(2017) 03 UK CK 0031

In the Uttarakhand High Court

Case No : 2182 of 2016 (M of S)

Garhwal Region Contractor?Welfare Association & others. Vs State of Uttarakhand & others.

Date of Decision : 10-03-2017

Acts Referred:

Constitution of India, Article 14 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions

Citation : (2017) 03 UK CK 0031

Hon'ble Judges : V.K. Bist

Bench : Single Bench

Advocate : U.K. Uniyal, Sandeep Kothari, V.B.S. Negi, Paresh Tripathi, Shobhit Saharia

Judgement

1. Petitioners have approached this Court seeking the following reliefs: "I. Writ, order or direction in the nature of Certiorari by quashing the e-procurement notices, issued on 02.07.2016, 04.07.2016, 05.07.2016, 06.07.2016, 13.07.2016 (Annexure No. 1).

II. Writ, order or direction in the nature of Mandamus by commanding the respondents to provide all the documents required by the petitioners mentioned in the Annexure No. 3 to the writ petition as well as in the Bidding Documents and thereafter proceed afresh for inviting Bids for the work of Pradhan Mantri Gram Sadak Yojna as detailed in the Annexure No. 2 of the writ petition or in the alternative before inviting the tenders as per the tender notices of the Annexure No.-1 and proceeding further on the same, the representation submitted by the petitioners vide Annexure No.-3 be decided and documents sought by the petitioners be furnished to them.

III. Any other suitable writ, order or direction, which in the interest of justice and under the circumstances of the case, the Hon''ble Court may deem fit and proper be issued.

IV. An interim order or direction by restraining the respondents from proceeding further and accepting the tenders on the basis of tender notices issued as mentioned in the Annexure No.-1 be issued.

V. To award the cost of the petition to the petitioners."

2. Briefly put, the case of the petitioners is as follows: The petitioner no. 1 is a society, registered under the Societies Registration Act, and the petitioner nos. 2 and 3 are its Vice President and Secretary respectively. The members of petitioner no. 1 society, including the petitioner nos. 2 and 3 and other persons from the State of Uttarakhand, are the registered contractors of the Government of Uttarakhand and are eligible and entitled to participate in the Government, Government Undertaking and Local Bodies contracts. Respondent no. 2, on behalf of respondent no. 1, invited tenders for construction of roads and bridges under the Pradhan Mantri Gram Sadak Yojna in the various districts of the State of Uttarakhand viz., Tehri, Uttarkashi, Pithoragarh, Dehradun, Bageshwar, Almora, Chamoli, Pauri, Rudraprayag, Champawat and Nainital through e-procurement notices issued on 02.07.2016, 04.07.2016, 05.07.2016, 06.07.2016, 13.07.2016. The respondents, on their official website, provided Standard Bidding Document for Pradhan Mantri Gram Sadak Yojna (PMGSY) and instructions to the bidders, which in all, included 8 sections. According to the petitioners, the said documents were downloaded by the petitioners from the official website of the respondent. When petitioners came to know about the work through newspapers as well as from online sites, they downloaded the same from the official website of the respondents, i.e., http:// pmgsytendersuk.gov.in/nicgep/app. On perusal of the bidding documents, the petitioners came to know that the same does not provide detailed site plan, cross section, L Section, camber, super elevation and dumping zones for excavated materials. Thereafter, the petitioners made inquiries about the same from the concerned officials of the respondents; but, they were unable to give any answer about the queries of the petitioners. When the petitioners could not get any success, they made a representation to the respondent no. 2, with a copy to the respondent no. 3, on 25.07.2016, which was received by the office of the respondent no. 2 on the same date. By the said representation, the petitioners requested the respondent no. 2 to look into the matter and to incorporate all the documents mentioned in the representation and in the bidding documents, so that they may be able to ascertain the actual site, size and amount of work to be performed by them and submit their tenders after visiting and examining the work site as per conditions no. 7.1, 8.3, 7A of sections 2,3,4 and other sections of standard bidding documents; but all in vain. It is submitted that the petitioners, without obtaining the site plan, drawing and other documents, provided in the bidding documents, are not in a position to locate the worksite, access the actual work to be done, amount of hill cutting which has to be done and other activities, which are necessary for construction of the roads and, as such, are not in a position to fulfill the tender forms. According to the petitioners, the respondents are bound to follow all the instructions and guidelines provided in the Standard Bidding Form and the Uttarakhand Procurement Rules, 2008,

before inviting the tenders, which they have not done. Hence, this writ petition.

