
(2014) 02 AHC CK 0097
In the Allahabad High Court
Case No : C.M.W.P. No. 8959 of 2014

M/s. New ERA Builders and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Citation : (2014) 3 ADJ 480 : (2014) 103 ALR 626

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : J.P. Pandey, Advocate for the Appellant; Shivam Yadav, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi and Vivek Kumar Birla, JJ.—Heard Sri J.P. Pandey, learned Counsel for the petitioners, and Sri Shivam Yadav for the respondents No. 2 and 3. The challenge raised in this writ petition is to the Government Order dated 8.6.2012 as well as the consequential action as communicated by the impugned letter dated 7.9.2013 calling upon the contractors of the respondents authority, including the petitioners, to furnish additional performance guarantee/ security in terms thereof.

2. The contention of Sri Pandey is that in the absence of any relevant authority under the financial handbook, the Government Order dated 8.6.2012 runs counter to Rule 3 of Vol. VI Chapter 1 of the Financial Handbook. The said Rule is quoted hereinunder:

3. The rules in this volume may be supplemented by orders and detailed instructions which may be issued by the administrative department of the Government in consultation, where necessary, with the Finance Department. The orders and instructions so issued should be considered as authoritative in so far as they may not be in conflict or inconsistent with the Rules in this volume.

3. Sri Pandey further submits that Rule 365 thereof clearly prescribes a

deduction of 10 per cent from the payments as security for the due fulfillment of the contract and therefore the impugned Government Order being inconsistent as per Rule 3, deserves to be ignored.

4. Having considered the submissions raised, we find that Rule 365 says that security for the due fulfillment of the contract should invariably be taken. The said rule, therefore, in our opinion does not prohibit the State Government from prescribing any additional norms for performance guarantee and from the impugned Government Order we find that this prescription has been made afresh keeping in view the report of the Public Accounts Committee and the Technical Committee in order to ensure that the firms or the contractors do not abandon the work for which contracts have been awarded. It is, therefore, to secure the interest of the department that this additional performance guarantee/security has been imposed which has been adopted by the respondent-authority as well.

5. Sri Shivam Yadav, learned Counsel for the respondents No. 2 and 3 has invited the attention of the Court to another Division Bench judgment of this Court in Writ Petition No. 53697 of 2013 decided on 30.9.2013 where a similar issue, upon being raised, has been negatived and the petition was dismissed. Having perused the judgment, we find no good reason to differ from the same, over and above the reasons given by us hereinabove. Consequently, no ground is made out for interference. Rejected.