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**Associated Builders and Contractors Vs. South Eastern Coalfields Ltd. and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/504805

**Court** : Madhya Pradesh

**Decided On :** Jul-10-2007

**Reported in** : 2007(3)MPHT426

**Judge** : Shantanu Kemkar, J.

**Appellant** : Associated Builders and Contractors

**Respondent** : South Eastern Coalfields Ltd. and ors.

**Disposition** : Petition allowed

**Judgement** :
ORDER

**Shantanu Kemkar, J.**

1. By filing this petition under Article 226 of the Constitution of India the petitioner has challenged the order dated 8-10-05 (Annexure P-1) issued by the respondents forfeiting the amount of earnest money deposited by it.

2. Pursuant to the Notice Inviting Tender (for short 'NIT') dated 22-3-05 (Annexure P-3) the petitioner submitted his tender for the work of: (A) Transportation of coal from Jamuna 1 and 2 incline and Jamuna 5 and 6 incline to Jamuna OCM Railway

Siding via Colliery approach Road and Kushiyara Phatak with minimum 20 tes. Per day lead 4.58 K.M. (B) Transportation of coal from Jamuna 1 and 2 incline and Jamuna 5 and 6 incline to Govinda CHP/ Railway Siding via Cement Road and Pitch Road with minimum 400 tes. per day Lead 8.3 K.M. along with the tender for the petitioner also submitted Demand Draft No. 090778, dated 14-6-05 in terms of Clause 6 of NIT.

3. In response to the aforesaid NIT apart from the petitioner's tender one more tender of one Mahaveer Singh of Delhi was received. On evaluation of the Part I of the tender the respondents found that both the tenderers have not submitted certain documents. Accordingly, the tender committee informed both the tenderers to submit the required documents but both the tenderers did not submit the required documents. In the circumstances, instead of rejecting the tenders of both the tenderers, the tender committee opened the price bids of both the tenderers and found the tender of Mahaveer Singh to be lowest. However, no work order was issued to Mahaveer Singh.

4. Thereafter, vide impugned order dated 8-10-05 (Annexure P-1) the respondents decided to re-tender the work and informed the petitioner that since the petitioner did not submit the documents in spite of repeated letters the earnest money deposited by it stands forfeited.

5. The petitioner contends that the said order regarding forfeiture of its earnest money is contrary to Clause 6 of the NIT (Annexure P-3) and as such liable to be quashed. The petitioner further contends that it being unsuccessful tenderer the respondents were duty bound to refund it the earnest money as envisaged in Clause 6 of the NIT but instead of refunding the same the respondents have acted arbitrarily in forfeiting the same.

6. The respondents contend that since the petitioner failed to submit the documents in spite of repealed opportunities the decision of forfeiture of its earnest money deposit is justified.

7. In order to appreciate the contentions raised by both the parties it would be appropriate to refer Clause 6 of the NIT.

Clause 6 of the NIT reads thus:

Earnest money to be deposited : 75,864 (20% of estimated value) Earnest money to be deposited by bank draft in favour of South-Eastern Coal Fields Limited, J & K Area A/C 'Payable at SBI Branch Jamuna Colliery (M.P.) and attached to the Tender (Part I). The Earnest Money shall be refunded to the unsuccessful tenderer after finalisation of the tender and award shall bear no interest.

8. On a bare perusal of the aforesaid Clause 6 of the NIT it is very clear that the earnest money is refundable to the unsuccessful tenderer after finalisation of the tender. Admittedly, the petitioner was not a successful tenderer. The tender of lowest tenderer Mahaveer Singh was also not accepted but the respondents decided to retender the work. It is not even the case of the respondents that the petitioner's tender was accepted and he failed to execute the work. In the circumstances the decision of the respondents to forfeit the petitioner's earnest money cannot be said to be inconsonance with condition No. 6 of the NIT.

9. Having regard to the aforesaid in my considered opinion the action of the respondents in forfeiting the petitioner's earnest money cannot be sustained and is liable to be quashed. Accordingly, the impugned order dated 8-10-2005 (Annexure P-1) by which the petitioner's earnest money has been forfeited is quashed. Consequently, the respondents are directed to refund the earnest money deposited by the petitioner to it within two months.

10. In view of the condition in the NIT that the earnest money shall be refunded to the unsuccessful tenderer after finalisation of the tender and award shall bear no interest, petitioner would not be entitled for interest there on till the respondents decided to retender on 8-10-2005. However, since the petition has not been filed promptly, the petitioner would also not be entitled for interest upto the date of filing of the petition and the petitioner shall be entitled for interest from 17-7-2006 the dale of filing of this petition, at the rate of 9% p.a., till payment is made by the respondents.

11. The petition is allowed. No orders as to costs.

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