
(2012) 07 MP CK 0025
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4257 of 2009

M.I. Mansoori

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : (2012) 07 MP CK 0025

Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J

Bench : Division Bench

Advocate : S.K. Dubey, for the Appellant; S.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. Challenge in this writ petition is made to the action of the respondents in not permitting the petitioner to participate in the process of a tender, which was initiated in the year 2009 i.e. ... on 28.2.2009, mainly on the ground that as per condition No. 20 of the Notice Inviting Tender, current enlistment and experience of the petitioner is not available. Petitioner claims to be a contractor, who was enlisted with Bharat Sanchar Nigam Limited (hereinafter referred to as "BSNL"), right from the year 1993 onwards and whose enlistment and existence continued upto March 2005. It is said that he has conducted various work till March 2008 and has experience of excavation of trenches and other ancillary works. Experience certificate for the work done by the petitioner with BSNL from 1993 to 2005 is filed as Annexure P/2. It is stated that on 28.2.2009, vide Annexure P/1, a Notice Inviting Tender (hereinafter referred to as "NIT") was issued by the respondents, wherein contractors pre-qualified and enlisted with BSNL in various categories or with the MP Telecommunication Circle, were eligible to participate. One of the conditions stipulated in the tender document was that the Contractor should have completed construction work of telecommunication cable for minimum 50% of the amount estimated in the tender document, for the period 2007-08 and 2008-09.

2. However, it is the case of the petitioner that renewal was granted to him vide Annexure P/3 and his empanelment was valid upto March 2005. Thereafter, on 27.8.2005, he applied for renewal of his empanelment after March 2005 by depositing the requisite fee of Rs. 5000/- and was fulfilling all the conditions necessary for renewal. However, the renewal was not done and right from April 2005 till issuance of this tender and subsequently upto 28.2.2009 and 6.4.2009, petitioner had been making representation for renewal. Because of non-renewal, no work was granted to him for the period 2007-08 and 2008-09 and on the ground that he is not entitled to participate, tender documents were not issued to him. It is stated that the petitioner had to suffer because of non-renewal, and as the renewal was not granted only because of the lethargy and negligence on the part of the respondents, this writ petition has been filed seeking a direction that the petitioner should be permitted to participate in the process of tender. The relief claimed for by the petitioner initially reads as under:

7. Relief sought: In view of the facts and grounds mentioned above, the petitioner prays for the following reliefs:-

(i) The Hon''ble Court may kindly be pleased to issue a writ in the nature to direct the respondent authorities to permit the petitioner to participate in NIT dated 28.2.09 (Annexure P/1) by issuing tender form considering the past experience (Annexure P/2).

(ii) The Hon''ble Court may kindly be pleased to restrain the respondents from banning further empanelment which create discrimination amongst citizens those wants to work with respondent.

(iii) Any other relief which this Hon''ble Court may deem fit and proper may kindly be granted together with the cost of the writ petition.

Subsequently, by amendment, Clause 1-A has been added, which reads as under:

1-A. That, the Hon''ble Court may kindly be pleased to issue a writ in the nature to direct the respondent authorities to permit the petitioner to participate in NIT dated 11.6.09 (Annexure P/11) by issuing tender form considering his past experience.

3. Respondents have not filed any reply but Shri S.P. Singh, learned counsel for the respondents, argued that the tender was issued in the year 2009 for a specific work, which work is already over and now no further relief as prayed for by the petitioner can be granted. Accordingly, learned counsel submits that benefit cannot be granted to the petitioner.

4. We have heard learned counsel for the parties and perused the records.

5. From the records, it is clear that petitioner''s enlistment was alive upto March 2005 only and after March 2005, it is an admitted position that petitioner''s enlistment with the respondent was not alive, it was not renewed and according to petitioner''s own showing the process of renewal was pending. That apart, till

the NIT was issued on 28.2.2009, petitioner was not enlisted and, therefore, as per Condition No. 20 of the NIT, the requirement of being a current enlisted contractor is not available to the petitioner. That apart, the NIT requires work experience of atleast 50% of the amount of the contract for the period 2007-08 and 2008-09, in the matter of telecommunication and allied works. Admittedly after 2005 petitioner did not fulfil this experience and, therefore, it is a case where the petitioner did not fulfil the requirement of tender documents and the same was denied to him. Petitioner wants this Court to infer that because of the act of the respondents in sleeping over his renewal, petitioner is deprived of his right to participate and, therefore, NIT should be issued to him and his case considered without insisting upon experience for the year 2007-08, but by considering his past experience of the previous period.

6. Petitioner may have a grievance with regard to inaction on the part of the respondents in not considering his application for renewal in accordance with law. However, no relief is claimed for by the petitioner seeking consideration of his claim for renewal nor does he claim damages for such inaction on the part of the respondents. On the contrary, he wants a mandamus from this Court to permit him to participate in the NIT, which was issued on 28.2.2009, after considering his past experience and restrain the respondents from banning him or creating discrimination in not considering his case. The petitioner has not challenged the action of the respondents in not granting him renewal in time. He only wants that he should be permitted to participate in the process of tender. Now, this cannot be done for the following two reasons:

(i) The NIT was issued on 28.2.2009, the work in connection with the construction is already over now and, therefore, no direction can be issued.

(ii) The second ground is that the petitioner can be permitted to participate in the process of tender only if he fulfils the conditions stipulated in the tender document with regard to the eligibility criteria, because he is currently not an empanelled contractor, nor does he have the work experience of having completed construction work of telecommunication cable to the extent of minimum 50% amount of the estimated cost of the tender during the period 2007-08 and 2008-09.

7. That being so, once it is clear that the petitioner does not fulfil the conditions of the tender, no interference can be made by this Court in the matter. However, in case petitioner has any grievance still existing, due to his non-empanelment, he has to take recourse to the remedy available under law.

8. For the present, keeping in view the reliefs claimed by the petitioner as indicated hereinabove and finding that the same cannot be granted for reasons as indicated hereinabove, no indulgence is called for. Accordingly, the petition stands dismissed.