

(2010) 12 UK CK 0134
In the Uttarakhand High Court
Case No : Writ Petition No. 1688 of 2010

Bhuwan Chandra Sunariya

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Citation : (2010) 12 UK CK 0134

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma,J.

1. By means of this writ petition, the Petitioner has sought the following relief:

(I) Issue a writ, order or direction in the nature of certiorari quashing the work order dated 9-9-2010 given in pursuance to the tender invited by Respondent No. 3 for food grains and other items in the Bhowali Sanatorium by tender notice dated 17-7-2010 only to the extent of item No. 1 (Annexure 1 and 2 to the writ petition).

(II) Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 3 to issue the work order in favour of the Petitioner only to the extent of item No. 1.

(III) Award the cost of the petition in favour of the Petitioner.

2. Brief facts giving rise to the present writ petition, according to the Petitioner, are that on 17-7-2010, a short term tender was invited by the Chief Medical Superintendent of the Bhowali Sanatorium (T.B. Hospital) for supply of four items- (1) food grains, (2) vegetables, (3) contingency items and (4) firewood to the said hospital. In the tender notice it was specifically stipulated that the rates should be comparative to the market rates and the lowest bidder shall be awarded the work order for supply of items. The tenders were invited on

26-7-2010 by 12 noon and the same were to be opened on the same day at 2.00 p.m. Copy of tender notice has been annexed as Annexure-1 to the petition. The Petitioner also participated in the said tender and submitted his rates for item No. 1 (food grains) and the bid of the Petitioner is alleged to be the lowest for item No. 1. The Petitioner claims that the F.D.R. deposit of the Petitioner was given back to the Petitioner on 7-9-2010 prior to finalization of the tender.

3. Earlier also, tenders were invited on 2-7-2010 for the same purpose, but the tender issued on 2-7-2010 was cancelled by the Respondent No. 3 in an arbitrary manner for the reasons best known to him.

4. The grievance of the Petitioner is that the lowest bid of the Petitioner for item No. 1 was wrongly ignored by the authority concerned and the amount of security deposit made by the Petitioner was mala fide refunded to the Petitioner on 7-9-2010 and the work order with regard to item No. 1 has been given to Respondent No. 4, the third lowest bidder.

5. On behalf of the Respondents No. 2 and 3, counter affidavit has been filed. It has been stated in para No. 12 of the counter affidavit that the comparative detail has been prepared according to practical and lowest rates obtained from the Mandi Samiti Haldwani and also from wholesale dealers. In paragraph No. 15, which is in reply to the contents of paragraph No. 13 of the writ petition, it is stated that on the request of the Petitioner made in writing, the F.D.R. was released in favour of the Petitioner.

6. Counter affidavit has also been filed on behalf of the Respondent No. 4. In clause d of the counter affidavit, the following averments have been made:

That the Petitioner as well as the Respondent No. 4 participated in the bidding process and submitted their respective tenders. Condition number 15 of the terms and conditions of the tendering process clearly stipulates that the bids must be equivalent to the market price of the item. Needless to mention by submitting their bids, the bidders accepted the terms and conditions by action also hence the unsuccessful bidder can not challenge the condition of the tender which has already been accepted by action as doctrine of estoppel will be operating against him.

7. In clause f of the counter affidavit of Respondent No. 4, it is stated that on 9th September 2010 the work order was issued to the deponent by the Respondent No. 3 and he was directed to deposit Rs. 50,000/- as security money within a week.

8. I have heard learned Counsel for the parties and perused the entire material placed before this Court.

9. Learned Counsel for the Respondents No. 4 has raised a preliminary objection in the course of arguments that the writ petition of the Petitioner is not maintainable for the simple reason that the Petitioner himself has submitted an application to the Chief Medical Superintendent concerned to release the F.D.R.

worth Rs. 28,000/- which had been deposited by the Petitioner pertaining to tender dated 26-7-2010 and the order for release was passed on 4-9-2010 itself. It is also argued that this application was will-fully made by the Petitioner without any protest and that too prior to finalization of the tender.

10. In the case at hand, admittedly, a tender was earlier issued on 2-7-2010 for supply of certain items to Bhowali Sanatorium, which was cancelled and a fresh tender was issued on 13-7-2010, in which many persons including the Petitioner and the Respondent No. 4 had participated. In the tender notice dated 13-7-2010, there is a condition precedent that the security deposit in the form of F.D.R., Term Deposit/National Savings Certificate shall be pledged in favour of the Chief Medical Superintendent and shall be attached with the tender. From a bare perusal of the Tender Notice in question which has been annexed by the Petitioner himself as Annexure-1 to the writ petition, it is obvious that the security amount for item No. 1-food grains, item No. 2- vegetables, item No. 3-contingency items and item No. 4-firewood is respectively Rs. 10,000/-, 8,000/-, Rs. 6,000/- and Rs. 4,000/- (total Rs. 28,000/-).

11. Undisputedly, the tender process was not finalized till 4-9-2010, when the Petitioner made an application to the authority concerned for getting his F.D. Rs. worth Rs. 28,000/- released in his favour. It is admitted to the Petitioner that the F.D. Rs. were released in his favour on 7-9-2010. The Respondent Nos. 2 and 3 have annexed the application dated 4-9-2010 moved by the Petitioner for release of the security deposits made by him. The application of the Petitioner dated 4-9-2010 addressed to the Chief Medical Superintendent concerned contains one line prayer that the F.D.R. worth Rs. 28,000/- filed in pursuance of tender dated 26-7-2010 be released to the Petitioner. This application has not been made under protest by the Petitioner, which would clearly indicate that the Petitioner on his own accord has withdrawn from the tender process of all the four items. Moreover, in case the Petitioner would have been put under pressure to withdraw the security amount by the Respondents, the Petitioner in the usual course of nature must have approached this Court immediately after getting the F.D.R. released, i.e. soon after 7-9-2010, but the Petitioner has filed the present writ petition on 25-9-2010. The contention of the Petitioner as asserted in paragraph No. 6 of the writ petition that the Respondent-authority surprisingly returned the F.D.R. deposit to the Petitioner on 7-9-2010 is not acceptable. The Petitioner has not denied that any such application dated 4-9-2010 (Annexure-6 to the counter affidavit of Respondent No. 2 and 3) was made by him.

12. Besides above, it is admitted that the tender process was not finalized till 7-9-2010, when the security deposits were taken back by the Petitioner. Had there been any intention of the Petitioner to claim work order in respect of item No. 1-foodgrains, the Petitioner would have retained a sum of Rs. 10,000/- with the Respondent No. 3 and there was no occasion for him to have asked for return of the entire security deposits made by him. In such circumstances, an adverse inference can be drawn against the Petitioner that the Petitioner in his own

motion had withdrawn from the tender process and, therefore, he cannot raise any grievance against the tender process in question.

13. For the reasons discussed above, the writ petition is devoid of any merit and is liable to be dismissed at the admission stage.

14. The writ petition is dismissed summarily. No order as to costs.