IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 15th OF OCTOBER, 2025

WRIT PETITION No. 3594 of 2013

PRAMOD AGRAWAL

Versus

MADHYA PRADESH RAJYA BEEJ EVAM FARM VIKAS NIGAM

Appearance:

Shri Rajesh Maidiretta - Advocate for petitioner.

Shri Sanjeev Kumar Singh - Advocate for respondent.

ORDER

Per: Hon'ble Shri Justice Sanjeev Sachdeva, Chief Justice

1. Petitioner has filed the subject petition seeking quashing of acceptance letter dated 04.02.2013 and a direction to the respondents to refund the tender papers and the earnest money deposit of the petitioner.

2. Respondent had invited quotation for supply of 5 Lakhs D.W.Tarpaulin Jute Bags and 1 Lakh S.B.T. Gunny Bags.

3. Petitioner submitted his bid on 25.01.2013. The time for submission of the bids was by 03:00 pm on 28.01.2013 and the bids were to opened be at 3:30 pm on 28.01.2013. As per the tender documents, petitioner was requested to furnish an earnest money deposit of Rs.7 Lakhs and Rs.3 Lakhs respectively for the two categories of bags. As per the petitioner instead of mentioning the rate per hundred bags, petitioner mentioned the rates per bag. As per the petitioner on 28.01.2013, petitioner realizes his mistake and sent a fax on 03:10 pm and at

03:27 pm, withdrawing its bid and requesting the respondents not to open the tender.

4. Further, by communication dated 31.01.2013 petitioner once again informed the respondent that he had sought to withdraw his bid and withdrawal letter was faxed on 28.01.2013 prior to opening of the quotes however, it is contended that despite the submission of the withdrawal letter the bids were still opened.

5. By communication dated 04.02.2013, the petitioner was informed that their rates being lowest had been accepted and the petitioner was required to come forward to execute the agreement, failing which it was stated that the supply order would be liable to be cancelled and the earnest money deposit forfeited.

6. Petitioner responded to the letter dated 04.02.2013 and protested against the acceptance of the bid, thereafter subject petition has been filed.

7. The only contention of learned counsel for respondent is that the communication sent by the petitioner was just prior to the bid opening time i.e. at 03:30 pm and as such they were never communicated to the bid inviting authority and the bids were opened and since the petitioner's bid was the lowest, the same was accepted. He further submits that as per the tender document, the bids had to be kept valid for 90 days and the bid was accepted within 90 days and since the same was accepted and petitioner failed to come forward to execute the agreement or make the supply, the earnest money deposit has rightly been forfeited.

8. Reference may be had to the Clauses of the tender notice. Clause 2 of the terms and conditions specifies that the validity of rates quoted and the tender offer shall be for at least 90 days from the date of opening of the tender. Clause 9 of the tender document provides for forfeiture and refund of the earnest money

deposit/security money which reads as under:-

> "FORFEITURE AND REFUND OF THE EARNEST MONEY / SECURITY MONEY
> *a) In case the firm whose tender is accepted fails to supply the material at the quoted rate within the stipulated period and or contains any breach of any one or more of these terms and conditions of contract the security money deposited by the tenderer will be forfeited by the Nigam.*
> *b) Earnest money of the unsuccessful tenderer shall be refunded without interest with in reasonable period from the date decision regarding the tenders.*
> *c) The security money deposited by the successful tenderer shall be retained by the Nigam till final payment is made and account is completely settled."*

9. We note that the only condition in Clause 9(a) which provides for forfeiture of the earnest money deposit prescribes that in case, the firm whose tender is accepted fails to supply the material at the quoted rate within the specified period and or commits breach of any one or more of terms of contract the security money deposited by the tenderer will be forfeited.

10. In the instant case, the petitioner submitted its bid and the bids were to be opened at 28.01.2013 at 03:30 pm. As per the petitioner, petitioner withdrew its bids just prior to the bid opening time, which is disputed by the respondent. Even if it is assumed that the fax send by the petitioner prior to the bid opening time was not received by the respondent, it is not in dispute that by the subsequent communication dated 31.01.2013, petitioner sought to withdraw its bid.

11. Reference may be had to Clause 3 of the tender document which reads as under:-

> "ACCEPTANCE OF TENDERS :
> *a) Tenders will be opened on the specified date in presence of such tenderers who may wish to bp present.*
> *b) The successful tenderer(s) will be intimated by letter(s) or any other means of communication and the tenderer(s) so informed shall be bound from the time of transmission of such acceptance. Formal acceptance of the tender will be forwarded to the successful tenderer in due course but it shall serve merely as confirmation of the initial communication and shall not effect the time from which offer(s) is/are bound by the contract(s).*
> *c) The Nigam is not bound to accept the lowest quotation. Any or all the tender*

offers may be rejected without assigning any reasons thereof. The decision of the Nigam in the matter will be final and binding.
d) The Nigam may decide to split the order among two or more firms in a manner convenient to it.
e) Successful tenderer shall execute an agreement bond in prescribed form."

12. Clause 3(b) specifies that the successful tenderer(s) would be intimated by letter(s) or any other means of communication and the tenderer(s) so informed shall be bound from the time of transmission of such acceptance. In the present case, Respondents by communication dated 04.02.2013, sent through a fax, communicated the acceptance. The fax was transmitted on 04.02.2013.

13. In the instant case, NIT amounts to an invitation to offer and the petitioner's bids submitted on 25/28.01.2013 amounted to an offer/proposal to the respondents. This offer was withdrawn prior to the acceptance by communication dated 04.02.2013.

14. Section 5 of the Contract Act provides that a proposal may be revoked at any time before communication of its acceptance is complete as against the proposer but not thereafter. In terms of Section 6 of the Contract Act, an offer is revoked by communication of notice of revocation by the proposer to the other party.

15. We may note that in the subject tender there is no stipulation that the bidder cannot withdraw its offer prior to acceptance or any consequences provided for withdrawal of the offer before its acceptance. However, there is a stipulation that on communication of the acceptance, the tenderer shall be bound from the time of transmission of such acceptance. This clearly implies that it is only when the communication of acceptance is transmitted that the bidder is bound by his bid.

16. In the instant case, admittedly the petitioner withdrew its bid by letter dated 31.01.2013 and the communication of acceptance were transmitted on

04.02.2013 after the revocation was communicated to the respondents. Clearly in the instant case, the petitioner withdrew its bid i.e. the proposal before the communication of the acceptance was transmitted by the respondents.

17. As noticed hereinabove, there is no stipulation in the tender document that the bidder cannot revoke its offer prior to its acceptance. In view of the above, petitioner has established that the respondents could not have accepted the bid of the petitioner which was withdrawn prior to its acceptance.

18. Consequently, the petition is allowed and the letter of acceptance both dated 04.02.2013 and communication dated 14.02.2013, whereby the EMD was forfeited were quashed. Respondents are directed to refund the earnest money deposited by petitioner against both the bids along with interest at the rate of 6% per annum, within a period of four weeks from today.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(VINAY SARAF)
JUDGE

VPA