

(2017) 04 UK CK 0014
In the Uttarakhand High Court
Case No : 2921 of 2016

Harit Advertising and others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Uttarakhand Municipal Corporation (Advertisement Licence and Assessment and Recovery of Tax on Advertisement) Rules, 2015, Rule 6 -
Uttarakhand Procurement (Amendment) Rules, 2015, Rule 33(g)

Citation : (2017) 04 UK CK 0014

Hon'ble Judges : Sudhanshu Dhulia

Bench : Single Bench

Advocate : Siddhartha Singh, P.C. Bisht, Sandeep Kothari, Subhash Upadhyaya

Judgement

1. The petitioners before this Court are proprietorship firms in the business of advertising, etc. They have challenged the tender notice dated 15.10.2016 by which fresh bids have been invited for grant of advertising rights within the municipal limits of Municipal Corporation, Haridwar.

2. The challenge to the impugned tender notice is primarily on two grounds. Firstly that only one application has been invited for all the sites. There are total 126 sites where advertisement can be made. The argument of the learned counsel for the petitioner would be that Rule 6 of the Uttarakhand Municipal Corporation (Advertisement Licence and Assessment and Recovery of Tax on Advertisement) Rules, 2015 says that each site would be earmarked and will be separately shown in the bidding document and there shall be separate application for each of the sites. It is hence meaning that calling for only one application for all the sites and making it compulsory for a bidder to make a bid for all the sites is in violation of the Rules.

3. Translated version of Rule 6 of the Rules of 2015 reads as under:

"Tender Process

6. (1) Tender form for auction of earmarked places situated beside the public roads shall be obtained from the Municipality Office free of cost. This can also be downloaded from the website of the Corporation. For every site separate application will be made and along with all such tender form it will be mandatory to annex the proposed premium amount for the site along with advertisement tax.

(2) It shall be mandatory for the advertiser to deposit 10 per cent amount as security along with the tender form.

(3) In case any person after obtaining licence for constructing tree-guard displays any advertisement on such tree-guards, he will be liable to pay tax under this Rule."

4. A bare reading of the aforesaid provision coupled with the underlying purpose of the Rules clearly demonstrates that the purpose is not that there should be a separate bid for each of the sites but the requirement is that the bidder must give his rates separately for each of the sites. Therefore, the argument of the learned counsel for the petitioners on this aspect does not seem to be correct and is rejected.

5. The second argument is that individuals and proprietorship firms have been removed from the zone of eligible applicants as only a company or a registered partnership firm can apply. It is again an additional condition that applicant must have a turnover of atleast Rupees Three Crores, in each of the last preceding three years.

6. Clause 21 of the General Terms & Conditions with regard to impugned tender notice reads as under:

"21. The bidder shall be a Company registered under the Companies Act, 1956 or a Partnership registered under the Indian Partnership Act, 1932 for the last three years, and inter-alia should be in the business of outdoor advertising in India and should have at atleast average turnover of Rs. 3,00,00,000/- (Rupees Three Crore only) or more during the last three financial year viz. 2013-14, 2014-15 & 2015-16. In this connection bidders are required to submit the audited balance sheet and profit and loss account for last three financial years certified by a Chartered Accountant."

7. All the petitioners before this Court are proprietorship firms. None of them has a turnover of more than Rupees Three Crores. They would, hence, argue that restricting the bids for a company or a partnership firm which is registered under the Partnership Act and that too having a turnover of more than Rupees Three Crores seems to be arbitrary and that has been done only in order to oust the partnership firms.

8. On this, the case of the Municipal Corporation is that their past experience shows that they did not get bid offers for the sites which were less profitable. The bidders only make their bid for the most profitable sites and, therefore, the

Corporation incurs a loss of revenue, as there were no bidders for less profitable sites. Learned counsel for the Corporation has further drawn attention of this Court, by means of supplementary counter affidavit, to the amount the Corporation has been receiving for the last five years, details of which are reproduced below:

Sl. No. Financial Year Total Income

1 2011-12 21,02,725.00

2 2012-13 16,36,900.00

3 2013-14 2,07,000.00

4 2014-15 1,00,000.00

5 2015-16 29,19,295.00

9. In the last financial year i.e. 2015-16, the bids were for only Rupees Twenty Nine Lakhs odd. This time the minimum reserve price fixed is Rupees One Crore Seventy Two Lakhs and the Corporation expects to get anything higher than the said amount. Therefore, there are clear cut financial implications as well. The Corporation is well within its rights to fix the financial capacity of a bidder. This argument of the petitioners thus also fails.

10. The learned counsel for the petitioners has lastly argued that all these conditions have been tailor-made to suit the sole bidder, who has come forward as a response to the advertisement, who has been presently impleaded as respondent no. 3. Admittedly, as a response to the bid only respondent no. 3 has so far applied and there is no other applicant. Naturally in case the bid is responsive and is above the reserve price, it will go to respondent no. 3.

11. In reply to this, the learned counsel for the Corporation would argue that prior to the present tender notice earlier the advertisements were given thrice but none responded and it is only after the fourth advertisement that respondent no. 3 has made a responsive bid. Moreover, as per Rule 33 (g) of the Uttarakhand Procurement (Amendment) Rules, 2015, which is applicable in the present case, in case of e-tendering contract can be given to the sole bidder. Moreover, it has been categorically submitted by the learned

counsel for the Corporation that the amount which would be received by the Corporation would not be less than the reserved price.

12. In view of the above, this Court finds no merit in the writ petition. The writ petition is hereby dismissed. Interim orders are vacated.

13. Having made the above determination, though there is actually no legal infirmity with the conditions, yet considering that respondent no. 3 is the lone responsive bidder, it is better if the Municipal Corporation gives a fresh advertisement, in order to remove all apprehensions. The respondent Corporation shall, therefore, give a fresh advertisement inviting bids. However, in

the advertisement it would be open for the respondents to clarify that such persons who have already made a bid would be at liberty either to make fresh bid or continue with the earlier tender notice. In case of any practical difficulty with the respondents from starting the process de novo as it may lead to constituting new committees, the liberty is given to the Corporation to invite bids either through fresh tender notice or by issuing a corrigendum in continuation of the earlier tender notice dated 15.10.2016, by giving the prospective bidders enough time for making fresh bids. The invitation of fresh bid must be widely circulated in at least two local newspapers of the locality which have a wide circulation.