3. The case of the respondents is that the Pradhan Mantri Gram Sadak Yojna is being conducted since December, 2000 by the Ministry of Rural Development, Government of India. The prime object of the said scheme is to provide all-weather road, connectivity to habitations, having a population of 500 in the plain area and 250 in hill area, by the year 2019. Under this scheme, 90% of the expenses are to be borne by the Government of India and 10 % by the State Government. Apart from this, the compensation to the landowners, whose land falls in the alignment of the road as well as payment towards compensatory plantation, have to be borne by the State Government. Besides, compensatory land to the forest department for afforestation purposes has to be provided by the State Government. In the hill areas, the road construction works are to be carried out in two stages, namely, stage Ist i.e. road cutting work and stage IInd i.e. road painting work. After two years of the completion of the Ist stage work, the IInd stage work is to be carried out. Under the said scheme, for the procurement of the works, the Ministry of Rural Development, Government of India has issued Standard Bidding Document for the works under the Pradhan Mantri Gram Sadak Yojna in the entire country. Under the said scheme, the bids are invited through E-tendering process. Under the said Pradhan Mantri Gram Sadak Yojna, for details regarding the sanctioning of the DPR (detailed project report), procurement execution, online management of monitoring, accounting system, one can visit the website of the department online. Under phase-13 of the said scheme of the Ministry of Rural Development, Government of India, vide letter dated 28.06.2016, approval has been granted to carry out total 189 works in the State of Uttarakhand for the construction of 1664 km. long road on the estimated cost of Rs. 990 crores and, out of 189 works, 113 works are in the stage Ist and 69 works are in stage IInd and, besides this, there is also construction of 7 bridges. In the State of Uttarakhand, apart from the habitations, having population of more than 250, those habitations, having less population, are also to be provided road connectivity. The total habitations, having population of more than 250 are 211 and less than 250 are 109, therefore, total 320 habitations are to be connected with the road. After obtaining approval, bids are invited to be through E-tendering to carry out 189 works. According to the respondents, in the entire process, transparency is being maintained and it is wrong to contend that some persons only are intended to be given benefit of the scheme. Further, there is provision in Section 2 Instructions to Bidders of the Standard Bidding Document for holding pre-bid meeting at the designated place and time.

4. Counter affidavit has also been filed on behalf of respondent no. 2. Relevant paragraphs of the counter affidavit are as follows: "7. That in reply to the contents of para 4 of the writ petition, it is submitted that for clarification of any kind, there is provision in section 2 Instructions to Bidders of the Standard Bidding Document for holding prebid meeting at the designated place and time. Apart from this in clause 7.1 of section 2 Instructions to bidder of the Standard

Bidding Document for site visit the following provision is provided:-

"The Bidder, at his own cost, responsibility and risk, is encouraged to visit, examine and familiarize himself with the Site of Works. The Bidder acknowledges that prior to the submission of the bid, the Bidder/ Contractor has after a complete and careful examination, made an independent evaluation of the Scope of the Project, Specifications and Standards of design, construction and maintenance, Site, local conditions, physical qualities of ground, subsoil and geology, suitability and availability of access routes to the site and all information provided by the employer or obtained, procured or gathered otherwise, and has determined to its satisfactions the accuracy or otherwise thereof and nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The employer makes no representation whatsoever express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the bidder confirms that it shall have no claim whatsoever against the employer in this regard." Therefore, the contention of the petitioners cannot be sustained as they have full opportunity as per the standard bidding document to clarify any issue including drawing documents.

