
(2005) 01 MP CK 0059

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1432, 1433, 1558 and 1559 of 2004

C.K. Asati

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-01-2005

Acts Referred:

Citation : AIR 2005 MP 96 : (2005) 3 BC 287 : (2005) ILR (MP) 50 : (2005) 1 MPHT 475 : (2006) 2 MPJR 69 : (2005) 1 MPLJ 573

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : Vivek Dalal, for the Appellant; Vinay Zelawat, for the Respondent

Judgement

S.K. Seth, J.

This order shall also govern the disposal of W.P. Nos. 1433/2004, 1558/2004 and 1559/2004 as the common question of law and facts involved in all the cases. For the sake of convenience, the facts of W.P. No. 1432/2004 may be noticed.

Petitioner is aggrieved by the communication dated 10-11-2004 issued by the respondent No. 3 - Executive Engineer, C.P.W.D., Indore Central Division No. 1, Indore whereby the application submitted by the petitioner for issuance of tender documents was rejected.

The facts lie in narrow compass. One Smt. Chandrakala Asati was running a proprietary concern. She was a registered civil contractor. Later on, Smt. Chandrakala Asati and 4 other persons formed a partnership firm in the name and style of M/s. C.K. Asati. This aforesaid partnership firm was duly registered by the Registrar of Firms & Societies. The respondents floated a NIT which is available on record as Annexure P-2. One of the condition mentioned in the NIT was as under :-

"The tender shall be issued to approved and eligible contractor of CPWD, non-CPWD contractor shall also be eligible to tender provided they have satisfactorily

completed 3 similar works each of value Rs. 39,51,000/- in the period of last 5 years ending on 31-10-2004 (similar work shall be building works)."

Smt. Asati by running the proprietary concern undisputedly had executed more than 3 works of the value of Rs. 39,51,000/-. The firm applied for the tender documents, but the application was rejected in all the four cases on the ground that the petitioner firm does not have the requisite experience. Hence, present writ petition.

By an interim order dated 25-11-2004, respondents were restrained from opening the bids. After notice, reply has been filed by the respondents wherein the stand taken is that there were two separate firms, therefore, the experience of Smt. Asati being the partner of the firm of M/s. C.K. Asati can not be counted as experience of the firm which came into existence only in the year 2004.

I have heard learned Counsel for the parties at length. Perused the material available on the record. Shri Dalal, learned Counsel appearing for petitioner submitted that the past experience of Smt. Asati can be taken into account and in support of this contention, he has placed reliance on the decision of Supreme Court in *New Horizons Limited and Another Vs. Union of India (UOI) and Others*, . Shri Dalal also placed reliance on a decision of Andhra Pradesh High Court in *Avula Contractions Pvt. Ltd., Secunderabad and another Vs. Senior Divisional Electrical Engineer, Traction Distribution, South Central Railway, Vijayawada and others*, .

Per contra, Shri Zelawat supported the action of respondents on the ground that the firm has to requisite experience and the experience of a partner can not be taken into account.

After having heard learned Counsel for the parties at length, in the considered opinion of this Court, there is a force in the submission of Shri Dalal. The partnership firm which is duly registered has no personality of its own. It is compendium of partners. Thus, a firm is an association of individuals and the firm name is only a collective name of those individuals who constitute the firm. It is a compendium which has to carry on business through its constituents. The position of the experience of partnership firm has been recognized by the Supreme Court in *New Horizons Ltd. (supra)*. The decision of the Supreme Court has been followed by the Andhra Pradesh High Court in *Mis. Avula Constructions Pvt. Ltd.* In view of the aforesaid legal position, I have no hesitation to hold that the rejection of application for issuance of tender documents was bad in law. The past experience of Smt. C.K. Asati while she was running a proprietary concern can be counted towards the experience of the firm and thus, the partnership firm was eligible to obtain the tender documents. The impugned communication issued by the respondent No. 3 is, therefore, set aside. Since the respondents have already supplied the tender documents in W.P. Nos. 1433/2004, 1558/2004 and 1559/2004 and petitioner has already submitted the bids, the respondents are directed to proceed ahead and finalise the bid in accordance with law. So far

as W.P. No. 1432/2004 is concerned, learned Counsel for respondents submitted that in the said case, the bids pursuant to the NIT has already been opened by the respondents on 23-11-2004, but they have not been finalized so far because the matter was pending in the Court. Since, it has been found that the rejection of application for issuance of tender documents was bad in law, therefore, not only the impugned communication, but also the NIT (Press Note No. 30/EE/ICD-I/04-05) are hereby quashed. The respondents are directed to issue a fresh NIT on the same terms and conditions. After issuance of the fresh NIT, the respondents shall finalise the bids in accordance with law.

In view of the foregoing discussion, writ petitions are allowed to the extent indicated hereinabove. Let a copy of the order be retained in the file of each case.

C.C. on payment of usual charges, within 3 days.