
(2023) 04 UK CK 0042

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 258 Of 2023

Maa Shailputri Associates

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 18-04-2023

Acts Referred:

Citation : (2023) 04 UK CK 0042

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

Bench : Division Bench

Advocate : Rajendra Dobhal, Dushyant Mainali, S.S. Chauhan, B.S. Parihar

Final Decision : Disposed Of

Judgement

Vipin Sanghi, CJ

1. The petitioner has preferred the present writ petition to assail the tender notice dated 17.01.2023, issued by respondent no.3, by which fresh bids have been invited through E-tendering process for construction of 60 meter span steel guarder bridge in Lachampur (Nakel), District Nainital. The petitioner also seeks quashing of the rejection order dated 16.01.2023, passed by respondent no.3, whereby reply to the show-cause notice to the petitioner has been rejected. The petitioner also seeks a direction to the respondents to refrain from rejecting petitioner's bid in response to the E-tender dated 19.07.2022. Other reliefs have also been sought on the same lines.

2. On 19.07.2022, respondent no.3 had invited E-tender in two bid system for construction of 60 meter span steel guarder bridge in Lachampur (Nakel), District Nainital. The petitioner participated in the tendering process alongwith other bidders. On 29.09.2022, the technical bid of the petitioner was approved, apart from three others. The financial bids were opened and the petitioner emerged as L1 bidder. After some time, the petitioner was issued a notice/ communication dated 02.12.2022 by the respondents. The said communication asked the petitioner to explain the position with regard to the constitution of the

partnership deed. The notice stated that the petitioner had provided alongwith its bid, the amended partnership deed dated 30.01.2021, as per which, one partner, i.e. the party of second part desired to retire from the firm, whereas, the first partner desired to continue the business and the firm. We may notice that the first partner is Mr. Sanjay Dorvi, who is pursuing these proceedings. The partnership deed dated 30.01.2021 further recorded that two partners, namely Manju Dorvi and Pooja Dorvi, were being inducted, as the second and the third parties.

3. The respondents raised the issue with the petitioner, that the outgoing partner had not signed the amended partnership deed dated 30.01.2021. The petitioner was granted time to response to the notice. The petitioner sent its reply dated 08.12.2022. Thereafter, the respondents proceeded to cancel the tender, and issued a fresh tender on 17.01.2023.

4. Before we proceed further, we may take note of the settled legal position is that the employer, who invites the tender, has the absolute right to withdraw the tendering process at any stage. However, when the authority inviting tender is the State or a State instrumentality, it is obliged to act in a fair, reasonable and transparent manner, and not arbitrarily, with discrimination or whimsically. Therefore, the only limited inquiry that we are called upon to make in these proceedings is, whether, the decision taken by the respondents to cancel the tendering process- wherein the petitioner emerged as L1 bidder, had some justification, or not.

5. The amended partnership deed dated 30.01.2021, produced by the petitioner before the respondents, shows that the same was executed between Sanjay Dorvi-the continuing partner, Manju Dorvi and Pooja Dorvi, who were inducted in as second and third parties. Though, the said amended partnership deed records that the 'second party' wishes to retire from the firm, the name of the second party is not disclosed, and the erstwhile second party has not even signed the said amended partnership deed, as a retiring partner.

6. The submission of Mr. Dobhal is that the retiring partner was the father of the first partner- Sanjay Dorvi, who had sent the communication dated 30.10.2020 resigning from the firm w.e.f. 30.01.2021. The petitioner has placed before us the said communication. However, this document was not submitted by the petitioner along with its bid.

7. The further submission of Mr. Dobhal is that Mr. Pooran Chand Dorvi died of COVID-19 in May, 2021, and therefore, he could not sign the amended partnership deed.

8. This submission also does not appear to be correct, since the amended partnership deed is dated 30.01.2021, on which date Mr. Pooran Chand Dorvi was alive.

9. The respondents have filed their counter-affidavit, from which, it appears that

the respondents had even made inquiry from the Registrar, Firms, Societies and Chits, Hiranagar, Haldwani, District Nainital, and it transpired that the petitioner-firm was registered on 19.10.2007 with five partners. Thereafter, there had been no amended partnership deed filed before the Registrar, Firms, Societies and Chits, and no registration or renewal of registration was obtained.

10. Pertinently, this communication is of 28.12.2022, i.e. well before the cancellation of the tendering process, initiated on 19.07.2022, and the issuance of a fresh tender on 17.01.2023.

11. In these circumstances, it appears to us that the respondents had justification for cancellation of the tendering process wherein the petitioner emerged as L1 bidder.

12. For the aforesaid reasons, we do not find any merit in this petition, and we are inclined to dismiss the same.

13. At the same time, we may observe that while issuing show-cause notice dated 30.12.2022 to the petitioner, the respondents have alleged that the conduct of the petitioner tantamounts to a 'fraudulent practice', which is defined in the tender document itself to mean, "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation".

14. Even in the counter-affidavit filed before us, in Paragraph No.39, the respondents have stated that the aforesaid action of the petitioner tantamounts to fraudulent activity, as defined in Clause 3.1 (ii) of the Standard Bidding Document of the Instructions to Bidders.

15. In our view, though the petitioner may have acted casually in producing the partnership deed, which does not appear to be in order, inasmuch, as the signature of the outgoing partner was missing, and the petitioner had also not submitted the amended partnership deed before the Registrar, Firms, Societies and Chits, for its registration, that by itself, cannot be described as an act of committing fraud on the respondents for the purpose of obtaining financial or other benefit.

16. Pertinently, the outgoing partner, who has since passed away in May, 2021, was none other than the father of Sanjay Dorvi- the continuing partner, and the two newly inducted partners were his mother and brother's wife.

17. It is also not the case of the respondents that any third party had made a complaint against the petitioner, claiming that a forged and fabricated partnership deed had been submitted by the petitioner, with a view to deny the rights of such third party/ partner of the firm.

18. It was for the respondents to scrutinize the documents submitted by the petitioner at the stage of conducting the technical evaluation. Pertinently, the respondents cleared the technical bid of the petitioner, and raised the aforesaid

issue even after opening of the financial bid. Though, the respondents were not estopped from doing so, at the same time, the submission of amended partnership deed by the petitioner cannot be said to be either fraudulent, or a misrepresentation.

19. We, therefore, make it clear that it shall not be open to the respondents to debar the petitioner, or take any penal action against the petitioner from participation in future tendering process on account of the petitioner's submission of the amended partnership deed dated 30.01.2021.

20. The writ petition is disposed of in the aforesaid terms.

21. Pending application, if any, also stands disposed of.