8. That in reply to the contents of para 5 of the writ petition, it is submitted that the Uttarakhand Procurement Rules, 2008 are not applicable to the works. For the procurement of the works under the Pradhan Mantri Gram Sadak Yojna, the Ministry of Rural Development, Government of India has issued standard Bidding Document for works throughout the country by inviting bids through E-tendering. For this purpose the Government of India has issued procurement manual. Under the said manual for every activity a time limit is fixed and the procurement procedures, transparency, competitiveness and fairness are maintained. The details about all the works is made available on procurement online. Therefore, the contention of the petitioners cannot be accepted. 10. That in reply to the contents of para 7 & 8 of the writ petition, it is submitted that the clarifications on the representation dated 25.07.2016 moved by the petitioners were supplied at that relevant point of time through the URRDA (Uttarakhand Rural Road Development Agency) letter no. 4182 dated 01.08.2016 and the letter no. 4347 dated 04.08.2016. Furthermore, it is submitted that in every work as per the provisions of the Standard Bidding Document, pre-bid meeting is held at the designated time and place. Any kind of issue can be got clarified by the bidders in the said meeting. But, on the date of pre-bid meeting the petitioners or any of their representatives were not present. Therefore the contention of the petitioners are baseless and cannot be sustained.

12. That the contents of para 10 of the writ petition are not admitted, hence denied. It is submitted that clarifications sought through the representation dated 25.07.2016 had been supplied by two different office letters of the URRDA, dated 01.08.2016 and 04.08.2016.

14. That in reply to the contents of para 12 of the writ petition, it is submitted that there is provision that in the pre-bid meeting anyone can see the D.P.R. (detailed project report) and other related documents. In the Bill of Quantity issued under Section 2 of the Standard Bidding Document the rates as regard the DPR/SOR (schedule of rates) have been depicted. The bidders have to submit their bids after the assessment of their capacity/scheme, for which the bidders are free. It is also relevant to state that dumping places are already designated in the DPR for the safe disposal of the excavated material as there is provision for disposing the surplus excavated material at the dumping place. Therefore, the contention of the petitioners cannot be sustained."

5. Mr. U.K. Uniyal, learned Senior Counsel appearing for the petitioners submitted that the primary issue, which has been agitated, is that the certain specifications and drawing forming integral part of the bid document has not been uploaded in the website and has not been made available for the proposed tenderers and the members of the contractor association are not able to submit the bid and further the said inaction and omission on the part of the respondent authorities is smack of favouritism and nepotism. He submitted that the said inaction has deliberately been done so as to provide the advantage to certain class of persona and such documents were made access to these persons only. The said inaction and omission on the part of the respondent authorities, is complete lack of transparency in the tender process and further by no provision of law, the proposal floated by the respondent authority can be treated to be a proposal, which could have been responded in a fair manner. He submitted that the respondent authorities is the instrumentality of the State and the tenders have been invited on behalf of His Excellency Governor of the State and, under such circumstances, if the instrumentalities of the State proposes for calling the tender, no stipulation or no such material document can be kept/concealed with the proposed tenderers, so as to disable them to submit a fair bid, inasmuch as, only after having access to all specifications and drawings, appropriate rates could be quoted. He submitted that the petitioner no. 2 requested the Chief Engineer URRDA, vide letter dated 16th August, 2016, to provide him the D.P.R., drawing etc. to the petitioners and no document much less the drawing and specification have been provided to the petitioners or any member of the contractor association. The specifications and drawing are the integral part of the bid document and the same was required to be uploaded in the website itself. However, the same has also been not done till date by the respondent authority. He submitted that the entire exercise, in finalizing the tender process up to stage of the execution of the agreement, has to be completed within 71 days. However, the period of 71 days had already been lapsed and the technical bids have not been evaluated, except for only few jobs in validity of the bid is 90 days. The petitioners are apprehensive that, after the lapse of 90 days, most of the tenderers, who have submitted the tender, will withdraw their bid and they will be awarded contract as per the whims and choice of the respondent authorities, who are working under political dictates. He submitted that the evaluations have

been made manually and there is every possibility of manipulation and anti-timing of such evaluation and the petitioner association has cogent and reliable information that the officers, who have failed to succumb to the pressure for awarding the work to their favorites, have also been transferred. This particular fact has also being brought into the notice of the Chief Engineer by the association vide communication dated 14th September, 2016. However, no action till today has been taken by the respondent authority.

