

(2018) 09 RAJ CK 0023
In the Rajasthan High Court
Case No : Civil Writ No. 13386 of 2018

M/s Kuber Contractor @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 07-09-2018

Acts Referred:

Rajasthan Transparency Public Procurement Act, 2012 — Section 38
Constitution of India, 1950 — Article 226

Citation : (2018) 09 RAJ CK 0023

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : Himmat Jagga

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioner. Perused the material available on record. Through this writ petition under Article 226 of the Constitution of India, the petitioner firm has approached this Court with the principal prayer to direct the respondent No.3 Project Officer-cum- Development Officer, Panchayat Samiti, Kolayat to initiate a fresh tender process for the civil and supply works in the Gram Panchayat, Nagrasar.

The case as set up by the petitioner in the writ petition is that the bid process to this effect was initiated by the respondent No.3 for supplying raw construction material such as Brick Clins, Cement, Crasher, Iron, Gravel, etc. for use in the MGNREGA projects. The value of material to be supplied to the Gram Panchayat, Nagrasar was estimated as rupees 75.92 lacs. Online bids were to be filed from 27.07.2018 and the bids were to be opened on 13.08.2018. The process in question was modified and it was stipulated that the bids will be accepted between 27.07.2018 to 09.08.2018. The petitioner, claimed to be eligible in all aspects, submitted its online bid on 07.08.2018. The requisite demand drafts were to be issued in

the name of Sarpanch, Gram Panchayat, Nagrasar. The petitioner claims that he tried to approach the Gram Sachiv and Sarpanch of the Gram

Panchayat, Nagrasar for submitting the hard copy of the tender form and the demand drafts but, they were not found available in the Panchayat office

which was closed. The petitioner tried to contact them on phone on which, he was advised to submit hard copy of the bid and the demand draft on

09.08.2018. The petitioner again went to the office of the Gram Panchayat, Nagrasar on 09.08.2018 but, again found it locked. He tried to contact the

Sarpanch and the Gram Sachiv telephonically but their phones were switched off. The petitioner claims to have immediately approached the District

Collector, Bikaner and the Chief Executive Officer, Zila Parishdad, Bikaner with a complaint that his bid documents were intentionally not being

accepted and that the Sarpanch and the Gram Sachiv were trying to oust the petitioner from the bid process for oblique motives and for favouring their

blue-eyed persons. The CEO made an endorsement on the application submitted by the petitioner and directed the Gram Sachiv on phone to accept

the petitioner's bid documents but the Gram Sachiv stuck to his adamant ways and did not accept the bid documents of the petitioner. On

10.08.2018 as well, the office of the Gram Panchayat was locked. As Gram Sachiv did not collect the bid documents of the petitioner, the petitioner

again approached the CEO who in turn, sent the bid documents to the Gram Panchayat for being processed. The petitioner alleges that the Sarpanch

and the Gram Sachiv were acting in totally arbitrary and prejudiced manner and being annoyed by the efforts of the petitioner to participate in the bid

process, they malafide rejected the petitioner's candidature on the frivolous ground that the earnest money was not submitted. The petitioner has

alleged that this action of the Gram Panchayat was tainted with the malafide motive of benefiting the other contractors. The petitioner filed an appeal

to the CEO, Bikaner under Section 38 of the Rajasthan Transparency Public Procurement Act, 2012. The CEO, Zila Parishad Bikaner accepted the

appeal and cancelled the tender process. The petitioner and the other contractors, who are interested in vying for the contract in question, approached

the respondent No.3 with a request to initiate a fresh tender process but a grievance is raised in this writ petition that the respondent No.3 has bluntly

refused to take any such action threatening that the work shall be awarded only to the firms who had been awarded the contracts in the previous

years.

Shri Jagga, learned counsel representing the petitioner, vehemently and fervently urged that the contract which comprises distribution of public largesse, cannot be awarded without adopting an open auction. He thus craves a direction to the respondents to initiate a fresh tender process in relation to the material supply contract which was frustrated by the cancellation thereof owing to gross irregularities. He vehemently submitted that the Sarpanch and the Gram Sachiv are getting the work done in a clandestine fashion from their favoured contractor without inviting open tenders and thus, the entire action is highly arbitrary and illegal and hence, as per him, it is a fit case wherein, the respondent No.3 should be mandated to initiate a fresh tender process for the subject works.

I have given my thoughtful consideration to the arguments advanced by Shri Jagga and have gone through the material available on record.

At the outset, it may be stated here that the aspersion cast by Shri Jagga during the course of arguments that the works are being got conducted in a clandestine fashion without inviting tenders is totally lacking in the pleadings of the writ petition. The discretion to proceed with the procurement of construction material or to carry out the MGNREGA projects is within the domain of the authorities concerned and they cannot be mandated to carry out such works. Manifestly, such proceedings are to be undertaken as per the schedule/requirement and thus, this Court would be loathe to issue any direction to the Gram Panchayat to initiate a process for procurement of construction material, etc. while exercising the extraordinary jurisdiction of this Court. Thus, the prayer made to this effect in the writ petition is considered totally untenable and is turned down. However, unquestionably, whenever the Gram Panchayat undertakes the process of procurement of construction material for being used in the MGNREGA projects, the said process has to be undertaken strictly by adopting the open bidding procedure and as per the applicable rules and regulations. As regards the aspersion cast by Shri Jagga that the Sarpanch and the Gram Sachiv are procuring the material without advertng to an open tender process, manifestly, there is no such pleading in the writ petition.

In this background, and in absence of any material to satisfy the Court that the respondents are indulged in any illegality or irregularity and conducting

works of public nature, no writ can be issued to stay the same. However, the District Collector, Bikaner and the Chief Executive Officer, Zila

Parishad, Bikaner are directed to ensure that no contracts involving distribution of public largesse/ supply of material in the Gram Panchayat Nagrasar

are granted without calling for open tenders and if any complaint is received in this regard, proper inquiry shall be made and the guilty penalised as per

law.

With these observations and directions, the writ petition is dismissed as being devoid of merit. Stay application is also rejected.