

WP(C) 2499/2017

BEFORE

HON'BLE MR. JUSTICE SUMAN SHYAM

Heard Mr. U.K. Nair, learned senior counsel for the writ petitioner.

The present writ petition has been filed assailing the decision of the respondent No. 1, as communicated by the letter dated 25-04-2017 addressed to the respondent No. 4, seeking to invoke the Bank Guarantee amounting to Rs. 75,00,000/- (Seventy Five Lacs) deposited by the petitioner along with his bid submitted in response to the NIT dated 09-07-2016.

Mr. Nair submits that the contractual work in question has already been awarded to the 3rd party and the petitioner is not claiming any relief in respect thereof. However, aggrieved by the manner in which the petitioner's bid security amount of Rs. 75,00,000/- (Seventy Five Lacs) is being sought to be forfeited by the respondents, the petitioner has been compelled to approach this Court. Learned senior counsel further submits that there is no clause provided in the Instruction to Bidder (ITB) permitting the respondents to take such drastic step imposing panel measure when the petitioner himself is not found to be involved in any illegal activity.

Refuting the said contention made by the petitioner's counsel, Mr. D. Das, learned senior counsel appearing on behalf of respondent Nos. 1 to 3 has submitted that the petitioner had made an attempt to bag the contract on the basis of a fraudulent document thereby exposing the respondent No. 1 to 3 to risk of serious nature. Since the integrity of the petitioner is found to be tainted, the respondent No. 1 was entitled to and has rightly taken the panel action against the petitioner.

The rival contention of the parties have received due consideration by this Court. I am of the view that the matter cannot be decided at the motion stage without the affidavit on behalf of the respondents be brought on record.

Also heard Mr. S. Chamaria, learned counsel appearing for the respondent Nos. 4 and 5.

In view of the above, issue notice of motion returnable on 06-06-2017.

Since the parties are already represented, no formal notice is called for in this case.

Also heard on the prayer of interim relief.

Mr. S. Chamaria, learned counsel appearing for the respondent Nos. 4 and 5 submits that acting on the basis of the letter dated 25-04-2017 the Bank Guarantee has not been invoked. But since the Bank Guarantee is being operated by the Punjab National Bank, which is not a party to the writ petition, hence, he is not in a position to make any further submission in the matter.

Taking note of the controversy involved in this writ petition as well as the urgency expressed in this case by Mr. Das, learned senior counsel, this Court deems it appropriate to take up the prayer of interim relief for further consideration on the next date fixed.

Accordingly, it is provided that the respondents may file their counter affidavit on or before 29-05-2017. The petitioner may rejoin, if so advised, within 02-06-2017.

The prayer for interim relief would be taken up for final disposal on 06-06-2017.

Until the next date fixed, operation of the letter dated 25-04-2017 (Annexure-5) shall remain suspended, subject to the condition that within 01 (one) week from today, the petitioner would communicate to the respondent Nos. 1 to 3 intimating that the validity of the Bank Guarantee in question has been extended beyond the next date fixed in this case.

List again on 06-06-2017.