
(2004) 08 MP CK 0012

In the Madhya Pradesh High Court

Case No : Writ Petition No. 27838 of 2003

Dhanaram Jeswani

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 13-08-2004

Acts Referred:

Madhya Pradesh Store Purchase Rules — Rule 14, 6

Citation : (2004) 08 MP CK 0012

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Deepak Panjwani, for the Appellant; Sanjay K. Agrawal, for the Respondent

Judgement

Arun Mishra, J.—In this petition, petitioner has prayed for the relief to quash order (P/1) dated 4-6-03 and for issuance of a direction to the respondent-Water Resources Department to make the purchase as provided under Rule 14 of M.P. Store Purchase Rules.

2. It is averred in the petition that petitioner has a unit registered as small scale industry PVC, HDPE and LDPE pipes, polythene bags, low density polythene film. Respondent No. 6 Chief Engineer, Upper Narmada Zone, Bargi Hills, Jabalpur, published a notice inviting tender (P/ 1) for excavation and construction of Bargi Right Bank canal" along with its distribution system from R.D. 63 Km. to 72 Km. including earth work, C.C. lining, construction of structures. Said advertisement has been issued in contravention to the provisions contained in Rule 14 of the M.P. Store Purchase Rules. Rule 14 prescribes the procedure for purchase of the goods mentioned in the schedule. Item 18 Annexure B includes plastic goods, furniture, cane, polythene bags, lay flat tubing, buckets, tumblers, jars, etc. For any type of work, the purchase has to be made through small scale industries, as provided under Rule 14. "General Manager, M.P. Laghu Udyog Nigam Ltd., wrote a letter (P/2) on 14-11-02 to stop the practice of purchasing LDPE film directly through the contractors by issuing tenders for providing and fixing of aforesaid

material to contractors doing the construction work.

3. On 7-1-03, General Manager again wrote a letter (P/3) to the same effect. Still the letter remained uncomplied with. On 4-6-03, respondent No. 3 issued a direction to call for tender both for material for construction and labour. Material for construction was to be purchased separately. Thus, the action of the respondents is arbitrary and therefore same deserves to be quashed.

4. A return has been filed by the respondents contending that as per Rule 6 of M.P. Store Purchase Rules, in the case of works of the nature specified in Rule 6, articles required for construction may be supplied by the Contractor which conforms the specifications as may be mentioned. Specifications have been prescribed in the tender document. Goods have been supplied by the contracting agency which is in conformity with Rule 6 of Store Purchase Rules. There is no infirmity in the action. There is no violation of Rule 14 committed. Policy is not to be construed to completely oust the discretion of the department to act in accordance with the Store Purchase Rules in deserving cases when it is deemed necessary in the interest of State exchequer. In the nature of work, which was stipulated in the N.I.T., huge quantity of goods to be utilized in the process of execution of work, required to be purchased and stored by the department, was to be supplied to the contractor as and when required. In the process huge money is blocked. Thus, the contractor considering the nature of the work was awarded the contract as per conditions of the NIT and the agreement.

5. Rejoinder has been filed by the petitioner. It is averred that strict compliance of the Rules is required as per circular dt. 23-8-1988 and the exemption has to be taken by Commerce and Industries Department from Cabinet. An order, (P/6) dt. 21-9-1992 was issued by the State Govt, to comply strictly with the provisions of Store Purchase Rules, which has been violated.

6. Shri Deepak Panjwani, learned Counsel appearing on behalf of the petitioner has strenuously submitted that it is a case where the tender itself was floated in violation of the mandate of Rule 14 of M.P. Store Purchase Rules. He has submitted that earlier trend was to purchase the material by floating a separate tender by the department. Right to purchase the articles was not given to the contractor. Hence, the action is illegal. Respondent be directed to make the purchase in terms of Rule 14 in future.

7. Shri Sanjay K. Agrawal, learned Govt. Adv. appearing on behalf of the respondents has submitted that discretion is given to the department as per Rule 6 considering the special nature of the work as regards assignment of work to the contractor. In the instant case, contractor was assigned the total work of excavation of canal. Goods/ articles were required to be purchased by the Contractor. No purchase was made by the department. Contractor has effected the purchase considering the special circumstances in order to prevent the blockade of money for purchase of huge number of articles. The NIT provided that, purchases be made by the Contractor, He has placed implicit reliance on

Rule 6 of the Store Purchase Rules.

8. In the instant case, it is conceded at bar that work in question is virtually over. Matter survives for academic purport with regard to NIT in question. Rules 6 and 14 of the M.P. Store Purchase Rules, have been pressed into service, which are quoted below :--

"Rule 6 -- In the case of important construction works let out on contract, articles required for the construction of such works may be supplied by the contracting firm provided that when specifications and/or tests have been prescribed for such articles they shall conform to such specifications and/ or shall satisfy such" tests."

"14. Articles included in Annexure B which is subject to revision from time to time, produced or manufactured by Small Scale Industries of Madhya Pradesh registered as such, with Director of Industries for concerned articles, shall be purchased through the M.P. Laghu Udyog Nigam Ltd., only at the rates fixed by them. No tenders for purchase of such articles shall be called by the competent authority separately."

From the reading of Rule 14, it is clear that the department has to make purchase of the articles specified in Annexure B from the Small Scale Industries. In the instant case, contract has been given under Rule 6. Contract has been given to the Contractor for construction work. Contract itself is not for purchase of articles but for construction work. Contractor has been given the right to arrange for the goods/articles to be utilized in the construction work. A reading of Rule 6 makes it clear that in the case of important construction works, articles required for construction work may be supplied by the contracting firm.

9. It is not in dispute that construction work is of importance and as per Rule 6, when such a contract has been granted, articles may be supplied by the contracting firm. Specifications have been clearly mentioned in the agreement (R/1). Thus I find that when power under Rule 6 has been exercised, contracting firm can be given right to purchase the articles required for construction of such work. It is stated that decision was taken to prevent blockade of huge expenditure to be incurred for purchase of articles, which cannot be said to be irrelevant consideration. Thus, I find action to be permissible one in the facts of the case. However, Rule 6 is not of general applicability. Rule 14 intends to promote the interest of small scale industries. Respondents should make an endeavour as far as possible to adhere to Rule 14 and consider the directions issued by the General Manager, M.P. Laghu Udyog Nigam Ltd., as also of the State Govt. issued from time to times

10. Writ petition is disposed of with the aforesaid observation. No costs.