
(2019) 09 RAJ CK 0127
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13279 Of 2019

M/s J.P. Developers

APPELLANT

Vs

Rajasthan State Road Development And Construction
Corporation Ltd And Ors

RESPONDENT

Date of Decision : 02-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 09 RAJ CK 0127

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Sandeep Singh Shekhawat, VP Mathur

Final Decision : Dismissed

Judgement

This petition has been filed with the prayer to quash and set aside the impugned letter dated 29.7.2019 requiring certain deposits and Bank Guarantees as also post dated cheques as per the conditions of the NIT dated 13.6.2019 for collection of toll tax where the petitioner's bid had been accepted and inter-alia direct the respondents to provide reasonable time to the petitioner for depositing requisite payments as per the bid. It has been further prayed that the respondents be directed not to award the tender for collection of toll tax under the NIT dated 13.6.2019 to any other contractor for which the petitioner alone is entitled being the highest bidder.

Mr. Sandeep Singh Shekhawat, counsel for the petitioner submitted that the respondents issued an E-NIT dated 13.6.2019 for collection of toll tax on Bundi Bijoliya Section of Khatkar Bundi Bijoliya Road (hereafter 'the Road') for 2 years with reserve price of Rs. 233.50 lakh. He submitted that when the NIT was notified the road was incomplete and the participants in the bidding process were orally informed that the road under construction would be completed prior to execution of the contract in favour of the highest bidder. The petitioner participated in the bidding process and being the highest bidder was declared

successful. Consequent to which the impugned letter dated 29.7.2019 followed. Mr. Sandeep Singh Shekhawat submitted that, albeit the petitioner has been awarded the contract for toll collection but the road is still incomplete, as a result of which vehicles are not being plied on the road. The grant of the contract for collection of toll on such a road is presently a futility which will only entail the petitioner's obligation to deposit amounts under the impugned letter and further render it vulnerable to huge financial obligations without the contracted recompense. It has been submitted that vide the impugned letter dated 29.7.2019, the petitioner is to deposit one installment for the above toll collection contract @ 8% of the bid amount i.e. Rs. 22,48,889/- plus TCS @ 2% amounting to Rs. 44,978/-, aggregating to a sum of Rs. 22,93,867/- by Demand Draft and Performance Bank Guarantee @ 15% of the Bid Amount i.e. Rs. 42,16,667/- from Nationalized Bank within ten days i.e. by 8.8.2019 aside of depositing 23 post dated cheques against remainder 23 monthly installments covering the bid amount. Non compliance will entail cancellation of the bid and forfeiture of earnest money amount. Hence till the road on which toll is to be collected is complete, it be directed that the petitioner be protected and the respondents be directed not to make any unjust arbitrary demand as under the impugned letter dated 29.7.2019.

Mr. VP Mathur, counsel for the respondents submitted that following the impugned letter dated 29.7.2019, an agreement dated 31.7.2019 was executed by the petitioner with the Rajasthan State Road Development and Construction Corporation (RSRDCC). The petition is therefore infructuous. As per clause 9 of the said Agreement dated 31.7.2019, the petitioner if aggrieved of the working of the contract for collection of toll on the road in issue on any count, including the road allegedly being incomplete in breach of the respondent's obligation, the petitioner is required to approach the Empowered Standing Committee for resolution of the dispute arising therefrom. Instead of approaching the Empowered Standing Committee, the petitioner seeks to illadvisedly pursue his grievance in respect of a matter of pure contract before this Court. In the circumstance, the writ petition is not maintainable and to be dismissed - *moreso* it agitates a pure question of fact in the realm of a contractual dispute without any iota of public law element. On the falsity of the petitioner's claim, it has been submitted that in fact traffic is regularly plying on the road in question without obstruction. The road, for which the petitioner's bid for collection of toll was accepted is complete except for a portion of only 800 mtrs. pertaining to a minor bridge alongwith its approaches in respect of which an alternate motorable bye pass has been made whereon the traffic is plying regularly without any obstruction. There is no obstruction to the collection of toll.

Heard. Considered.

That the petitioner having entered in the agreement dated 31.7.2019 following the impugned letter dated 29.7.2019 renders the petition infructuous. Further for resolution of disputes as may arise between the petitioner and the respondents

in respect of the agreement dated 31.7.2019 an Empowered Standing Committee has been constituted in terms of clause 9 (1) of the Agreement which the petitioner can approach to agitate his grievance / claims. The rights of the petitioner are wholly contractual under the agreement dated 31.7.2019 and cannot otherwise also be agitated in a petition under Article 226 of the Constitution of India.

The petition is accordingly dismissed for reasons recorded above.