
(2018) 11 UK CK 0171
In the Uttarakhand High Court
Case No : Special Appeal No. 936 Of 2018

Gajendra Singh Bisht

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 16-11-2018

Acts Referred:

Uttarakhand Up Khaniz (Parihar) (Sanshodan) Niyamavali, 2017 — Rule 28(2)
Constitution of India, 1950 — Article 14, 226

Citation : (2018) 11 UK CK 0171

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Singh, J

Bench : Division Bench

Advocate : Pawan Mishra, C.S. Rawat

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, C.J.

1. This appeal is preferred against the order of learned Single Judge in WPMS No. 2798 of 2018 dated 27.09.2018.

2. The appellant herein invoked the jurisdiction of this Court questioning the action of respondent no. 2 in cancelling the bids. The petitioner's complaint, in the writ petition, was that he was H-3 in Lot 1 and H-2 in Lot 2; the bid submitted by H-1 and H-2 in Lot - 1 and H-1 in Lot - 2 were rejected, and they were black listed on the ground of collusion; respondent no. 2, instead of awarding the contract to the petitioner, had illegally cancelled the bid in its entirety.

3. In the order under appeal, the learned Single Judge observed that the bid submitted by the petitioner is only in the nature of an offer, which was not accepted by the respondents, and they were not bound to give the contract even in favour of H-1; the procurement Rules provided that, in case the highest bid was rejected, reasons should be assigned to him; the present case did not fall within the ambit of the Rules, since the petitioner was not H-1; and no relief

could, therefore, be granted to the petitioner.

4. Sri Pawan Mishra, learned counsel for the appellant, would submit that failure on the part of respondent no. 2, in awarding the tender in the appellant's favour, is in violation of Rule 28(2) of the Uttarakhand Up Khaniz (Parihar) (Sanshodan) Niyamavali, 2017. Rule 28 (2) of the said Rules stipulates the order of priority for acceptance of the bid. Under Rule 28(2) if the highest bid is rejected, then the Tendering Authority is empowered to offer the bid to the second highest bidder, thereafter to the third highest bidder and so on. Rule 28(2) confers a discretion on the Tendering Authority, if it so chooses, to accept the bid of the second highest bidder in cases where bid of the highest bidder has been rejected. That does not mean that the Tendering Authority is obligated to award the work to the second or the third highest bidder, in every case where the bid of H-1 and H-2 have been rejected.

5. Whether the bid submitted by a tenderer should be accepted, or bids should be invited afresh, are all matters for the Tendering Authority to decide. Save patent illegality or arbitrariness in the decision making process, culminating in the decision to cancel the bids being taken, no interference is called for in judicial review proceeding under Article 226 of the Constitution of India.

6. Sri Pawan Mishra, learned counsel for the appellant, would allege discrimination. He would submit that, with respect to another Lot, the Tendering Authority had awarded the work to the second highest bidder; and, in such circumstances, failure of Tendering Authority to accept the bids of the petitioner, with respect to the present Lots, is discriminatory and is in violation of Article 14 of the Constitution of India.

7. It is evident from the material placed on record that bids were invited separately for each Lot. In the present case, the appellant - writ petitioner had submitted his bid for Lot Nos. 1 and 2. The appellant-writ petitioner cannot be heard to complain of discrimination comparing his case with bidders of other Lots unconnected to the Lots for which he had submitted his bid. The appellant-writ petitioner has not even arrayed the second highest bidder in the other Lot, whose bid was accepted, as a party respondent in the present writ petition. In Chandigarh Administration Vs. Jagjit Singh reported in (1995) 1 SCC 745, the Supreme Court observed thus:

".....We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be

followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent- authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal /unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)....."

(emphasis supplied)

8. In the light of the law declared by the Supreme Court, in the aforesaid judgment, the plea of discrimination, and violation of Article 14 of the Constitution of India, must fail. In exercise of its jurisdiction under Article 226 of the Constitution of India this Court would not, ordinarily, undertake the exercise

of ascertaining whether awarding the tender to the second highest bidder in the other Lot was in accordance with law or not, in the absence of the person whose bid was accepted for the other lot being arrayed as a respondent in the present writ proceedings. The mere fact that, with respect to another Lot, the Competent Authority had accepted the second highest bid would not, by itself and without anything more, justify a writ of Mandamus being issued directing him to do likewise in the present case also.

9. Sri Pawan Mishra, learned counsel for the appellant, would further contend that the respondent ought to have assigned reasons for rejection of the appellant's bid. In *M/s Star Enterprises Vs. CIDC of Maharashtra Ltd.* reported in (1990) 3 SCC 280 the Supreme Court held that the State is entitled to look for the best deal with regard to its properties; in the absence of any allegation of malafides, the Court must proceed on the footing that the Authority had acted bonafide; reasons should be recorded for executive action, including cases of rejection of the highest offer, when the highest offer is rejected; reasons, sufficient to indicate the stand of the appropriate authority, should be made available; and, ordinarily, the same should be communicated to the concerned parties unless there is any specific justification not to do so. As held by the Supreme Court, in *M/s Star Enterprises Vs. CIDC of Maharashtra Ltd.* reported in (1990) 3 SCC 280, in cases where the highest bid is rejected, and the second highest bid is accepted, the Competent Authority is obligated to assign reasons as to why it has chosen to award the work to the second highest bidder, after rejecting the bid of the highest bidder.

10. That does not mean that the competent authority cannot cancel the bid in its entirety, and invite bids afresh. It is for the competent authority to examine whether the bid of the second / third highest bidder is reasonable or not, and thereafter decide whether the bid should be awarded in his favour or the entire bid process should be cancelled and bids invited afresh.

11. The learned Single Judge has rightly noted, in the order under appeal, that the appellant was not the highest bidder, and it was not his complaint that his bid was rejected, and the tender was offered to a person, who had quoted lesser than the price which the petitioner had quoted. No statutory provision has been brought to our notice which obligates the respondent to assign reasons to each tenderer for canceling the bid process in its entirety, and in calling for bid afresh.

12. The order under appeal does not suffer from any illegality warranting interference in an intra-court appeal. The appeal fails and is, accordingly, dismissed.