

Government of Odisha
Works Department

File No.-07550401702017- 13286 /W, dt. 7 9.17

From

Sri A. Mahalik,
FA-cum- Addl. Secretary to Govt.

To

All Departments.

Sub- W.P. (C) No. 7120/2017 filed by Ajay Kumar Jain-Vrs-State of Odisha & others with similar other cases.

In inviting reference to the subject cited above the undersigned is directed to say that the Govt. in Works Department made amendment to Para-3.5.5 (v) of Note-II of OPWD Code, Vol.-I by modification vide Office Memorandum No.5288/W dt.04.05.2016 with the provision to deposit the differential amount between the amount put to tender and the quoted rate, as Additional Performance Security (APS) along with their tender to indemnify the Govt. instantly against any such loss caused due to acceptance of a tender with value less than the amount put to tender.

The above O. M. was challenged before the Hon'ble High Court of Orissa with a prayer to quash the said Office Memorandum. The Hon'ble High Court disposed the matter on 24.07.2017 and batch of similar cases with certain observation and direction as cited below.

"In view of the matter, the Writ Petition is allowed to the extent that the condition imposed by Office Memorandum dated 04.05.2015 by amending Para-3.5.5 (v) of Note-II of OPWD Code Vol. I by modifying the same and providing that Additional Performance Security (APS) of the amount of difference between the estimated cost and the cost of bid (If lower than the estimated cost) is to be provided at the time of submission of the bid, is quashed.

The said condition of providing Additional Performance Security of the amount of difference can be imposed only for a successful bidder, which can be required to be provided within such stipulated time as may be provided for, or else the bid of the successful bidder would be cancelled and the security deposited would be forfeited, if permissible in law, and further proceeding for blacklisting would be initiated as per law".

(P.T.O.)

The Ld. Govt. Advocate, O/o the Advocate General, Odisha has opined that pre deposit of Additional Performance Security (APS) has been quashed and as such that should not be insisted upon by any Officer-cum-Authority until it is set aside / or stayed by Supreme Court, if challenged. He has cited that tenders have been rejected on the ground of non-deposit of pre-Bid APS. ***The Hon'ble High Court of Orissa have taken a serious view of rejection of tender on this ground and will take Sou Motu contempt proceeding against the Officer including statutory authorities, which has been indicated as this is clear violation of order.***

The matter as regard implementation of orders 24.07.2017 passed by the Hon'ble Court is under process at Govt. level.

It is, therefore, requested that since Pre-Deposit of Additional Performance Security (APS) has been quashed, the said condition of providing Additional Performance Security of the amount of difference can be imposed only for a successful bidder, which can be required to be provided within such stipulated time as may be provided in the Tender process unless & until further instruction from Govt. in Works Department is received in the matter. Immediate steps may also be taken at their level to issue instruction to this effect to the Sub-Ordinate Offices under their control for the purpose.

This may be taken as **MOST URGENT**.

Yours faithfully,


FA-cum- Addl. Secretary to Govt.

Memo No. - 13287 W, dt. 7.9.17

Copy forwarded to the EIC (Civil), Odisha, Bhubaneswar / all Chief Engineers, Odisha (under Works Deptt.) / CMD, OB & CC Ltd., Bhubaneswar for information & necessary action.

They are requested to issue instruction to this effect to the Sub-Ordinate Offices under their control accordingly until further instruction.


FA-cum- Addl. Secretary to Govt.

Memo No. - 13288 W, dt. 7.9.17

Copy forwarded to the Govt. Advocate, O/o the Advocate General, Odisha, Cuttack for information & necessary action with reference to his letter No. 22143 (2) dt.06.09.2017.


FA-cum- Addl. Secretary to Govt.