

(2023) 04 PAT CK 0067

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15128 Of 2018

M/S Rehanam Construction Pvt. Ltd

APPELLANT

Vs

Chairman Cum Managing Director

RESPONDENT

Date of Decision : 17-04-2023

Acts Referred:

Citation : (2023) 04 PAT CK 0067

Hon'ble Judges : P. B. Bajanthri, J;Arun Kumar Jha, J

Bench : Division Bench

Advocate : Raj Kishore Prasad, Prasoon Sinha

Final Decision : Dismissed

Judgement

1. None appears for the petitioner.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

"i. For quashing the order dated 17.10.2015 passed by the respondent No.2, whereby and where under he, in purported exercise of clause 16.6 of the SBD, has forfeited the EMD of Rs. 85 lakh, deposited by the petitioner while submitting the tender documents and has further held that forfeiture shall not come in the way in taking other penal action, overlooking the explanation submitted by the petitioner and his proposal of withdrawal from the bid, as forthwith it was detected that the while uploading tender documents, the experience certificate has wrongly been attached by the cyber cafe, then he requested respondents to withdraw the bid submitted on his behalf and this action was taken by the petitioner at the time of technical evaluation of bid, even prior to opening the financial bid, thus there is no application of clause 16.6 of the SBD in the present case, moreover there is no such clause in the NIT which says that before opening the financial bid the bidder cannot withdraw his bid, and this is well settled law which could be seen from Sec. 5 and 9 of the contract Act 1872, apart from that this proposition is supported by several judgements passed by different high courts, which says that a persons who makes an offer is entitled to withdraw it

before its acceptance, and definitely the acceptance of tender of the petitioner was not made by that time in this case, hence the respondents have no jurisdiction to take such coercive action, however at one hand they have disqualified the tender and other hand passing the order for forfeiting the EMD of Rs. 85 lakh is bad in law as well is against settled proposition of law. And thus the said clause does not authorizes the respondent to forfeit the EMD, as clause 16.6 of SBD says:-

"The Earnest money may be forfeited:--

(a) If the Bidder withdraw the Bid after Bid opening during the period of Bid validity;

(b) If the Bidder does not accept the correction of the Bid Price, pursuant to Clause 26; or

(c) in the case of a successful Bidder, if the Bidder fails, within the specified time limit to

(i) Sign the Agreement or

(ii) furnish the required Performance Security. However in this case neither the bid was disposed finally nor issued the letter of acceptance of bid of the petitioner, hence the order impugned dated 17.10.2015 may be quashed.

ii. For holding the impugned order to be influenced with malice and prejudiced as at one hand he has disqualified the bid and on other had disqualified the bid and rejected the explanation along with withdrawal of bids of the petitioner and forfeited the huge amount of EMD, overlooking that under their own organization the work of cores has been executed by the petitioner and still executing the work under respondents, hence he had no occasion for submitting the false experience certificate before them, while uploading the tender under the NIT No. 36/2015/BPBCC, work no. - 1, for building construction of B.M.P, Training Centre in Dumraon, Dist – Buxar, Bihar. However since withdrawal was offered by the petitioner prior to tender disposal as such there was no reason to forfeit the EMD. Hence the impugned order is patently illegal, bad and influenced with malafide just to ruin the petitioner and cause hardship against mandates of Art 19 of the Constitution of India.

iii. For direction the respondent concerned to release the amount of EMD with statutory interest and further to restrain them from taking any other penal actions against the petitioner and Further for staying operation of impugned order till pendency of this writ application.

iv. For granting any other relief/s for which the petitioner be found entitled in the eye of law."

3. On 07.04.2023 following order was passed:

"None appears on behalf of petitioner.

Petitioner submitted his bid on 03.07.2015 and technical bid was opened on 06.07.2015. The concerned respondent noticed that there was certain defects insofar as production of certain documents along with bid by the petitioner. In the result, he had issued show cause notice on 23.07.2015. Thereafter, petitioner has withdrawn the bid on

25.07.2015. In view of these facts and circumstances, concerned respondent proceeded to forfeit the EMD in the light of Clause 16.6 (a) of Standard Bidding Documents. Thus

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the petitioner has assailed the impugned action of the respondents insofar as forfeiting of EMD.

Re-list this matter on 17.04.2023. If there is no representation on the next date of hearing, petition would be treated as heard."

4. The petitioner has withdrawn the Bid on 25.07.2015, therefore, respondents have rightly invoked Clause 16.6 (a) in forfeiting the EMD amount. Clause 16.6 reads as under:

"16.6. The Earnest Money may be forfeited"

(a) If the Bidder withdraws the Bid after Bid opening during the period of Bid validity;

(b) If the Bidder does not accept the correction of the Bid Price, pursuant to Clause 26; or

(c) In the case of a successful Bidder, if the Bidder fails within the specified time limit to

(i) sign the Agreement or

(ii) furnish the required Performance Security."

5. In the light of the aforementioned Clause, the petitioner has not made out a case so as to interfere with the impugned action of the respondents insofar as forfeiting of EMD.

6. Accordingly, writ petition stands dismissed.

At 2:15 pm :

7. Learned counsel for the petitioner submitted that he should be heard in the matter, therefore, the matter was taken up at 2:15 pm.

8. Learned counsel for the petitioner submitted that the petitioner's grievance has been redressed, therefore, the present petition does not survive for consideration.

9. Accordingly, present writ petition stands dismissed as withdrawn.