15.03.2022 passed in CWP-5183-2022.

13. Resultantly, the present writ petition is allowed and the order dated 13.04.2022 passed by respondent No.4-The Executive Engineer, Water Supply and Sanitation Division No.2, Moga, directing forfeiture of the earnest money deposited by the petitioner, is set aside. The respondents are directed to refund the earnest money of 2,48,000/- along with interest as awarded by this Court in its order dated 15.03.2022 @ 6% per annum from the date of award till realization as already passed in CWP-5183-2022, within a period of 2 months of the receipt of a certified copy of this order.

(VINOD S. BHARDWAJ)
JUDGE

02.05.2024

Mangal Singh

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