

(2014) 05 P&H CK 0514

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 7230 of 2014 (O&M)

M/s. Kansal Builders
and Another

APPELLANT

Vs

Union of India and
Another

RESPONDENT

Date of Decision: May 27, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Sanjay Kishan Kaul, C.J; Arun Palli, J

Bench: Division Bench

Advocate: Tajender K. Joshi, Advocate for the Appellant

Final Decision: Allowed

Judgement

Sanjay Kishan Kaul, C.J.

CM-6823-2014:

1. Leave is granted to place on record the affidavit stated to be in terms of the order dated 21.4.2014.

2. The application is accordingly allowed.

CWP-7230-2014:

3. Rule D.B.

4. Mr. Rahul Garg, Advocate, accepts notice for the respondents.

5. At the request of learned counsel for the parties, the petition is taken up for final disposal.

6. The Senior Divisional Engineer-II of Northern Railways/respondent No. 2 invited proposal by issuing tender form for construction of additional rooms in running room Dhuri in Patiala which was to be opened on 18.6.2013. A participant in the tender was required to deposit earnest money of Rs. 59,000/- by way of fixed deposit receipt in the name of respondent No. 2.

7. The petitioner-firm participated in the tender. It is stated that the petitioner-firm was the L-1 and, thus, certain negotiations of rates took place on 27.9.2013 and the work was allotted to petitioners vide Letter of Acceptance (LOA) dated 8.10.2013 for a contract value of Rs. 31,64,378/-. The petitioner-firm was also called upon to deposit a Performance Guarantee (PG) amounting to 5% of the contractual value to the tune of Rs. 1,58,219/- within 30 days from the date of issue of the LOA. An extension of time for submission of PG up to 30 days was permissible on payment of penal interest of 15% for the period beyond 30 days, i.e., 31st day after the date of issuance of LOA. The contract was liable to be terminated with earnest money forfeited if such a PG was not submitted as aforesaid.

8. The petitioners submitted the PG by way of a fixed deposit Receipt of Rs. 1,58,500/- in the name of respondent No. 2 on 7.12.2013 in compliance of the LOA dated 8.10.2013. It is, thus, the claim of the petitioners that the PG was submitted on the sixtieth day of issuance of LOA. The petitioners sought to start the work thereafter by seeking permission including vide letter dated 21.12.2013, but the intimation was received only on 4.3.2014 and that too informing the petitioners that there has been failure on their part to submit the requisite bank guarantee within 60 days and, thus, even their earnest money was being forfeited.

9. It is the aforesaid circumstances which have compelled the petitioners to approach this Court by filing the present petition under Article 226 of the Constitution of India assailing the letter dated 4.3.2014 (Annexure P/4) carrying a triple consequence of cancellation of tender, forfeiture of earnest amount and debarment of petitioners from participating in re-tendering of the work. A writ of mandamus has also been sought directing the respondents to allow the petitioners to complete the contractual work.

10. The affidavit filed on behalf of the respondents is a brief one as the reliance placed is only on Clause 16(4)(a) of the Indian Railways Standard General Conditions of Contract July, 2013 Edition where the procedure for obtaining PG is mentioned as under:

The successful bidder shall have to submit a Performance Guarantee (PG) within 30 (thirty) days from the date of issue of Letter of Acceptance (LOA). Extension of time for submission of PG beyond 30 (thirty) days and upto 60 days from the date of issue of LOA may be given by the Authority who is competent to sign the contract agreement. However, a penal interest of 15% per annum shall be charged for the delay beyond 30 (thirty) days, i.e. from 31st day after the date of issue of LOA. In case the contractor fails to submit the requisite PG even after 60 days from the date of issue of LOA, the contract

shall be terminated duly forfeiting EMD and other dues, if any payable against the contract. The failed contractor shall be debarred from participating in re-tender for that work.

11. Learned counsel for the respondents, relying on the aforesaid clause, thus, submits that the date of issuance of LOA, i.e., 8.10.2013 had to be counted and, thus, the PG had to be submitted up to 6.12.2013 while the petitioners submitted the bank guarantee on 7.12.2013.

12. We are unable to accept the contention advanced by learned counsel for the respondents. The clause, as aforesaid, talks about the 31st day after the date of issue of LOA. Not only that, even otherwise the date of issuance of LOA has to be excluded and, thus, the time period has to be a clear 30 days or a clear 60 days, as may be applicable. These 60 clear days, as in the case of the petitioners, would thus expire on 7.12.2013, i.e. 23 days of October, 30 days of November and 7 days of December. Thus, the manner of counting of 60 days has not been correct which is the cause why it has been alleged by the respondents that the petitioners submitted the PG on the 61st day.

13. The result of the aforesaid is that the letter dated 4.3.2014 (Annexure P/4) is quashed and, consequently, Performance Guarantee is held to have been submitted within time by the petitioners. The forfeiture of the earnest money as well as debarment being the consequence would, thus, also stand quashed. Learned counsel for the respondents has clarified that the Performance Guarantee was otherwise in order.

14. Learned counsel for the petitioners states that a fresh tender is being floated. Naturally, the same would stand withdrawn in view of the reliefs granted aforesaid.

15. The respondents to take steps to issue the necessary letter for commencement of work by the petitioners within a maximum period of fifteen days from today within which period of time the petitioners will also take all necessary steps including re-submission of the performance guarantee within ten days, as prayed for by learned counsel for the petitioners.

16. Petition is accordingly allowed, leaving the parties to bear their own costs.