6. Learned Senior Counsel for the petitioners further submitted that the guidelines have been framed by the National Rural Road Development Agency, Ministry of Rural Development, Government of India, and the respondent authority have even failed to adhere such guidelines. He submitted that in the said guidelines, the specific time period has been provided and even the lengthy process and formalities have also been done away with, so as to reduce the time for finalizing the award of the contract. He submitted that it is a peculiar case, wherein, as per clause 8 of the tender document, drawing and specifications are the integral part of the bidding document. Though, the respondent authorities have uploaded the bidding document; but, have not provided the specifications and drawing with the said bid. He submitted that Section 5 of the tender document substantiate the aforesaid fact and provide the details of the drawing which has to be provided. The respondent authorities have failed to abide by the terms and conditions, hence, there is no question of continuation with tender process and the same is liable to be quashed with the directions to the respondents'' authorities to de-novo start the proceedings after supplying the details as required. He submitted that the bidding process initiated by the respondent authorities may be cancelled for the primary reasons that the basic documents, forming integral part of the standard bid documents, have not been supplied and due to the non-availability of such material information, the members of the petitioners association could not take part in the tender process. He submitted that, on 18.10.2016, the petitioners have also got the copy of the byelaws of the respondent agency and it clearly shows that the respondent URRDA is a society registered under the Societies Registration Act and calling the tenders by the society, in the name of the Governor, is illegal and, on this ground alone, the notice inviting tender is liable to be cancelled.

7. Learned Senior Counsel submitted that the respondents are bound to follow all the instructions and guidelines provided in the standard bidding form and the Uttarakhand Procurement Rules, 2008, before inviting the tenders, which has not been done. He submitted that non-providing of all the documents and information, as sought by the petitioners as well as provided in the biding documents, is arbitrary, totally unreasonable, unfair and in violation of principles of natural justice. He submitted that, without assessing the actual amount of the work to be done, in absence of the documents sought in the representation dated 25.07.2016, the petitioners cannot assess their profit or loss from the work obtained on the basis of present documents, provided by the respondents. He submitted that, in the said standard bidding document, the respondents have

also required the bidders to maintain the roads for 2 years for stage I work and for 5 years for stage II work. In the said documents, they have freezed the rights of the petitioners by putting their own rates, which is totally arbitrary, unreasonable and unfair. He submitted that for description of work of stage I at serial no. 1 in the column of unit, they have shown the unit as LS (Lump sum), which is totally arbitrary and illegal, as they are bound to specify the quantity of each work with nomenclature viz., nature of rocks, soils etc.

8. Learned Senior Counsel also contended that it is an established law that when tenders are invited, the terms and conditions must indicate with legal certainty, norms and bench marks. This legal certainty is an important part of Rule of Law and any vagueness is in-violation of doctrine of ''Level Playing Field''. He argued that by arbitrary, unfair, unreasonable and vague acts of the respondents, the opportunity of equality to the petitioners has been taken away. The petitioners are professional registered contractors and earning their livelihood from the contracts and by denying equal opportunity to them, their livelihood have been taken away by the respondents. He contended that, by the uncertainty, arbitrariness, vagueness, unfair and malafide acts on the part of the respondents, the respondents have violated the Fundamental Rights of the petitioners enshrined under Article 14, 19 (1)(g) and 21 of the Constitution of India. He submitted that Right to Life includes opportunity and both the Article 14 and 21 are the heart of the Fundamental Rights. He argued that by arbitrary, illegal and unfair acts of the respondents, these rights of the petitioners have been taken away.

