

**(2013) 04 CHH CK 0019**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition No. 2429 of 2001**

H.R. Construction

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 08-04-2013

**Acts Referred:**

**Citation :** AIR 2013 Chh 110 : (2013) 2 CGBCLJ 286

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** Sourabh Sharma, for the Appellant; H.S. Ahluwalia, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Satish K. Agnihotri, J.—The petitioner questions the legality and validity of the order dated 21.08.2001 (Annexure P/6) whereunder the tender submitted by the petitioner on joint venture with M/s. Pilcon Engineering, was cancelled and the earnest money deposited against the tender offer, was forfeited by the competent authority. The facts, in brief, are that pursuant to the advertisement for construction of Pile Foundations on Hasdeo river, the petitioner, on a joint venture alongwith M/s. Pilcon Engineering offered his tender for pile foundation, pier and two PSC span of bridge No. 43 on Hasdeo river in connection with construction of 3rd line between Akaltara and Champa Railway Station on S.E. Railway. The tender offered by the petitioner was accepted on 20.05.2001. As per the undertaking (Annexure R/1, page 44 of paper book), wherein it was clearly stated that "I/We also agree to keep this Tender open for acceptance for a period of 90 (Ninety) days from the date fixed for opening the same and in default thereof, I/We will be liable for forfeiture of my/our security deposit". It was further accepted by the petitioner that "A sum of Rs. 50,000/- is hereby forwarded as for earnest money. The full value of the earnest money shall stand forfeited without prejudice to any other rights or remedies if, (a) If I/we withdraw my/our offer within the validity of tender, or (b) I/We do not execute

the contract document within seven days after receipt of such notice issued by the Railway that such documents are ready or (c) I/We do not commence the work within Ten days after receipt of the orders to that effect". Admittedly, the same was accepted on 20.05.2001.

2. There is no dispute that by the joint venture agreement dated 12.02.2001 (Annexure P/4), the petitioner and M/s. Pilcon Engineering, Rajnandgaon, entered into a joint venture for tender and execution of the construction of Pile foundation, Pier and two PSC Spans of bridge No 63 on Hasdeo River in connection with construction of 3rd line between Akaltara and Champa Railway Stations on S.E. Railway, Tender Notice No. 4/CEC/BSP/2001 issued by C.E. (Constn)/SE. Railway/Bilaspur. In clause 7 of the said agreement, it was provided that the petitioner party No. 1 to the consortium/joint venture shall be the prime contractor and will be responsible for timely completion of work and coordinate with the Railways to receive payments and also to make all sorts of correspondence on behalf of this consortium/joint venture. Pursuant thereto, all the correspondences was made by the party No. 1 i.e. the petitioner. In the meantime, after the tender was accepted by the Railway authorities, M/s. Pilcon Engineering, by letter dated 02.03.2001 (Annexure R/2) informed the Chief Engineer (C), S.E. Railway, Bilaspur, that the petitioner, before entering into the joint venture agreement, it was decided that the rate will be quoted after mutual discussion, however, the petitioner quoted the rates without mutual discussion, thus, the joint venture agreement between the petitioner and M/s. Pilcon Engineering be treated as cancelled. The respondent authorities, having considered the fact of cancellation of the joint venture agreement and also the fact that the petitioner had not taken any action within 90 days, the earnest money was forfeited.

3. Contention of Shri Sharma, learned counsel appearing for the petitioner is that the respondent has quoted the lowest rates. Further, the respondents have not suffered any loss and as such, forfeiture of earnest money is illegal, as held by the Supreme Court, in Yogesh Mehta Vs. Custodian Appointed under the Special Court and Others, .

4. On the other hand, Shri Ahluwalia, learned counsel appearing for the respondents would submit that since the joint venture agreement, on whose behalf the tender was offered, was cancelled and also no action was taken within a period of 90 days from the date of opening of the tender, the earnest money as per the terms of the tender offer was forfeited. If the work has been delayed for 90 days, there may not be same offer as price have increased during that period and the delay in completion of construction work would have aggravated the difficulty and financial loss. Shri Ahluwalia would further submit that the offer of the petitioner was lowest but the same was not accepted as the petitioner quoted totally unworkable and very low rates. This could have certainly led to non-execution of work, disputes, number of claims and non-completion of work as well as delay.

5. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

6. On careful consideration, it is found that the above facts are indisputable. The rates were offered in response to the tender notice by the petitioner i.e. the first party of the joint venture agreement between the petitioner and M/s. Pilcon Engineering. No steps could be taken within a period of 90 days. The second party i.e. M/s. Pilcon Engineering informed the Railways that the Joint Venture offering tender was already cancelled as the rates quoted by the petitioner was done without mutual consent. It is also not in dispute that if the tender offer was withdrawn within 90 days, the earnest money so deposited was liable to be forfeited and accordingly it has been done.

7. Contention of Shri Sharma that since the petitioner was given the responsibility of correspondence and completion of the contract even if M/s. Pilcon Engineering had withdrawn, that would not make any difference, is noticed to be rejected. The joint venture agreement was duly executed and under the agreement, the petitioner only had the right to enter into correspondence with the Railways. The tender offer was made by the petitioner on behalf of the joint venture of the petitioner and M/s. Pilcon Engineering. If one party to the joint venture had withdrawn from the joint venture, the offer stands cancelled. In the case on hand, the offer stood withdrawn. In the instant case, accordingly, the tender was not considered and as per the terms of the agreement, earnest money was forfeited. The ground of cancellation submitted by the respondents/ Railways in its return cannot be accepted as the order impugned informs forfeiture of the earnest money on other grounds. The ground stated therein was well founded.

8. Reliance of the petitioner in Yogesh Mehta (supra), is not relevant to the facts of the case as forfeiture of the earnest was a condition of the tender form which was duly accepted by the petitioner alongwith M/s. Pilcon Engineering.

9. Even otherwise, when the tender form was offered on joint venture and letter was written by M/s. Pilcon Engineering to withdraw the tender offer, M/s. Pilcon Engineering was a necessary and proper party in this petition. The petitioner has not impleaded M/s. Pilcon Engineering as party respondent, thus, on this count also, this petition deserves to be dismissed for want of impleadment of necessary party.

10. For the reasons stated hereinabove, there is no infirmity or illegality in the impugned order dated 21.08.2001 (Annexure P/6) on merit as well as for want of impleadment of necessary party, this petition is dismissed. No order as to costs.