

(2019) 05 UK CK 0160

In the Uttarakhand High Court

Case No : Writ Petition No. 9, 19, 20, 21(MS) Of 2019

M/s Dalip Singh Adhikari & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Citation : (2019) 05 UK CK 0160

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Shobhit Saharia, S.S. Chauhan, Rakesh Thapliyal

Final Decision : Dismissed

Judgement

Alok Singh, J

1. Issue raised in all the aforesaid writ petitions is common, therefore, all the three writ petitions are heard together and decided by this common judgment.

2. Brief facts of the present case, inter alia, are that on 9.11.2018 respondent no. 2 issued a notice inviting tenders for construction of different roads under Pradhan Mantri Gram Sarak Yojna. Petitioner submitted his bids for four roads mentioned at serial nos. 5, 6, 7 and 8. On 04.12.2018, Technical Bids were opened and on 11.12.2018 final decision was taken. Bid Evaluation Committee rejected the bids of the petitioner. As per provisions of the Standard Bidding Document as well as order dated 18.07.2017 issued by the State Government and mentioned at Clause 6.1 of the Bid Evaluation Report, the bids were to be evaluated by four persons / officials namely Divisional Accounts Officer, Executive Engineer (PMGSY) Champawat, Superintending Engineer (PMGSY), Pithoragarh and Chief Engineer (PMGSY) Kumaon. Decision dated 11.12.2018 would reveal that same do not contain signatures of Divisional Accounts Officer and respondent no. 5 acted as both Superintending Engineer and Chief Engineer. Meaning thereby two persons have taken decision instead of four persons. As per Attachment 6B to the decision dated 11.12.2018, under Clause 5 (v) income

returns for the last three years were to be submitted and the bid of the petitioner has been declared not qualified on the ground of improper balance sheet, though same was not at all required. Petitioner submitted certified and audited balance sheet along with his bid document. Technical bids of petitioner were rejected on two grounds viz. details of on going work was not submitted and improper balance sheet was submitted. Feeling aggrieved, petitioner has approached this Court.

3. Heard Mr. Shobhit Saharia, Advocate for the petitioner, Mr. S.S. Chauhan, Deputy Advocate General for the State of Uttarakhand / respondents nos. 1 to 4 and Mr. Rakesh Thapliyal, Advocate for the respondent no. 6 and perused the record.

4. Mr. Shobhit Saharia, Advocate for the petitioner has submitted that as per Clause 6.1 of the Bid Evaluation Report, the bids were to be evaluated by a committee consisting of Divisional Accounts Officer, Executive Engineer, Superintending Engineer and Chief Engineer. In the Bid Evaluation Committee, Divisional Accounts Officer was not present and petitioner's bids were rejected. He has further submitted that Superintending Engineer and Chief Engineer is one and the same person; Chief Engineer is the accepting authority of the bid. He has further submitted that under Clause 5 (v) only income tax returns for the last three years were to be submitted and respondents have rejected his bid on the wrong premise.

5. Mr. S. S. Chauhan, Deputy Advocate General for the State of Uttarakhand has submitted that post of Divisional Accounts Officer was vacant and Head Clerk was having the charge of Divisional Accounts Officer and on the relevant date, he was on leave. He has further submitted that there is no person in the name of Mr. Vaibhav Gupta, who has accepted bid. Mr. Sushil Kumar Gupta was holding the charge of both posts viz. Chief Engineer and Superintending Engineer and Government has accorded sanction in this regard. He has further submitted that petitioner has submitted neither income tax returns nor correct balance sheet. He has further submitted that petitioner has furnished wrong information in the balance sheet. Petitioner has shown his partnership monthly salary as Rs. 1,00,000/-, Rs. 75,000/- and Rs. 50,000/- which comes to Rs. 27,00,000/- per annum but in the end of March, 2018 he has shown his annual salary as Rs. 81,00,000/- per annum while in the earlier tender in the same division, petitioner has shown, in the end of March, 2018 his annual salary as Rs. 46,80,000/-. Both figures were contradictory. He has further submitted that as per Clause 1.3.3, anticipated date of completion was required but petitioner in the certificate has mentioned work in progress while contract date of completion has already passed, therefore, petitioner concealed material facts.

6. Mr. Shobhit Saharia, Advocate for the petitioner has submitted that petitioner has submitted correct information in his balance. One is provisional assessment and another is final assessment of balance sheet.

7. Clause 4.2 (f) and 4.7 of the Standard Bidding Document read as under:

"4.2 (f) Reports on the financial standing of the bidder, such as profit and loss statement and auditor's report for the past three years."

"4.7 Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have:

(i) made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/or

(ii) record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures etc; and/or

(iii) participated in the previous bidding for the same work and had quoted unreasonably high or low bid prices and could not finish rational justification for it to the Employer."

8. From perusal of the record, it clearly transpires that grounds, on which petitioner's bids were rejected, are correct. Petitioner had filed incorrect balance sheet and failed to provide information regarding on going work. Petitioner placed reliance on Clause 5 (v) of the bid document but he himself failed to supply the income tax returns. Technical grounds raised by the petitioner that Divisional Accounts Officer was not present and one person is holding charge of two posts would not overcome the petitioner from the deficiencies left in the bid document.

9. In view of law laid down by the Hon'ble Supreme Court in the case of Municipal Corporation Ujjain Vs. BVG India Ltd. reported in 2018 (5) SCC 462, there is very limited scope of judicial review in the matter. In my opinion, Expert Committee has rejected the bids of the petitioner on the ground of not fulfilling the criteria. Petitioner himself has failed to fulfil the criteria. Therefore, I do not find any illegality or perversity in the impugned orders.

10. Accordingly, all the writ petitions fail and are hereby dismissed. Interim order passed by this Court stands vacated.

11. Let copy of this judgment be placed in each connected petition.