9. Mr. V.B.S. Negi, learned Advocate General submitted that the contention of the petitioners cannot be sustained, as they have full opportunity as per the standard bidding document to clarify any issue including drawing documents. He submitted that the Uttarakhand Procurement Rules, 2008 are not applicable to the works. For the procurement of the works under the Pradhan Mantri Gram Sadak Yojna, the Ministry of Rural Development, Government of India has issued Standard Bidding Document for works, throughout the country, by inviting bids through E-tendering. For this purpose, the Government of India has issued procurement manual. Under the said manual, for every activity, a time limit is fixed and the procurement procedures, transparency, competitiveness and fairness are maintained. The details, about all the works, are made available on procurement online. Therefore, the contention of the petitioners cannot be accepted. He submitted that the clarifications on the representation dated 25.07.2016 moved by the petitioners were supplied at that relevant point of time through the URRDA (Uttarkahand Rural Road Development Agency) letter no. 4182 dated 01.08.2016 and the letter no. 4347 dated 04.08.2016. He submitted that, in every work, as per the provisions of the Standard Bidding Document, pre-bid meeting is held at the designated time and place. Any kind of issue can be got clarified by the bidders in the said meeting. But, on the date of pre-bid meeting, the petitioners or any of their representatives were not present. He submitted that there is provision that, in the pre-bid meeting, anyone can see

the DPR (detailed project report) and other related documents. In the Bill of Quantity issued under Section 2 of the Standard bidding Document, the rates, as regards the DPR/SOR (schedule of rates), have been depicted. The bidders have to submit their bids, after the assessment of their capacity/scheme, for which the bidders are free. He submitted that dumping places are already designated in the DPR for the safe disposal of the excavated material, as there is provision for disposing the surplus excavated material at the dumping place. He submitted that reply to the points raised in the representation dated 25.07.2016 moved by the petitioners had already been given vide office letters dated 01.08.2016 and 04.08.2016 of the Uttarakhand Rural Road Development Agency. He submitted that in the BOQ (Bill of Quantity), which contains the quantity of the material to be excavated, measurements of the walls to be constructed and the slabs, scuppers etc. details have been mentioned as per the guidelines issued by the Government of India. The maintenance work, after the cutting of the road, has also to be carried out by the contractor for a period of 5 years and rates for which are also indicated in the BOQ. He submitted that, in the past, the maintenance work of the roads was not being properly carried out by the contractors and the contractors used to submit higher rates for the construction work and less rate for the maintenance work and, keeping this fact, as per the direction of the Ministry of Rural Development, Government of India, the maintenance rates have also been frizzed as per the SOR (schedule of rates). He submitted that the rates, mentioned at item no. 1 of the Bill of Quantity, are as per the S.O.R. (Schedule of Rate) of the State Government and contractor is free to quote own rates in this item.

10. Learned Advocate General further submitted that the prayer no.1 of the writ petition runs contrary to the prayer no.2, as when the petitioners have challenged the e-procurement notices, there is no occasion for the petitioners to pray for a writ of mandamus to provide all the documents in regard to the aforesaid tender notices and the petitioners would have to stick to one stand. Moreover, the petitioners Sri Raghubeer Singh Sajwan, Pradeep Thapliyal and Bheem Bhatt have entered into 16, 12 and 11 contracts respectively under the PMGSY earlier and have not disclosed that the tender process, presently in vogue, is virtually the same process which was followed in the earlier bidding process pursuant to which the petitioners were awarded contracts. This aspect of the matter leaves one with no doubt that the petitioners have not come before this Court with clean hands and their sole object is to stall the entire process. He submitted that the office bearers of the alleged association have participated in the tender process in question and against 189 works, total 872 tenders were received and, hence, it is wrong to contend that the petitioners have not been provided any information, even otherwise when the petitioner no. 3, namely, Sri Pradeep Thapliyal, who, as per the contents of the writ petition is the Secretary of the petitioner no.1, has participated in the tender process in question, it cannot be contended, by any stretch of imagination, that the petitioners have not been informed about the tender process in question. He submitted that for the

