

(2015) 04 RAJ CK 0174

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 316/2015 in Civil Writ Petition No. 5773 of 2014

National Meditek

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2015) 4 CDR 1922

Hon'ble Judges : Sunil Ambwani, C.J;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : K. Verma, for the Appellant

Final Decision : Dismissed

Judgement

1. We have heard learned counsel appearing for the appellant.
2. Learned Single Judge dismissed the writ petition, challenging the rejection of the petitioner's bid and forfeiture of the earnest money and debarring the Firm from participating in the tender process for a from participating in the period of two years, on the ground that though the appellant/petitioner had offered lowest tender for supply of the Diagnostic Kits, the petitioner backed out from its assurances given in the negotiation process on 23.10.2013.
3. Learned Single Judge found that Shri Ashok Bhasin, the authorized representative of the Firm, attended the negotiations held on 23.10.2013, and agreed to supply the kit "Anigen Brucella, ID-Vet IBR Test", to the Rajasthan Livestock Development Board, on the rates given by the National Dairy Development Board. The Firm later on backed out from its assurances, on which the entire process of tendering was frustrated.
4. Learned Single Judge held that the Firm was taking contradictory stands. A combined reading of the documents, relied on before learned Single Judge, demonstrated that not only the representative of the appellant-Firm had

attended the negotiation meeting but also agreed for further reduction of 1% on over and above 2.5% reduction in the quoted prices by the respondent, and had also agreed to offer the kits in the packing of 960 tests. Having agreed, if the appellant had backed out from its offer, the respondent-Board had every justification in forfeiting the earnest money of Rs. 25,000/-, and debarring it from participating in the tender process for a period of two years.

5. It is submitted that the offer secured from the appellant during the negotiations, was not in consonance with the advertised tender. The appellant immediately protested to the alleged extraction of the offer. It is further submitted that debarring the appellant from taking part in the tendering process for next two years, was by way of blacklisting the Firm, which has resulted into cancellation of several offers, made by the Firm to other departments. The blacklisting of the Firm could not have been made without affording an opportunity of hearing, and making a reasoned order.

6. We do not find any error in dismissing the writ petition on the ground that having agreed for supply of Kits with 960 tests and lowering the quotation, the Firm was not justified in backing out from the offer and thus frustrating tender process. The negotiation was a part of tendering process, in which the authorized representative of the Firm had participated. With regard to blacklisting of the Firm without giving an opportunity of hearing, the point was not pressed before learned Single Judge. It is submitted that the documents in support of the contentions, were received by the appellant under the Right to Information Act, after the judgment was passed by learned Single Judge, and which have been sought to be filed under Order 41 Rule 27 CPC, in this Special Appeal.

7. We could have appreciated the effect of the documents, in case this point was pressed before learned Single Judge. The additional evidence in an appeal can be taken on the points, which were taken and argued before learned Single Judge. In an intra-Court appeal, the parties are not allowed to expand the scope of the writ petition, and to take the grounds, which were neither urged, nor pressed before learned Single Judge.

8. In the circumstances, learned counsel for the appellant prays for a liberty to file a review petition before learned Single Judge.

9. The Special Appeal is accordingly dismissed as withdrawn, with liberty to the appellant to file an appropriate review petition before learned Single Judge, to be heard in accordance with law only on the point of blacklisting of the Firm.

10. The application, I.A. No. 9997/2015 stands disposed of.