

(2021) 04 SHI CK 0116

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2237 Of 2021

Baldev Kumar, Man Power Agency

APPELLANT

Vs

State Of Himachal Pradesh & Anr

RESPONDENT

Date of Decision : 06-04-2021

Acts Referred:

Citation : (2021) 04 SHI CK 0116

Hon'ble Judges : Ravi Malimath, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Vinod Thakur, Ashok Sharma, Rajender Singh Dogra, Amit Dhumal

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Mr. Amit Dhumal, learned Deputy Advocate General, takes notice on behalf of the respondents/State.

2. Respondents invited E-tenders on 4.9.2020 for providing security services at three Civil Hospitals i.e. Civil Hospital Dehra, Civil Hospital Kangra and Civil Hospital Nurpur District Kangra, H.P. Petitioner alongwith others participated in the tender process. The Tender Opening Committee disqualified the petitioner on the ground that he did not have the valid licence to run private security agency. Pursuant to a judgment passed in civil writ petition filed by the petitioner i.e. CWP No.4758/2020, decided on 5.01.2021, petitioner was allowed to participate in the bidding process and his technical bid was considered. The grievance of the petitioner now is that instead of opening financial bids of the bidders, the respondents on 31.03.2021, cancelled the e- Tenders. Against this backdrop, instant petition has been filed for the grant of following substantive reliefs:-

"(i) That writ in the nature of certiorari may kindly be issued by quashing the impugned cancellation letter dated 31.03.2021 (Annexure P-8) at Civil Hospital Dehra, Civil Hospital Kangra and Civil Hospital Nurpur, Distt. Kangra, Himachal

Pradesh.

(ii) That writ in the nature of mandamus may very kindly be issued by directing the respondents to open the financial bid of all the bidders and in case, the petitioner Firm comes as lowest bidder in the financial bid then the respondents be further directed to award the tender in favour of the petitioner Firm."

3. We have heard learned counsel for the parties. Learned counsel for the petitioner contended that the respondents could not have cancelled the tenders without assigning any reasons. Cancellation of tenders without opening bids of the participants have caused prejudice to the petitioner as a lot of time, energy and money was spent by him for participating in the tender process.

4. It is well settled that in the matter of award of contracts, the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the Court, which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest.(Refer Maa Binda Express Carrier and another Vs. North East Frontier Railway and Ors (2014) 3 SCC 760) In (2016) 14 SCC 172 titled State of Jharkhand and Ors. Vs. CWE- Soma Consortium, well settled principle was reiterated that the right to refuse the lowest or any other tender or to cancel the tender process and float a fresh tender is always available to the Government. So long as the bid has not been accepted, the bidder acquires no vested right. In this regard, it is apt to extract following paragraphs:-

"13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well-settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide Laxmikant and Ors. v. Satyawar and Ors. (1996) 4 SCC 208; Rajasthan Housing Board and Anr. v. G.S. Investments and Anr. (2007) 1 SCC 477 and Uttar Pradesh Awas Evam Vikash Parishad and Ors. v. Om Prakash Sharma (2013) 5 SCC 182).

14. The appellant-state was well within its rights to reject the bid without assigning any reason thereof. This is apparent from clause 24 of NIT and clause 32.1 of SBD which reads as under:-

"Clause 24 of NIT: "Authority reserves the right to reject any or all of the tender(s) received without assigning any reason thereof."

Clause 32.1 of SBD: "...the Employer reserves the right to accept or reject any Bid to cancel the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's action."

In terms of the above clause 24 of NIT and clause 32.1 of SBD, though Government has the right to cancel the tender without assigning any reason, appellant-state did assign a cogent and acceptable reason of lack of adequate competition to cancel the tender and invite a fresh tender. The High Court, in our view, did not keep in view the above clauses and right of the government to cancel the tender."

In the instant case, it has not been demonstrated that the impugned decision to cancel the tender process is unfair, discriminatory or mala-fide. It is not the case of the petitioner that any of his fundamental rights were violated by cancellation of the tender process. The Notice inviting tenders reserved 'the right to reject any or all the tender offers without assigning any reason'. The decision of the respondents to cancel the tender process in the facts of the case, therefore, cannot be termed as unreasonable. Hence, no interference is warranted and the petition is dismissed accordingly. Pending miscellaneous application is also disposed of accordingly.