**(2003) 07 AHC CK 0225**

**In the Allahabad High Court**

**Case No :** C.M.W.P. No. 48962 of 2002

Mala Vanaspati Store — APPELLANT

Vs

Bharat Sanchar Nigam Ltd. and Others — RESPONDENT

**Date of Decision :** 31-07-2003

**Acts Referred:**

**Citation :** (2003) 6 AWC 4785

**Hon'ble Judges :** R.S. Tripathi, J;M. Katju, J

**Bench :** Division Bench

**Advocate :** P.K. Jain, for the Appellant; B.N. Singh, S.S.C., Rajiv Joshi, M.B. Singh and S.K. Tripathi, for the Respondent

**Final Decision :** Dismissed

## Judgement

M. Katju, J.—This writ petition has been filed for quashing the impugned letter dated 18.10.2002 Annexure-9 to the writ petition and for a mandamus directing the Respondents not to permit the Respondent No. 3 to function as pre-paid dealer of cellular service of Bharat Sanchar Nigam Limited (hereinafter referred to as ''B.S.N.L.'') and to issue a mandamus directing the Respondents to accept the bid of the Petitioner.

2. The Respondent No. 1 B.S.N.L. is a statutory corporation. It floated on 15.7.2002 the tender for grant of dealership of post-paid service and distributorship of pre-paid services to sell its cellular services. True copy of the tender form is Annexure-1 to the writ petition. The conditions in the tender form were that the applicant must have turnover not below Rs. 25 lacs, the person should be registered with the sales tax Department and should be an income tax payee. In paragraph 6 of the writ petition it is alleged that the Petitioner fulfilled all these conditions and in paragraph 7 it is alleged that Petitioner is the sole eligible applicant. The Petitioner applied for grant of dealership, and submitted experience certificate also.

3. It is alleged in paragraph 11 of the writ petition that the Respondent No. 3 did

not fulfil the minimum qualification for being considered for award of the dealership as he did not hold any registration with the sales tax department, and to the best of the Petitioner''s own knowledge the Respondent No. 3 was not an Income Tax payee and he did not have requisite turnover of Rs. 25 lacs per year. It is alleged in paragraph 13 of the writ petition that after submission of the application form the Respondent No. 3 has applied for trade tax registration. It is alleged in paragraph 17 of the writ petition that the Respondent No. 3 did not submit Income Tax certificate as required. The Petitioner addressed a letter to the Principal Chief General Manager, Telecom, U.P. West stating that the technical bids of some of the applicants were forged and fabricated and the Respondent No. 3 did not have eligibility qualification. Similar letters were sent to other authorities also vide Annexures-5 to 8 to the writ petition. By letter dated 18.10.2002, Annexure-9 to the writ petition the Petitioner was informed that its application for distributorship of B.S.N.L. Mobile Services cannot be accepted. Hence this petition.

4. A counter-affidavit has been filed by the Respondent No. 3 and we have perused the same. The Respondent No. 3 has stated that he has all the necessary qualification as mentioned in paragraph 5 of the counter-affidavit. The details are mentioned in paragraphs 6, 7 and 8 of the counter-affidavit. In paragraph 9 of the counter-affidavit it is stated that the technical bid of Respondent No. 3 was accepted by the Respondent No. 2 on 1.8.2002 and the Respondent No. 3 was found to be eligible and financially sound. By the letter dated 27.8.2002, the Corporation informed the Respondent No. 3 that his interest for distributorship has been considered and technical bid for Etah has been accepted and the financial bid will be opened on 4.9.2002 at 2 p.m. at the Conference Hall of the Corporation at Rajpur Road, Dehradun. The technical bids of only Petitioner and the Respondent No. 3 were accepted and they were asked to be present on opening of the financial bid on 4.9.2002. The financial bid was opened on that date in the office of the Respondent No. 2 in presence of the Petitioner and Respondent No. 3. The bid of Respondent No. 3 was found to be lowest being 42% commission while that of the Petitioner was 51.25%. Since the bid of the Respondent No. 3 was lowest it was accepted and he was granted the distributorship in question vide letter dated 13.9.2002 Annexure-C.A. 6 to the counter-affidavit. Subsequently the Respondent No. 3 received a letter dated 16.9.2002, from the Respondent No. 2 in which original documents were asked from Respondent No. 3 to substantiate the turnover of more than Rs. 25 lacs along with the sales tax clearance and income tax return vide Annexure-C.A. 7. The Petitioner submitted these documents vide Annexures-C.A. 8 and C.A. 9. After considering the original documents the Corporation executed an agreement on 23.9.2002 for the distributorship for Etah vide Annexure-C.A. 10. Thereafter training was attended by the Respondent No. 3 on 11.11.2002, vide Annexure-C.A. 12. The Respondent No. 3 also submitted bank guarantee of Rs. 5 lacs. In paragraph 19 it is stated that the Respondent No. 3 has also spent a considerable amount in preparing a showroom as per specification of the Corporation vide

 

Annexure-C.A. 14. In paragraph 25 it is stated that the tender notice did not mention any condition that the tenderer should be registered with the sales tax Department and be an income tax payee. Copy of the assessment order dated 23.10.2000, passed by the Trade Tax Officer is Annexure-C.A. 15. The Assistant Commissioner Trade Tax, Etah, also submitted report dated 5.12.2002, to the Income Tax authority certifying the Petitioner''s turnover vide Annexure-C.A. 16.

5. On the facts of the case, we find no merit in this petition. The bid of the Respondent No. 3 was lowest and hence, the contract was rightly granted to him. We are not satisfied that the Respondent No. 3 was not eligible as details have been given in the counter-affidavit.

6. The petition is dismissed. The interim order is vacated.

 