

**(2015) 03 AHC CK 0121**  
**In the Allahabad High Court**  
**Case No : Misc. Bench No. 583 of 2015**

Maa Vindhyavasini Construction

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

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**Date of Decision :** 10-03-2015

**Acts Referred:**

**Citation :** (2015) 4 ADJ 379

**Hon'ble Judges :** D.Y. Chandrachud, C.J.;Rajan Roy, J

**Bench :** Division Bench

**Advocate :** Manish Sharma, for the Appellant; T.J.S. Makkar, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. On 28 May 2014, a tender notice was published under the Pradhan Mantri Gram Sadak Yojana (PMGSY) by the Superintending Engineer in the Public Works Department, Bareilly for the upgradation of various roads in district Hardoi. Tenders were invited on the basis of an E-Procurement Module. The last date for the submission of bids was 10 July 2014. The tender conditions stipulated in Clause 22 that the first part containing the technical bids would be opened initially and the result of the evaluation would be made public on the E-Procurement Module before opening the second part of the bid document. The bids submitted in the second part which contained the financial bids were to be opened only of those bidders who had qualified in respect of part one. According to the petitioner, the evaluation of technical bids was uploaded on the PMGSY website and the bid submitted by the petitioner was found to be technically compliant. Subsequently on 11 November 2014, the Bid Evaluation Committee recommended the award of the contract for construction and maintenance of roads of district Hardoi to the petitioner as the lowest bidder. The petitioner had submitted a bid in the amount of Rs. 11 crores which was 3.81% in excess over the technically sanctioned estimate. This decision of the Bid Evaluation Committee was accepted by the Chief Engineer who was also the Chairman of

the Committee on 11 November 2014. On 14 November 2014, the Chief Engineer granted his approval for uploading the result of the evaluation of the financial bids in the second part of the bid document on the website. This was uploaded on the website on 14 November 2014 at 16:25 hours.

2. A Government order was issued on 8 October 2014 constituting a Committee inter alia consisting of (i) the Chief Executive Officer of the U.P. Rural Roads Development Agency; (ii) the Chief Engineer; (iii) the Chief Engineer PMGSY) of the district concerned; and (iv) the Financial Controller of the U.P. Rural Roads Development Agency. The Committee conducted an evaluation of all the bids on 23 December 2014. The Committee noted that in respect of all other projects in various districts under PMGSY-2, the bids which had been accepted as the lowest responsive bids were lower than the DPR (Detailed Projected Report) rates. On the other hand, since the rates quoted by the petitioner were found to be 3.81% above of the estimated rates, the Committee resolved to re-invite fresh tenders.

3. The petitioner is aggrieved by the decision of the Committee to invite fresh bids and has challenged the decision.

4. Two submissions have been urged on behalf of the petitioner. The first submission is that the bid submitted by the petitioner having been accepted, it was not open to the competent authority to conduct a process of reevaluation and take a decision to invite fresh tenders. The second submission is that a reevaluation could not have been made by the newly formed Committee on the basis of the Government order dated 8 October 2014 after the bid submitted by the petitioner had been accepted.

5. At the outset, it must be noted that the petition is premised on the basis that, as a matter of fact, no letter of acceptance was issued to the petitioner. The specific averment in para-18 of the writ petition is that though after the acceptance of financial bids, a letter of acceptance should have been issued by the Superintending Engineer, instead what was done was that a different Committee had been constituted under the Government order dated 10 October 2014 which in turn resolved to invite fresh tenders.

6. Clause 28.1 of the bid document contains a specific reservation under which the employer reserves the right to accept or reject any bid and to annul the bidding process at any time prior to the award of the contract.

7. Clauses 28 and 28.1 were in the following terms:

"28. Employer's Right to accept any Bid and to reject any or all Bids:

28.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders."

8. Clauses 29, 29.1 and 29.2 are as follows:

"29. Notification of Award and Signing of Agreement.

29.1 The bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable or facsimile confirmed by registered letter. This letter (hereinafter and in the Part I General Conditions of Contract called the "Letter of Acceptance") will state the sum that the Employer will pay to the Contractor in consideration of the execution, completion and the routine maintenance of the works for five years, by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

29.2 The notification of award will constitute the formation of the Contract, subject only to the furnishing of a performance security in accordance with the provisions of Clause 30."

9. Clause 29.1 makes it clear that a Bidder whose bid was accepted was to be notified of the award of the contract by the Employer. This letter notifying the award of the contract, called the letter of acceptance, would state the amount which the Employer was required to pay the Contractor in consideration of the execution, completion and routine maintenance of the works for five years. Clause 29.2 specifically provided that the notification of the award would constitute the formation of the contract, subject to the furnishing of a performance security under Clause 30.

10. Admittedly, in the present case, there was no notification of the award of the contract to the petitioner. Admittedly, no letter of acceptance was issued. In the circumstances, an agreement defining the mutual rights and obligations between the parties did not come into existence. Prior to the first evaluation by the Bid Evaluation Committee on 11 November 2014, a Government order had been issued on 8 October 2014 redefining the constitution of the Committee which was to evaluate the financial bids. The recommendation of the Bid Evaluation Committee in the first instance, though it was accepted by the Chief Engineer who was the Chairperson of the Committee did not fructify into a valid and legally enforceable agreement coming into existence in the absence of a notification of the award to the petitioner.

11. Clause 29.2 makes it clear that the notification of the award to the successful bidder would constitute the formation of the contract, subject of course to the bidder submitting the performance security under Clause 30.

12. The learned counsel appearing on behalf of the respondents has also stated before the Court that in respect of PMGSY-2, no bid has been accepted above the stipulated rates and the submission of the petitioner in relation to the valuation of bids under PMGSY-1 would, therefore, be of no relevance.

13. In this view of the matter, in the absence of a legally enforceable agreement having come into existence, it was open to the employer to resolve to invite fresh

tenders. The reason on the basis of which this decision has been taken is that the bid submitted by the petitioner was 3.81% above the schedule of rates. The commercial wisdom of the employer in doing so cannot be scrutinized by the Court. The issue before the Court is limited to the question as to whether the decision can be termed as arbitrary or irrational. In absence of an award of a contract to the petitioner, it is always open to the employer to resolve to invite fresh tenders for the completion of the work. The action impugned cannot be said to be arbitrary or irrational.

14. In this view of the matter, we find no error in the decision. No case for interference is made out. The petition is, accordingly, dismissed. There shall be no order as to costs.