
(2018) 05 UK CK 0076

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1348 of 2018

MS I. AND D. CONSTRUCTION

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Citation : (2018) 05 UK CK 0076

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, Sanjay Bhatt, Anurag Bisaria, D.S. Patni

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, JÂ

1. The petitioner before this Court is an â??Aâ? Class contractor having experience in electrical and mechanical construction work. The petitioner is

aggrieved by certain conditions laid down by the Uttarakhand Pey Jal Nigam, while inviting offers for work contract, which is called â??Tapovan

(Reorg) Pumping Water Supply Scheme of Block Narendra Nagarâ?..Â Admittedly, the nature of work has civil, mechanical as well as electrical

components. The experience of work being sought for the last seven years includes experience in work of civil, mechanical and electrical works.

According to the petitioner, since they have experience primarily in the field of mechanical and electrical works, they cannot participate in the

contract. Hence, the present writ petition.Â

2. The contention of the petitioner primarily is that had the tender been invited by separating the work, the petitioner would have been eligible to

participate in the work, which is purely mechanical and electrical.Â

3. However, the learned counsel for the respondents, on the other hand, would argue that Procurement Rules permit the respondents to have a

composite work order and it is not necessary for the Department to call for separate contracts. Moreover, the learned counsel for the respondents has

relied upon a decision of the Division Bench of Punjab and Haryana High Court in the case of Enlisted Electrical Contractors Association (Regd.) v.

State of Punjab and others (CWP No. 9711 of 2016 (O&M), wherein such contention that separate tenders should have been invited instead of a

composite tender has been rejected. Paragraph Nos. 11, 12 and 13 of the judgment passed by the Division Bench of Punjab & Haryana High Court

read as under:

11. Earlier, the Government of Punjab was issuing separate tenders for each discipline of electrical, civil and public health works. However, in the

year 2013, while changing this policy, it was decided by the State Government to start issuing composite tenders. Accordingly, composite tenders were

invited by the respondents, which have been impugned by the petitioner association, stating that instead of one composite tender for civil, health,

horticulture and electrical works, the Government ought to have invited different and distinct tenders for each work. We do not find any substance in

the submissions of learned counsel for the petitioner in this regard. Some times, various works of the Government are such, which cannot be

bifurcated being co-related to each other. Hence, inviting of composite tender by the State of Punjab and its undertakings, Corporations and Divisions

cannot be said to be illegal and arbitrary. The State Government cannot be directed to execute a work in a particular manner, until and unless the

same is malafide or arbitrary or is violative of any provision of the Constitution of India. In this regard, the following observations of the Apex Court in

State of Jharkhand and others Vs. Ashok Kumar Dangi and others, (2011) 13 SCC 383, are relevant :-

In framing of the policy, various inputs are required and it is neither desirable nor advisable for a court of law to direct or summarise the Government

to adopt a particular policy which it deems fit or proper. It is well settled that the State Government must have liberty and freedom in framing policy.

Further, it also cannot be denied that the courts are ill-equipped to deal with competing claims and conflicting interests. Often, the courts do not have

the satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of the case.

12. In the instant cases, issuance of composite tenders by the State Government or its agencies by no stretch of imagination amounts to depriving of

the right of livelihood to the members of the petitioner association, because no restriction has been imposed upon them for not executing or doing any

work in their individual and private capacity. Even otherwise, there is no prohibition or restriction from joining hands in the composite tenders with the

civil contractors. No embargo or rider has been imposed barring them from giving bid as such.

13. There is no merit in the stand of the petitioner association that execution of all types of civil work by way of composite tender would be costlier,

putting extra burden on the state exchequer. It is for the State to delve into this issue and petitioner has not been able to substantiate his argument

except to raise a bald contention. The decision of the Bombay High Court in Aurangabad Electrical Contractors Association, Aurangabad and others

(supra) does not support the case of the petitioner(s).

4. In any case, the apprehensions being made by the petitioner are not correct as Condition No. 11 of the tender conditions stipulates as under:

“11. Joint Venture is allowed for the above work upto maximum three partners including lead partner.”

5. In other words, it is an admitted case that the petitioner can participate after forming a joint venture with other partners, who have experience in

civil work. Therefore, the apprehension of the petitioner is totally misplaced.Â

6. Consequently, writ petition is liable to be dismissed and is hereby dismissed in limine.Â

7. Let a certified copy of this order be issued within twenty-four hours on payment of usual charges.Â