
(2019) 06 UK CK 0034

In the Uttarakhand High Court

Case No : Special Appeal No. 615 Of 2019, Writ Petition (M/S) No. 1665 Of 2019

Kumaon Mandal Vikas Nigam Ltd. & Others

APPELLANT

Vs

Kundan Singh And Another

RESPONDENT

Date of Decision : 14-06-2019

Acts Referred:

Uttarakhand Procurement Rules, 2008 — Rule 3

Citation : (2019) 06 UK CK 0034

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

Bench : Division Bench

Advocate : Sandeep Kothari, Vipul Sharma, Vikas Pande

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Special Appeal No. 615 of 2019 along with Writ Petition (M/S) No. 1665 of 2019. While this appeal is, no doubt, filed against the interlocutory order passed by the learned Single Judge in Writ Petition (M/S) No. 1665 of 2019 dated 11.06.2019, both Mr. Sandeep Kothari, learned counsel for the appellant-Kumaon Mandal Vikas Nigam Ltd. and Mr. Vipul Sharma, learned counsel for the respondent-writ petitioner, agree that, instead of adjudicating the validity of the interlocutory order under appeal, this Court may consider deciding the writ petition itself.

2. Kumaon Mandal Vikas Nigam Ltd., the appellant herein, has been entrusted, by the Government of India, with organizing the Mansarovar and Aadi Kailash tours, whereby pilgrims are required to travel in part over the hilly tracts of the State of Uttarakhand in India, and thereafter in the Tibet region of China before reaching Mansarovar and Mount Kailash. Since the Yatra was to commence on 12.06.2019, the appellant sought permission of the Election Commission of India, and permission was accorded on 8.05.2019. The appellant invited bids issuing a tender notification on 10.05.2019. When the bids were opened on

20.05.2019, it was found that only a single bid was received. In terms of the Uttarakhand Procurement Rules, 2008, receipt of a single bid did not suffice for processing of the tender. Consequently, a fresh tender was issued on 21.5.2019 inviting bids from interested tenderers. On the bids being opened on 28.05.2019, it was found that, of the two bids submitted, the petitioner was the lowest tenderer, and the fourth respondent was the second lowest. Since the bid offered by both the tenderers were far more than the bid received in the previous year, the appellant sought to negotiate the price with the respondent-writ petitioner (L-1), and he was requested to reduce the price quoted by him. While the respondent-writ petitioner, after negotiations, offered Rs. 1.90 per Kg. per Km. for porters, Rs. 1.19 per Kg. per Km. for ponies, and Rs. 32 per quintal per Km. for vehicles, and had intimated, by his letter dated 29.05.2019, that this was the lowest price he was willing to offer, the appellants had, thereafter, negotiated with the fourth respondent on telephone; and, pursuant thereto, the fourth-responder submitted a revised offer of Rs. 1.86 per Kg. per Km. for porters, Rs. 0.86 per Kg. per Km. for ponies and Rs. 18/- per quintal per Km. for vehicles. The appellant accepted the revised offer of the fourth-responder, and a contract was entered into with him on 10.06.2019. Aggrieved thereby, the present writ petition.

3. In the interlocutory order under appeal, the learned Single Judge observed that the action of the appellant in first negotiating with L-1 and thereafter when it failed with L-2, and in awarding the contract to L-2, was in violation of the Uttarakhand Procurement Rules, 2008, particular Rule 3 thereof; in terms of Rule 3, negotiation can only be undertaken with L-1, but negotiations were done with L-2 which was not permissible under law; and, therefore, the action of the appellant was, prima facie, illegal. As an interim measure the appellants were restrained from executing a contract.

4. It does appear that the respondent-writ petitioner had, by letter dated 29.05.2018, indicated the minimum offer which he was willing to give pursuant to the negotiations. Rule 3, no doubt, permits the appellant to negotiate only with the lowest tenderer (L-1), and not with others. The very object of negotiation would be defeated if negotiation is restricted only to the lowest tenderer for, in such circumstances, the lowest tenderer may well indicate his unwillingness to reduce his bid price, leaving the appellant with no other alternative but to again invite bids afresh, in case it is satisfied that the lowest tenderer's bid should not be accepted. In cases, such as the present one where the Yatra was to commence on 12.06.2019, delay in awarding the contract would cause needless inconvenience to pilgrims undertaking the Yatra.

5. A strict construction of the Uttarakhand Procurement Rules, 2008 would disable the appellant from negotiating with the second lowest tenderer even if he is willing to offer a price lower than the one offered by L-1, and this in turn would deprive the pilgrims, undertaking the Yatra, of a reduction in their financial burden. Even if we were not to accept the construction placed on these Rules, by

Mr. Vipul Sharma, learned counsel for the respondent-writ petitioner, the fact remains that the appellant has not passed a reasoned order, much less have they communicated any such reasons to the respondent-writ petitioner. The appellant has acted contrary to the law declared in *M/S Star Enterprises and others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and others* : (1990) 3 SCC 280, wherein the Supreme Court held that, when highest offers are 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 be any specific justification not to do so. Even if L-2 had subsequently offered a price lower than L-1, the appellant ought to have invited both L-1 and L-2 for negotiations, and should have awarded the contract to the bidder who offered a lower bid than the other.

6. It is unnecessary for us to dwell on this aspect any further, since Mr. Sandeep Kothari, learned counsel for the appellants, would fairly state that, in case the respondent-writ petitioner is willing to participate in fresh negotiations alongwith L-2, the appellant would forthwith call both of them for negotiations on 17.06.2019 at 02:00 p.m.

7. Mr. Vipul Sharma, learned counsel for respondent-writ petitioner, would also fairly state that the respondent-writ petitioner is ready and willing to participate in negotiations; and it would suffice if this Court were to dispose of the writ petition directing the appellants to offer the contract to the lowest bidder among the respondent-writ petitioner and the fourth-respondent, since both of them have qualified at the technical bid evaluation stage. Suffice it, in such circumstances, to set aside both the order under appeal, and the contract awarded in favour of the fourth respondent on 4.06.2019; and to dispose of the writ petition itself directing the appellant to invite both the respondent-writ petitioners and the fourth respondent (L-1 and L-2) for negotiations at 02:00 p.m. on 17.06.2019, and award the work to the person who quotes a lower price among both of them. Needless to state that the bid, which the respondent-writ petitioner or the fourth-respondent, may quote shall not be higher than the bid offered by the fourth-respondent on 04.06.2019. Both the appeal and the writ petition are, accordingly, disposed of. No costs.

8. Let a certified copy of this order be issued to the parties, on payment of prescribed charges, today itself.