first time, the tenders were invited for 189 work functions, out of which 41 works were re-invited, thereafter, technical value of 82 tenders, against the remaining 148 tenders, has been uploaded after technical valuation and the process for remaining is still on. The procedure regarding the bid has been mentioned in the standard bidding documents. He submitted that the process has been followed in a fair and transparent manner, which cannot be said to in favour of any person or against any particular person. The transfer of employees and officers is a normal procedure and there is no law, which restrains the transfer of any officer during the tender process. The technical evaluations of the bids are being done as per the prescribed procedure by NRRDA and by the committee duly constituted. The petitioners have also been awarded the contracts earlier by following the same procedure which is presently being done. According to the learned Advocate General, it is not understandable as to how the petitioners, who have taken benefit of the same process earlier, can be permitted to contend that the process is being done presently is illegal while the process done earlier in the earlier works and in Phase-13 i.e. present work are the same. He submitted that, vide letter dated 29.9.2016, the petitioners have been given reply to its letter dated 14.09.2016.

11. Learned Advocate General further submitted that the petitioners have not been able to show their locus and as to how the petitioners fall within the ambit of "person aggrieved for maintaining the instant petition" and same deserves to be dismissed and, not only this, the petitioners have not brought on record their registration certificate. He submitted that, as per the information received, besides Secretary of the alleged Association, namely, Sri Pradeep Thapliyal, its Deputy Secretary, Sri Shiv Singh Gusain and its Treasurer, namely, Sri Sader Singh Rawat have also participated in the tender process in question. Hence, it is evident that the present petition has been filed by the petitioner no.2 only by using the names of the society and the petitioner no.3. He submitted that the petitioners have not disclosed, in the writ petition, that the office bearers of the petitioner no.1, namely, Secretary Sri Pradeep Thapliyal, Deputy Secretary, Sri Shiv Singh Gusain and Treasurer, namely, Sri Sader Singh Rawat, have participated in the tender process, in question, and, therefore, the instant writ petition suffers from vice of concealment of material and relevant facts and the same deserves to be dismissed. He submitted that there has been no illegality nor any irregularity in the tender process, in question, and the entire process is being done in a fair and transparent manner satisfying the rigour of Article 14 of the Constitution of India and the petitioners, instead of espousing their case, are proceeded as if the case in hand is a public interest litigation. It is further submitted that the petitioners have indulged into deliberately concealment of material facts. The petitioner no.3 has participated in the tender process in question. Further, Deputy Secretary Sri Shiv Singh Gusain and Treasurer Sri Sader Singh have also participated in the tender process in question; but, have deliberately concealed this factual information from the notice of this Court. This aspect of the matter leaves no doubt that the present petition has been filed with

