

(2019) 11 UK CK 0164

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3285 Of 2019

M/s APPAR Infratech Pvt. Ltd. And Another

APPELLANT

Vs

Uttarakhand Jal Vidyut Nigam Ltd. And Others

RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Citation : (2019) 11 UK CK 0164

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Rajendra Dobhal, Devendra Singh Bohra, Vinay Kumar, Pawan Mishra

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. Petitioner no. 1 before this Court is a company registered under the Companies Act, 1956 having its registered office at Noida and petitioner no. 2 is the proprietorship firm of contractors which is engaged in the business of civil engineering, construction, maintenance, repair works of canal/power channel. The two formed a joint venture and applied for work contract which was floated by Uttarakhand Jal Vidyut Nigam Limited (from hereinafter referred to as UJVNL) initially on 04.01.2019. The work was for "special repair of downstream training wall, downstream river training works, construction of access road at downstream left bank and other allied works of Ichari Dam". The petitioner was held to be technically disqualified by the employer i.e. UJVNL as there was certain defects in the bid and the technical bid and the financial bid of respondent no. 3 was accepted. All the same on a complaint made to Central Project Management Unit (from hereinafter referred to as CPMU) which is a nodal agency for Dam Rehabilitation and Improvement Project which is an organ of the World Bank, the tender process was cancelled.

2. Thereafter, another notice inviting tender was issued by the UJVNL on 09.08.2019. There were certain changes in the nature of work here, as the

subject matter itself reveals. Now the subject matter says that it is a contract for "special repair of training wall, river training works, access at downstream of Ichari Dam and other allied works of Ichari Dam". In pursuant to the second notice, five construction companies applied, including the present petitioners and respondent no. 3. The petitioners applied as a joint venture. As it was a two bid system the technical qualification was examined first and the petitioners were found to be technically disqualified, so was one another company i.e. Arun Construction.

3. At the same time, the petitioners have also challenged the condition of UJVNL which have held private respondent no. 3 to be eligible and technically qualified although as per the petitioners they are technically disqualified.

4. The grounds for challenge of the present petitioners are basically two. The first is that the entire nature of work has been changed in the second notice, which is evident from the subject matter of the earlier work, and more importantly this has been done to favour respondent no. 3 and the condition which has been incorporated in the new contract are tailor-made to suit respondent no. 3. The second contention of the petitioner is regarding the certificate given by the UJVNL to respondent no. 3 of earlier projects done by respondent no. 3 and for this they have stated that for one project which was to be completed within one year, completion certificate has been issued on completion of 21 days of work only, which is not physically possible and therefore the petitioners have also raised questions on the veracity of this certificate.

5. As regarding the first objection of the petitioners regarding the change of the condition the reply given by the UJVNL is that though the project is being executed by the UJVNL, it's a project of the World Bank and the UJVNL has to abide by the guidelines of the World Bank. Definitely there has been a change in the nature of the project, but this has been done on the guidelines and instructions of CPMU, which is a nodal agency of the World Bank. For this certain documents have been placed by UJVNL before this Court wherein according to the UJVNL they did not make any change in the project and it has been done on the suggestion and direction of the CPMU and the work of power generation was dropped and the entire work now shifted to repair of dam and primarily the training wall of the dam.

6. Undoubtedly the work in question is of repairs of work regarding a dam known as "Ichari Dam", which is on Tons river, which falls in District Dehradun. Moreover, even after the change of conditions petitioners have applied knowing fully well that they do not qualify under the new conditions. Once they have applied under the changed conditions, they cannot go back and challenge the same conditions.

7. If the petitioners were not eligible for even participating, they should not have participated, and challenged the changed conditions before this Court. They have only done that post participation. Moreover, their case is that the condition has

been deliberately tailor-made to suit respondent no. 3 and inspite of this they have participated in the changed condition. Now under these circumstances it is not given to them to challenge the said condition or allege malafide either against the private respondent or the employer i.e. UJVNL.

8. The second ground that a wrong certificate has been given to the petitioner is also not correct, inasmuch as the reasons assigned by the UJVNL is that the period of work is deliberately enlarged in order to take note of the Monsoon season during which the work continue. There is nothing unusual if the work has been completed in 21 days.

9. The petitioner's contention is that private respondent no. 3 in connivance with UJVNL has procured two different certificates dated 22.06.2016 and 11.12.2017 for the same work.

10. By order dated 19.11.2019, the authority which had issued the certificate i.e. Executive Engineer, Pashulok Barrage, Rishikesh was called. The Executive Engineer is present before this Court. He has stated that the first certificate dated 22.06.2016 and the second certificate dated 11.12.2017 relates to the same project namely "Repair of Damaged Lining (Pane) of Power Channel of Chilla HEP from Chainage 4.00 Km to Intake of Power House, at Rishikesh", but in the first certificate dated 22.06.2016 it was wrongly mentioned as "road work". The second mistake in the first certificate dated 22.06.2016 was that in Column No. 10, the exact quantity was not given. This certificate was submitted by respondent no. 3 for correction and consequently another certificate was issued on 11.12.2017 mentioning the exact quantity and details of work in Column No. 10 and the subject matter was also corrected.

11. Moreover what also has to be considered is that the work has to be completed within the stipulated period i.e. by March, 2020 or otherwise the UJVNL shall not be able to qualify for the second phase of the DRIP project and the UJVNL will also have to pay compensation charges.

12. In view thereof there is a public necessity also involved in the matter. Considering all these aspects no interference is called for.

13. Consequently, writ petition fails and is hereby dismissed.