
(2023) 04 UK CK 0084

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1308 Of 2022

Gautam Associates

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 26-04-2023

Acts Referred:

Citation : (2023) 04 UK CK 0084

Hon'ble Judges : Vipin Sanghi, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Sandeep Kothari, S.S. Chaudhary, B.S. Adhikari

Final Decision : Disposed Of

Judgement

Vipin Sanghi, CJ

1. We have heard learned counsels for the parties.
2. The petitioner has preferred the present Writ Petition to seek the following reliefs :-
 - "a) Issue a writ, order or direction in the nature of Certiorari to call for the record and to quash/ set aside impugned the order dated 05.05.2022 (Annexure No.- 10) issued by the Chief Engineer, Regional Office, Public Works Department, Yamuna Colony, Dehradun, whereby, the Superintendent Engineer, Public Works Department has directed, if M/s Shiva Associates has deposited the performance or additional performance security, up-till 05.02.2022 then the further steps for the acceptance of the tender may be taken.
 - b) Issue a writ, order or direction in the nature of Certiorari to call for the record and to quash/ set aside the consequential order dated 07.05.2022 (Annexure No.- 11) issued by the Office of Superintending Engineer, Ninth Circle, Public Works Department, Dehradun, whereby, the Executive Engineer, Public Works Department, Rishikesh has been directed to do the needful in terms of the order dated 05.05.2022 issued by the office of Chief Engineer, Regional Office, Public

Works Department, Dehradun.

c) Issue a writ, order or direction in the nature of Mandamus directing the respondents to issue letter of acceptance and the letter of award to the petitioner pursuant to the order dated 24.12.2021."

3. The case of the petitioner is that the petitioner, along with other bidders - which included respondent no. 6, participated in the National Competitive Bidding Process for construction of Ghuttu Gandhakpani Motor Road in Doiwala Constituency, district Dehradun under State Sector (From KM 11.500 to KM 16.000). The tender was invited by the Superintending Engineer 9th Circle, Public Works Department, Dehradun.

4. The petitioner, and respondent no. 6, were both found to be technically qualified. Upon opening of the financial bids, respondent no. 6 emerged as the L-1 bidder. Accordingly, the respondent-authorities offered the contract to respondent no. 6 - M/s Shiva Associates. The respondent no. 6 was called upon to furnish the earnest money, and the security deposit. Admittedly, respondent no. 6 did not furnish the security deposit to the tune of Rs. 75,61,000/- within the time granted for the said purpose. Consequently, on 24.12.2021, the respondent-authorities decided to cancel the award of the contract to respondent no. 6, and forfeited the security of respondent no. 6. Simultaneously, the respondent-authorities called upon the petitioner to convey its acceptance, and furnish the earnest money deposit. In pursuance of the said communication dated 24.12.2021, the petitioner furnished the earnest money deposit in the form of a Fixed Deposit. It appears that, subsequently, the respondent-authorities decided to grant one more opportunity to respondent no. 6 to furnish the security deposit, and, in pursuance of the said opportunity, respondent no. 6 furnished its security deposit of Rs. 75,61,000/- on 02.02.2022.

5. Since the petitioner was left in lurch after it furnished the earnest money deposit, the petitioner has preferred the present Writ Petition to seek the reliefs, as aforesaid.

6. The submission of Mr. Kothari, learned counsel for the petitioner is that once the respondent-authorities had decided to cancel the offer made to respondent no.6, and forfeited its security deposit, it was not open to the respondent-authorities to unilaterally withdraw the said action, and grant further time to respondent no.6 to furnish the performance security. In the meantime, the petitioner had been called upon to accept the offer, and also to furnish the earnest money deposit, which the petitioner had done.

7. The respondent-authorities have filed their counter affidavit, wherein respondent no. 5 - Executive Engineer, Temporary Division, Rishikesh, District Dehradun has stated as follows :-

"8. That before issuing the letter of acceptance, M/s Shiva Associates was directed to provide Rs. 75.59 Lacs against performance and additional

performance security and vide order dated 30.09.2021 issued by the respondent, letter of acceptance was issued to M/s Shiva Associates and further directed to furnish performance and additional performance security amounting Rs. 75,58,809/- within 28 days in favour of Executive Engineer, Temporary Division, Rishikesh, Dehradun.

9. That M/s Shiva Associates has not deposit the additional performance security then he wrote a letter dated 21.10.2021 to the Superintending Engineer, 9th Circle Dehradun in which he seeks exemption in view of the office memorandum dated 12.11.2020 issued by Government of India and issued by State Government.

10. That vide letter dated 15.12.2021 written by Executive Engineer, Temporary Division, PWD, Rishikesh which is addressed to Superintending Engineer by informing that M/s Shiva Associates has not deposited the additional performance security till date, therefore he has recommended to cancel the letter of acceptance under clause 39 of standard bid document.