ulterior motive and oblique purpose and same is liable to be dismissed. He submitted that issuance of the tender notice in the name of His Excellency, the Governor of the State, is no manner can be said to be against law nor the petitioners, in any manner, can be said to be prejudiced against the same. He submitted that, after due scrutiny of papers, names of qualified bidders were declared and the list of qualified bidder was uploaded, in which, only the names of qualified bidders figured, and, at no point of time, any bidder, who was declared disqualified, was included as qualified neither any such action was undertaken by the respondents nor any such action would be done during the entire procedure. He submitted that, as alleged, one Superintendent Engineer has not put his signature is also misconceived, the said authority, i.e. the Superintendent Engineer has signed the report and his signatures are available on all the relevant papers and his signatures were inadvertently left in the bid summary, which is only an annexure to the report submitted by the committee and, as evident, the signature of the said authority is available on the relevant pages. Hence, missing of signature of the Superintending Engineer on annexure is of no significance. He submitted that the plea regarding the corruption and working of officers under the political pressure, is wholly misconceived, rather fallacious in nature and the said plea is nothing, but an attempt to prejudice this Court, in order to get proceedings stalled by raising false and frivolous pleas. He submitted that neither in the entire writ petition nor in the supplementary affidavits filed by the petitioners have disclosed, as to which legal rights or fundamental rights are being violated or have been violated in the process, in question, and in the absence of the petitioners having been able to establish violation of any of the fundamental rights or legal rights, cannot maintain the instant writ petition as for maintaining the writ petition, it must be established that their fundamental rights or even legal rights are being violated and, thus, the writ petition is liable to be dismissed. He submitted that, except the petitioners, no other bidder has raised any grievance against the process in question. He submitted that even if an officer is transferred, the transfer is simply an incident of service, although there is no such contingency in the case in hand, cannot be made a ground of challenge by the petitioners as being convinced by the petitioners. He submitted that the Superintending Engineer, Pradhan Mantri Gram Sadak Yojna, Srinagar went on leave from 25.09.2016 to 02.10.2016 and, in his absence, an order was passed by the competent authority to discharge the duties of the Superintending Engineer, Pradhan Mantri Gram Sadak Yojna, Srinagar. He submitted that the State is proceeding in a fair and transparent manner and the exercise cannot be said to be unreasonable nor irrational nor arbitrary nor in violative of Article 14 of the Constitution of India nor any other provisions of the Constitution of India, rather as evident from the record the State Government is adhering to the norms satisfying the rigorous of the Article 14 of the Constitution of India. He submitted that in view of the facts and circumstances covered with the fact that the petitioner no. 3 and the office bearer of the petitioner no. 1 have responded to the tender notices impugned in the writ petition and there has been no denial of the said fact specifically pleaded by the State and in view of the fact that the entire process is being done in a fair and transparent manner, the writ petition is liable to be dismissed. He submitted that the petitioners have not come before this Court with clean hands and it is settled principle of law that a person approaching the Court must come with clean hands. He submitted that it has not been disputed by the petitioners that petitioner no.3, namely, Pradeep Thapliyal, Deputy Secretary of petitioner no.1 Sri Shiv Singh and Treasurer have also participated in the tender process, in question, and since this fact remains undisputed which amounts the admission by the petitioners, consequently, the petitioners are not entitled for any relief and the writ petition is liable to be dismissed as such.

12. Mr. Shobhit Saharia, learned counsel for the interveners submitted that concealing and suppressing the most relevant fact that the petitioner no. 2 actually participated in the bidding process and responded to the notice inviting tender, preferred this writ petition before this Court on absolutely vague, evasive and frivolous pleadings and grounds. He submitted that, during the pendency of the writ petition, the bidding process continued and all the bids received in response to the notice inviting tenders were duly evaluated. The interveners also participated in the bidding process and submitted their bids in response to N.I.T. for District Almora and Pauri Garhwal. He submitted that the bidding process was in two stages; wherein, at the first stage, the technical bid was to be evaluated and, in the second stage, the financial bid was to be evaluated. The technical bid of the applicant was found responsive in respect of package no. UT-0317 and UT-08-07 and two more and, thereafter, the financial bid of the petitioners was also found to be responsive. He submitted that, vide communication dated 01.12.2016, the declaration of the awarding of contract in favour of the applicant has been made by the competent authority and a legal and binding contract has come into existence between the intervener and the state authorities and the intervener is ready to fulfill the paper formalities, which includes submission of performance guarantee. He also submitted that the applicant''s civil rights would be adversely and substantially affected in case of any adverse order being passed in the present writ petition, inasmuch as, the intervener stands declared as a successful bidder and there being declaration of awarding of contract in his favour. He also submitted that the doctrine of Locus Standi is well established in administrative law, law of contract and other allied laws. A person prejudicially affected would have a cause of action, while in the specified class of cases, a third party may be able to bring an action in public interest, despite the fact that he may not have personal interest. He further submitted that in the case of Ramana Dayaram Shetty vs. The International Airport Authority of India and others, reported in AIR 1979 S C 1628, the Hon''ble Supreme Court has unambiguously held that the Government action be based on standards that are not arbitrary or unauthorized. But, the burden to show that either of these elements exist is upon the petitioner. In the present case, the petitioners have not been able to demonstrate either from the averments made in the writ petition or from the documents annexed to the petition the existence of these

