
(2006) 12 MP CK 0036

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15748 of 2006

Deepak Upadhyay

APPELLANT

Vs

General Manager, West Central Railway Zone and others

RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)

Citation : (2007) 1 MPLJ 402

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Rohit Arya, with Sanjay Lal, for the Appellant; Sudhir Kumar Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

Petitioner is engaged in the business of deploying motor vehicles on rental basis in response to N.I.T. dated 27th July, 2006 contained in Annexure/P-1. He submitted his tender which is stated to have been opened on 31-8-2006 for a period of 6 months 13 days commencing from 16-10-2006. Description of 13 vehicles is contained in paragraph 5.4 of the writ petition. It is further stated that the bid of the Petitioner was found to be the lowest and the acceptance of his bid was communicated orally. The vehicles were verified and the registration books of the vehicles were deposited with the Engineering Construction Department of the Respondent. To the utter surprise of the Petitioner a second N.I.T. was published as contained in Annexure/P-2 dated 13-10-2006 without taking decision with regard to the tenders received in response to the first N.I.T. Obviously, the first N.I.T. stood cancelled which is challenged herein on the ground that the same is highly arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India.

In the return it has been contended by the Respondents that the tender of the

Petitioner was never accepted and no contract was signed between the parties. According to the terms and conditions of the tenders, the matter, after opening of the tenders was placed before the accepting authority who did not accept any of the tenders received in response to the first N.I.T. contained in Annexure/P-1. The accepting authority exercising the powers under the general conditions of contract cancelled the earlier N.I.T. and directed for issuance of fresh N.I.T. which was well within his powers. Accordingly, a prayer has been made for dismissal of the writ petition.

Shri Rohit Arya, learned senior counsel contended that the second N.I.T. was issued in respect of the same work and the same could not have been legally issued after opening of the tenders received pursuant to the first tender. Relying upon the Apex Court decision in the case of M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, it has been contended that in the matter of tenders, public interest is paramount and there should be no arbitrariness in the matter of award of contract. Accordingly, it has been contended that the action of the Respondents in issuing second N.I.T. for the same work is highly arbitrary and is opposed to the public interest. He urged that the second N.I.T. contained in Annexure/P-2 is liable to be quashed and the Respondents are liable to be directed to proceed in accordance with the first N.I.T. contained in Annexure/P-1.

Per contra, Shri Sudhir Shrivastava, Learned Counsel appearing for the Respondents, the decision of the accepting authority in directing a fresh issuance of N.I.T. is not tainted with any kind of mala fide or favouritism. As such, no interference is warranted in exercise of the powers under writ jurisdiction.

Considered the submissions and perused the record.

It is an admitted position that the Petitioner is not in receipt of letter of acceptance and no work order was received by him. Admittedly, no contract has been signed by the parties to the writ petition. Undisputably, the petition does not contain any averment about mala fide, malice or favouritism. This being so, there is very little scope for interference in the present writ petition.

As regards the powers of the Respondents, it may be seen that the Petitioner has signed the Conditions of Tender which includes the following relevant clauses:

It shall not be obligatory on the said authority to accept the lowest tender and no tendered/tenderers shall demand any explanation for the cause of rejection of his/their tender.

Accepting Authority: The authority for acceptance of the tender will rest with the Chief Administrative Officer (C)/Chief Engineer (C)/Deputy Chief Engineer (C)/Executive Engineer(C), West Central Railway who does not bind himself to accept the lowest or any other tender or does he undertake to assign reasons for declining to consider any particular tender or tenders.

The successful Tenderer/Tenderers shall be required to execute an Agreement

with President of India acting through the CAO(C)/Chief Engineer(C)/ Deputy Chief Engineer (C)/Executive Engineer (C) of the West Central Railway, for carrying out the work according to the General Conditions of Contract and Specifications for Works and Materials of West Central Railway.

It is true that in view of the aforesaid, the Respondents are not liable to inform the Petitioner about the reasons which led to the cancellation of the N.I.T. contained in Annexure/P-1. However, the cancellation of tender cannot be based on the arbitrary whims of the Respondents. This Court is definitely empowered to look into the reason for cancellation. Faced with this, Shri Sudhir Shrivastava, Learned Counsel appearing for the Respondents placed before this Court a record containing the proceedings of cancellation of the first N.I.T. (Annexure/P-1).

This Court exercising the said privilege perused the proceedings which reveal that in case of contract involving estimated cost of more than Rs. 10 lacs, a minimum eligibility criteria was required to be prescribed and the tenderers fulfilling minimum eligibility criteria alone could have been permitted to participate in the tender proceedings. The estimated cost of the work is Rs. 11.68 lacs. Since, no eligibility criteria was prescribed in the first N.I.T., the accepting authority did not find it proper to accept any of the tenders received in response to the first N.I.T. Accordingly, it was decided by the accepting authority that a fresh N.I.T., with prescribed eligibility may be issued so that there would not be violation of letters of the Board which were issued in the light of Sudhir Chandra's Committee report.

In view of the aforesaid, cancellation of the earlier N.I.T. contained in Annexure/P-1 is not found to be arbitrary and unreasonable. On the contrary, it is found that the cancellation of the earlier tender was in accordance with the powers of the accepting authority and no illegality has been committed by the Respondents.

In the result, the petition is found to be meritless and the same is hereby dismissed without cost.