
(2012) 04 AHC CK 0223
In the Allahabad High Court
Case No : Writ-C No. 16678 of 2012

M/s. United Associates

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Citation : (2012) 2 EFLT 921

Hon'ble Judges : Vinay Kumar Mathur, J; R.K. Agarwal, J

Bench : Division Bench

Advocate : S.K. Pundir, M.D. Singh Shekhar and R.D. Tiwari, for the Appellant; Sandeep Kumar Srivastava and V.K. Dixit, for the Respondent

Judgement

R.K. Agarwal and Vinay Kumar Mathur, JJ.—By means of the present writ petition, the petitioner seeks a writ, order or direction in the nature of mandamus directing the opposite parties not to proceed further in pursuance of the auction bid dated 30th March, 2012 pertaining to Abhivahan Shulk of Zila Panchayat, Saharanpur for its confirmation or settlement in favour of the opposite party No. 7. A further writ, order or direction in the nature of mandamus has been sought directing the opposite parties to settle the auction in favour of the petitioner for the amount of Rs. 10 crores ignoring the offer of opposite party No. 7, which was only for Rs. 6,02,21,000/-. Briefly stated the facts giving rise to the present petition are as follows:

Upper Mukhya Adhikari, Zila Panchayat, Saharanpur got published an auction notice on 18th March, 2012 in two Hindi daily newspapers-Amar Ujala and Dainik Jagran-proposing auction for collection of Abhivahan Shulk from the vehicles used for transportation of the mines minerals and to control the same in the systematic manner. One of the conditions was that the intending bidder will deposit Rs. 50.00 lacs by bank draft as earnest money and shall also produce a solvency certificate of Rs. 2.00 crores. The petitioner deposited a bank draft of Rs. 50.00 lacs and also produced a solvency certificate of Rs. 2.00 crores. It participated in the auction proceedings held on 30th March, 2012. According to

the petitioner it had given a bid of Rs. 10.00 crores whereas the respondent No. 7 had given a bid of Rs. 6,02,21,000/- and the authorities had illegally and arbitrarily stopped the petitioner from participating in the auction thereafter and accepted the bid of Rs. 6,02,21,000/- offered by the respondent No. 7.

2. Sri M.D. Singh Shekhar, learned Senior Counsel, appearing for the petitioner submitted that the entire bidding process has been videographed and from the videography so made it is clear that the petitioner had offered a bid of Rs. 10.00 crores which was not considered by the authorities.

3. Sri V.K. Dixit, learned Counsel appearing for Zila Panchayat, Saharanpur filed a counter-affidavit enclosing a copy of the Bid-sheet as Annexure No. CA-2. In the Bid sheet the offer given by the petitioner has been mentioned as Rs. 6,02,15,000/-. In all five persons, who had participated in the proceedings, except the petitioner remaining four persons had signed the Bid-sheet. There is no noting on the Bid sheet that the petitioner had refused to sign.

4. Sri Dixit, learned Counsel submitted that when the petitioner made an application that it was prepared to give a bid of Rs. 10.00 crores an order has been passed that it should deposit 25% more of the offered amount of Rs. 6,02,21,000/- so that the process of re-auction in terms of Clause 23 of the terms and conditions, be held and, therefore, the petitioner be directed to comply with the said order.

5. Sri W.H. Khan, learned Counsel appearing for the respondent No. 7 submitted that the petitioner has not come with clean hands as from the application filed before the authorities it is not clear whether the bid of Rs. 10.00 crores was offered by the petitioner or by all the three persons, therefore, the authorities had rightly directed the petitioner to comply with the provisions of Clause 23 as mentioned by authorities in their order dated 2nd April, 2012.

6. Sri M.D. Singh Shekhar submitted that Clause 23 of the Terms and Conditions would apply where the petitioner was not bidder or in the event it is revising its bid by way of upward offer. As in the present case, the petitioner has offered the bid of Rs. 10.00 crores in the auction proceeding held on 30th March, 2012 itself, Clause 23 cannot be pressed into service.

7. We are not inclined to go into the merits of the case at this stage for the simple reason that whether the petitioner had given a bid of Rs. 10.00 crores or not has to be seen by the Commissioner, who is overall Incharge of the Zila Panchayat and under whose supervision it works. We, therefore, direct the Commissioner, Saharanpur Division, Saharanpur to look into the matter and also view the two videograph recordings-one to be provided by the petitioner and other by Zila Panchayat authorities and if he comes to the conclusion that the petitioner has offered a bid of Rs. 10.00 crores in the auction proceedings held on 30th March, 2012 in that event he will direct the authorities to hold the auction proceedings from that stage permitting all the participants who had given their bids. However, if he comes to the conclusion that the petitioner had not

given the bid of Rs. 10.00 crores, in that event the petitioner would comply with the provisions of Clause 23 and thereafter the bidding will be held between the petitioner and the respondent No. 7 on the same terms and conditions.

8. Sri W.H. Khan, learned Counsel appearing for the respondent No. 7 submitted that as the respondent No. 7 has already deposited 1/3rd of bid of Rs. 6,02,21,000/- at the fall of hammer it may not be required to deposit any further amount in participating in the auction. We order accordingly. However, if the bid is settled at a higher figure in its favour it will have to comply with the terms and conditions of the auction.

9. The Commissioner shall do the needful within one week. Till a decision is taken the auction shall not be confirmed if the same has not already been confirmed but if it has been confirmed it shall be subject to the order passed by the Commissioner. The writ petition stands disposed of.