

Writ Petition No. 2629 of 2013 (M/S)

Dinesh Chandra Patni

.....Petitioner

Versus

State of Uttarakhand and others

.....Respondents

Present:

Mr. Rahul Consul, Advocate for the petitioner.

Mr. R.C. Arya, Standing Counsel for the State/respondents.

Hon'ble Alok Singh, J (Oral).

Undisputedly, respondent invited e-tenders vide notification dated 13.5.2013 from the registered Ist Class contractors for construction of motor bridge; petitioner and other contractors submitted their respective tender; validity of tender was ninety days; last date of submission of tender was 27.5.2013, therefore, rates quoted in the tender were valid for ninety days i.e. till 27.8.2013; initially tender of one Lal Singh was accepted, however, he failed to commence the work, therefore, his security deposit amounting Rs. 2,90,000/- was forfeited and vide communication dated 31.7.2013, petitioner as well as another contractor Sri Harish Singh Aithani were called for negotiations and were requested to submit their respective rates on or before 12.8.2013; petitioner submitted his revised rates on 12.8.2013 with the letter that validity of the rates would be till 30.8.2013 only; revised rates of the tender submitted by the petitioner were accepted by the Department and acceptance letter dated 30.8.2013 was sent to the petitioner vide Registered Post AD as revealed from Annexure No. CA-1 and CA-4 to the counter affidavit; petitioner, vide acceptance letter dated 30.8.2013, was

called upon to furnish performance guarantee of Rs. 6,90,000/- and additional performance guarantee of Rs. 10,35,000/- (total 17,25,000/- in the shape of FDR/TDR or bank guarantee and to execute the formal contract within a week from 30.8.2013, failing which security of Rs. 2,90,000/- already deposited by the petitioner along with original tender would be forfeited in favour of the Department; petitioner did not deposit performance guarantee as well as additional performance guarantee as required by the Department vide letter dated 30.8.2013 nor reported to execute the formal agreement, therefore, vide impugned order dated 23.9.2013, petitioner was informed that his security amount of Rs. 2,90,000/- stood forfeited in favour of the Department. Feeling aggrieved, petitioner has approached this Court by way of filing present writ petition for quashing of the order dated 23.9.2012, Annexure No. 1 to the writ petition, forfeiting the amount of Rs. 2,90,000/-, and to issue Mandamus commanding the respondents to release the forfeited security amount of Rs. 2,90,000/- in favour of the petitioner.

I have heard Mr. Rahul Consul, learned counsel for the petitioner and Mr. R.C. Arya, learned Standing Counsel for the respondents, and have carefully perused the record.

Mr. Rahul Consul, learned counsel for the petitioner, does not dispute that as per condition No. 2.1 of the tender notice, security deposited by the contractor shall stand forfeited if bidder/contractor fails to furnish performance security within ten days after the acceptance. Mr. Rahul Consul, however,

vehemently argued that although acceptance letter

was said to be issued on 30.8.2013 vide postal receipt dated 30.8.2013, Annexure No. CA-4 to the counter affidavit, however, same was not served on the petitioner, therefore, petitioner is not bound by the acceptance. Consequently, it was not open to the Department to forfeit security amount of the petitioner. Mr. Rahul Consul, learned counsel for the petitioner, further contends that since validity of the rates quoted by the petitioner in the tender and in the negotiation was valid till 30.8.2013, therefore, acceptance ought to have been made and communicated to the petitioner on or before 30.8.2013 and, admittedly, letter dated 30.8.2013 was not tendered to the petitioner on or before 30.8.2013, therefore, it cannot be said that rates quoted by the petitioner were accepted on or before 30.8.2013, thus, forfeiture of the security amount is bad in law. —

Undisputedly, revised rates quoted by the petitioner were held valid till 30.8.2013 and acceptance letter was issued by the Department accepting the rates quoted by the petitioner on 30.8.2013 vide postal receipt, Annexure No. CA-4 to the counter affidavit. —

Section 4 along with illustrations of the Indian Contract Act, 1872 is being reproduced hereunder:

"4. Communication when complete. —*The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.*

The communication of an acceptance is complete, —

as against the proposer, when it is put in a course of transmission to him so as to be out

of the power of the acceptor,- as against the proposer.

The communication of a revocation is complete,-

as against the person who makes, it when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations

(a) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete,

as against A when the letter is posted;

as against B, when the letter is received by A.

(c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is dispatched.

It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is dispatched, and as against A when it reaches him."

Perusal of Section 4 along with illustration (b) thereof would demonstrate that communication of the acceptance is complete against the proposer when letter of acceptance is posted, however, that acceptance can be revoked by the acceptor i.e. by the Department before same could be received by the proposer/contractor. In a matter of contract,

notification/advertisement inviting the tender is an invitation to make offer and if pursuant to the invitation any tender is furnished by the contractor, that tender is always treated as proposal/offer and the moment Department accepts it and acceptance is communicated/sent by a letter then acceptance is complete against the proposer/contractor on the date when letter of acceptance is posted.

In the present case, since the letter of acceptance was posted by the Department on 30.8.2013 by Registered Post AD, therefore, acceptance against the petitioner/contractor stood finalized on 30.8.2013. Since, petitioner failed to furnish performance guarantee, as asked by the Department vide letter dated 30.8.2013, therefore, forfeiture of the security amount as per clause 2.1 of the tender notice seems to be totally justified.

Consequently, writ petition fails and is hereby dismissed.

No order as to costs.

CLMA No. 12246 of 2013 also stands disposed of accordingly.

Sd/-
(Alok Singh, J.)
9.5.2014

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Sd/-
Section Officer
12/5/14
High Court of Uttarakhand
NAINITAL.