11. That the Superintending Engineer vide its order dated 22.12.2021 cancelled the letter of acceptance in view of recommendation made by Executive Engineer, Temporary Division, Rishikesh and forfeited the bid security amount Rs. 3,10,000/-."

8. It is further disclosed by respondent no. 5 that respondent no. 6 had approached this Court by filing Writ Petition (M/S) No. 2787 of 2021. That Writ Petition was disposed of on 27.12.2021 with a direction to the respondent-authorities to take a decision on the representation made by M/s Shiva Associates, i.e. respondent no. 6 herein. The representation of respondent no. 6 herein was rejected by the Superintending Engineer, 9th Circle, PWD, Dehradun on 11.01.2022. The affidavit further goes on to state :-

"15. That vide letter dated 24.12.2021 issued by the Executive Engineer, Temporary Division inform the petitioner that M/s Shiva Associate has not been deposited the additional performance security till 22.12.2021, therefore, letter of acceptance issued to M/s Shiva Associate has been cancelled and the petitioner has been directed since the petitioner is being second lowest he was directed to submit a consent letter as well as the earnest money deposit in the office. It is further submitted that on 08.01.2022, code of conduct was issued for general election of Legislative Assembly by the Election Commission of India, therefore, letter of acceptance has not been issued in favour of petitioner.

16. That the Chief Engineer, Regional Office, PWD, Dehradun issued a letter dated 05.05.2022 which is addressed to the Super tending Engineer, 9th Circle, Dehradun in which it is mentioned that on 01.02.2022 Engineer-in-Chief directed the Superintending Engineer, 9th Circle to accept the performance and additional performance security of M/s Shiva Associates till 05.02.2022 if such security has been deposited pursuant to the order passed by Engineer-in-Chief further steps for acceptance of tender may be taken.

17. That in pursuance to the letter issued by the Chief Engineer on 05.05.2022 the Superintending Engineer written a letter dated 07.05.2022 to the Executive Engineer, Temporary Division, Rishikesh to take necessary action in view of the letter dated 05.05.2022.

18. That vide letter dated 20.05.2022 issued by the Executive Engineer, Temporary Division, PWD, Rishikesh, Dehradun which is addressed to the Superintending Engineer, 9th Circle, PWD, Dehradun wherein it is mentioned that the M/s Shiva Associates furnished performance and additional performance security amounting Rs. 72,51,000/- as against Rs. 75,58,809/-, rest of the amount Rs. 3,07,809/- has not been deposited as yet and further requested to take decision in the matter and as yet no decision has been taken by the Superintending Engineer."

9. From the above, it will be seen that, even after rejection of the representation of respondent no. 6, the Chief Engineer, Regional Office, PWD, Dehradun sought to grant more time to respondent no. 6 to furnish the security deposit. Though it is claimed that the security furnished by respondent no. 6 was short by Rs. 3,07,809/-, this position is disputed by respondent no.6, to claim that the entire security deposit amount has been deposited by respondent no. 6.

10. Be that as it may, we are of the view that once the offer made to respondent no. 6 had been cancelled, and the security deposit of respondent no. 6 has been forfeited, the respondent-authorities could not have blown hot and cold at the same time, and granted more time to respondent no. 6 to furnish the performance security, particularly when, in the meantime, the petitioner had been asked to convey its acceptance of its offer, and to furnish the earnest money deposit.

11. The power to review such administrative decision did not inhere in the respondent-authorities. Such an act on the part of the respondent-authorities has the potential of abuse of such power for extraneous considerations.

12. We are, therefore, of the view that the aforesaid action of the Chief Engineer was not in consonance with administrative law and, even otherwise, was not permissible. We may also observe that the offer made by respondent no. 6 was to the tune of Rs. 2.76 crores, whereas the offer made by the petitioner was to the tune of Rs. 2.90 crores. In response to our query, learned counsel or the petitioner, on instructions from the petitioner, who is present in Court, states that the petitioner would match the bid offered by respondent no. 6, and would perform the contract at the same price, as was quoted by respondent no. 6. The aforesaid stand of the petitioner would ensure that the public exchequer does not suffer in any way.

13. We, therefore, allow the present Writ Petition, and quash the order dated 05.05.2022 issued by the Chief Engineer, Regional Office, Public Works Department, Yamuna Colony, Dehradun. We further direct the respondent-authorities to proceed to execute the contract with the petitioner. The petitioner

shall comply with all the contractual obligations, inter alia, by furnishing the performance security. The petitioner shall also abide by its offer of executing the contract at the rates offered by respondent no. 6.

14. The Writ Petition stands disposed of in the aforesaid terms.

15. Consequently, pending applications, if any, also stand disposed of accordingly.