basic elements. He submitted that, in fact, this writ petition has been preferred by concealing and suppressing material facts and the very participation of the petitioner no. 2 in the bidding process and his bid also being found technically responsive makes it clear that this writ petition was filed with no sense of responsibility and was an absolute and patent abuse of process of law. He also submitted that there was an absolute level playing field and the very basis and ground and foundation on which the reliefs have been sought by the petitioners do not hold any ground in light of the admitted fact that the technical bid submitted by the petitioner no. 2, though deliberately concealed and suppressed from this Court, has been found to be responsive and, as such, petitioners are estopped to even suggest, much less claim that they were, in any manner, discouraged from participating in the tender process because of alleged non-providing of certain documents and information, as sought by them.

13. I have considered the submission of learned counsel for the parties. It is settled position of law that power of judicial review is very limited in the matter of contract. Such power can be exercised in the matter, where public interest is affected, where process adopted/decision taken is malafide or intended to favour someone and where process adopted/decision taken is so arbitrary and irrational that no responsible authority, acting reasonably and in accordance with law, could have reached. This is what the Hon''ble Supreme Court has held in the matter of "Jagdish Mandal Vs. State of Orissa and other, alongwith connected matter, reported in (2007) 14 SCC 517. Paragrah 22 of the said judgment is being reproduced below: "22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone. OR Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached."

(ii) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/ contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

14. In the present matter, this Court finds that there is provision in Section 2 Instructions to Bidders of the Standard Bidding Document for holding pre-bid meeting at the designated place and time. The Bidder, at his own cost, responsibility and risk is required to visit, examine and familiarize himself with the Site of Works. Therefore, the Bidders were having full opportunity to clarify the issue as per the Standard Bidding Document. It is the case of the official respondents that, in the pre-bid meeting, anyone can see the Detailed Project Report (D.P.R.) and other related documents. The bidders have to submit bids after the assessment of their capacity/scheme, for which the bidders are free. But, on the date of pre-bid meeting, the petitioners or any of their representatives were not present. In such situation, argument of the petitioners that, due to lack of information, they could not submit their bid cannot be accepted. Another submission made on behalf of the petitioners is that the representation of the petitioners was ignored, thus, the respondents violated the norms of fair play and transparency. This is denied by the respondents by stating that clarification sought through the representation dated 25.07.2016 had been supplied by two different office letters of URRDA dated 01.08.2016 and 04.08.2016.

15. Lastly, official respondents have come with the case that petitioners Raghuveer Singh Sajwan, Pradeep Thapliyal and Bheem Bhatt have entered into 16, 12 and 11 contracts respectively under the PMGSY earlier and present tender process is also same, which was followed in the earlier bidding process, pursuant to which the petitioners were awarded tender. The petitioner no. 3, namely, Pradeep Thapliyal (Secretary of petitioner no. 1), Shiv Singh Gusain (Deputy Secretary of petitioner no. 1) and Treasurer Sader Singh Rawat have participated in the tender process in question. This fact has not been denied by the petitioners. Further, this fact has not been disclosed by the petitioners. In view of these facts, this Court is in agreement with the submission of learned Advocate General that the petitioners have not come before the Court with clean hands.

16. As far as argument of applicability of the Uttarakhand Procurement Rules, 2008 is concerned, it is the case of official respondents that for the procurement of the works under the Pradhan Mantri Gram Sarak Yojna, the Ministry of Rural

Development, Government of India has issued Standard Bidding Document for works throughout the country by inviting bid through E-tendering. For this purpose, the Government of India has issued procurement manual. Since Standard Bidding Document for works is applicable throughout the country, the submission of learned Senior Advocate for the petitioners cannot be accepted that the Uttarakhand Procurement Rules should be made applicable.

17. In view of above discussion, the writ petition fails and is dismissed.

18. There will be no order as to costs.

