(2011) 04 AHC CK 0345

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24131 of 2011

Dharmendra Singh Traders and Another APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 5 ADJ 402 : (2012) 1 AWC 468 : (2012) 1 BC 139 : (2011) 8 RCR(Civil) 2987

Hon'ble Judges : Ashok Srivastava, J;Amitava Lala, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—The Petitioners'' contention is that they were not allowed to submit the tender form on acceptance of 2% earnest money required to be paid as per Para 18 of Schedule 19 of Financial Handbook Vol. V (Part I).

2. Petitioners'' own case is that in the place and instead of 2% earnest money the Respondent Rajya Krishi Utpadan Mandi Parishad has claimed 10% earnest money. The Petitioners have relied upon a Division Bench judgment of this Court reported in 2006(6) ALJ 22 DB Jal Akash v. State of U.P. and Ors, which was followed by various Division Benches of this Court and interim orders were passed. Such writ petitions might be pending till now. Only distinguishable factual aspect available between the referred judgment and the case herein is that no where therein the contractor was required to deposit 10% of the estimated cost as "earnest money" when on the other hand, in this case one of the clauses of the tender speaks about 10% as "Zamanat Dhanrashi" which grammatically seems to be security deposit but not the earnest money. In any event, no argument was advanced by the Petitioners showing such distinguishable feature. However, we ourselves have gone through the judgment and relevant provisions of Financial Handbook to come to an appropriate conclusion. Mr. Ravi Shanker Prasad learned Additional Chief Standing Counsel has contended that when the Petitioners'' own case is that 10% earnest money

has been directed to be deposited in the place and instead of 2%, as per the condition of the tender form, the aforesaid language of "Zamanat Dhanrashi" seems to be loosely mentioned and are interchangeable in nature. We have gone through other parts of the judgment where differentiation between the earnest money and the security deposit have been made and we followed the same in one of the matters being Writ Petition No. 17030 of 2011 Ruhel Khan Builders v. State of U.P. and Ors. decided on 24th March, 2011.

3. It is true to say that there is difference between earnest money and the security deposit. Question of deposit of earnest money comes when the tender form is submitted and the question of security deposit comes when a person allotted a contract through the tender for the purpose of executing the work. There is no doubt with regard to such understanding. But upon going through aforesaid paragraph 18 of the Financial Handbook we do not find any specific feature fixing the earnest money between 2% and 2.5%. On the other hand, paragraph 17 of the Financial Handbook speaks contracting officer may fix the amounts of earnest money at rates lower than those prescribed above (as set out below), if for any particular reason they consider it advisable to do so, but in no case should the earnest money be less than 1/2 percent of the estimated value of the work. We have gone through the amount of earnest money as per amount of tender which speaks as follows:

Amount of tender

Earnest money Rs.

(1) UptoRs. 2,000

50

(2) Above Rs. 2,000 but not exceeding Rs. 5,000

100

(3) Above Rs. 5,000 Ditto Rs. 10,000

200

(4) For each additional Rs. 5,000 or part thereof, a further sum of

100

4. Therefore, according to us, fixation of earnest money is not static in nature nor it will be made static for years together. It will be dependent upon the circumstances and the decision of the State in this regard, who is the financial guardian. It is also necessary for the State to maintain the standard of work through a contractor and on the basis of earnest money it is necessary to see whether such contractor is financially sound or not. The judgment as referred by the Petitioners i.e. M/s Jal Akash (Supra) is silent on this score.

5. Therefore, for all practical purposes the following order are required to be

passed hereunder:

(a) Since the last date of tender fixed is 28th April, 2011 i.e. tomorrow, therefore, the tender with the existing earnest money of 2% as per the judgment i.e. M/s Jal Akash (Supra) be deposited without prejudice to the rights and contentions of the parties.

(b) Since no date of opening the tender, according to the parties, is fixed, the matter is sent back to the State Government for taking decision in this regard for all practical purposes now onwards within one month from the date of communication of this order, who will consider the matter taking into account the decision of the Court along with the judgment which has been referred herein and take a decision thereon.

(c) Subject to communication of the decision to the concerned department, the tender form will be opened and will be accepted for the purpose of appropriate selection or it will be returned.

The writ petition is, accordingly, disposed of.

However, no order is passed as to costs.

6. Since learned Counsel for all the parties are present hereunder they will formally inform the authority concerned to accept the tender without prejudice to the rights and contentions of the parties, if the certified copy of the order is not ready for delivery by that time.

Ashok Srivastava, J.

7. I agree.

