
(2018) 07 UK CK 0062

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2908 Of 2017

Naveen Chandra Joshi

APPELLANT

Vs

State of Uttarakhand & Others

RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(g)

Citation : (2018) 07 UK CK 0062

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : Shiv Bhatt, S.R. Joshi, D.S. Patni, B.P. Nautiyal

Final Decision : Dismissed

Judgement

SUDHANSHU DHULIA, J. (ORAL)

1. Petitioner before this Court is a contractor and a proprietor of a firm named M/s Joshi Enterprises. As per the averments made in paragraph 1 of

the writ petition, petitioner is engaged in the business of government contracts for electrical and mechanical works since the year 2014. Petitioner is

aggrieved by the tender notice dated 13.11.2017 by which tenders have been invited by Uttarakhand Pey Jal Nigam for civil and electrical work.

2. Petitioner would argue that the construction which is required by the Uttarakhand Pey Jal Nigam is a composite work of both civil engineering and

electrical engineering and, therefore, it means that there are two different kinds of work which calls for separate auction, tender, etc., whereas

Uttarakhand Pey Jal Nigam has asked for a composite tender. Conditions of tender document with which the petitioner are aggrieved have been filed

by him subsequently through supplementary affidavit. Petitioner would refer to clause 3.5(a) of the tender conditions which reads as under:

3.5 Eligibility Criteria

(a) Any Bidder who is presently doing Civil works of similar nature through different contract agreements in Central Govt. / Any State Govt. or

Central / State Govt. Undertaking Department and ARE REGISTERED IN REQUIRED CLASS / CATEGORY are eligible to bid. For this purpose,

similar nature of work will be considered under the following categories:

(i) Building work Experience of only the relevant category works will be considered in Sub Cl. 3.5(d) & (e) given below.

3. Petitioner also refers to clause 4.3 (a) of the tender conditions which reads as under:

4.3 Joint Venture Bids from Joint Ventures are acceptable. Bids submitted by a Joint Venture (JV) of not more than three firms/contractors as

partners shall comply with the following requirements:

a) There shall be a Joint Venture Agreement (refer Form-I in Section-VIII) specific for this contract package between the constituent firms,

indicating clearly, amongst other things, the proposed distribution of responsibilities, both financial as well as technical, amongst them for execution of

the work. For the purpose of this clause, the most experienced partner will be defined as the Lead Partner. A copy of the notarised Joint Venture

agreement in accordance with requirements mentioned in the said Form-I, duly signed by the legally authorized signatories of all the partners of the

Joint Venture, shall be submitted in original with the tender.

4. Petitioner would also refer to clause 8 of Form-I of tender document which reads as under:

8. NATURE OF JOINT VENTURE

The legal status of this joint venture is that of collaboration between the two parties and shall not construe as a partnership as per the Indian Act 1932.

All the parties accept responsibilities and liabilities among themselves and of the employer for the successful execution of the project in accordance to

the terms and conditions of contract agreement.

5. The learned Counsel for the petitioner would hence argue that although the nature of work also has electrical component, but electrical engineers as

well as contractors who have experience in electrical work, such as the present petitioner, has been virtually ousted from the process. This amounts to

not only the violation of Article 14, but also amounts to an unreasonable restriction and hence also violation of Article 19 (1) (g) of the Constitution of India.

6. Learned Counsel for the respondent Uttarakhand Pey Jal Nigam, on the other hand, would argue that the composite tenders have been called in

order to save time and money of the department. Moreover, the major component of the work is admittedly civil work and he would argue that the

electrical work is only 20 to 30 per cent, the rest is civil work. Learned Counsel for the respondents would further argue that it is not a case where the

electrical engineers have been prohibited or barred from participating in the tender process. To the contrary, in order enable the electrical engineers

and contractors to participate in the tender process and in order to give them a level playing field, they have permitted to apply as a joint venture in the

bidding process.

7. In rebuttal, learned Counsel for the petitioner would argue that it is not a level playing field at all as in spite of the fact that the joint venture is

permitted, yet an electrical contractor is no more than a junior partner in the venture and, therefore, it is the violation of Article 14 of the Constitution

of India.

8. Freedom to practice any profession, or to carry on any occupation, trade or business, given in Article 19 (1) (g) of the Constitution of India is

a Fundamental Right, which comes with certain restrictions and limitations. These are contained in clause (6) of Article 19 of the Constitution of India,

where reasonable restrictions on the exercise of such rights can be placed by the State Government. Under the Rules which are presently under

challenge, it is not a case where contractors who are engaged in Electrical Engineering, have been totally barred to participate in the bidding, on the

contrary they have been permitted, with certain restrictions. Considering that the amount of electrical work, in the work which is to be done, forms a

small part of the entire work, there is nothing unreasonable if the main part in a joint venture is a civil contractor and the dealings of the State

Government or the instrumentality of the State is with such contractor. 70% to 80% of the work is admittedly of Civil Engineering.

9. In fact the learned Counsel for the respondent Uttarakhand Pey Jal Nigam also apprised this Court that in a similar writ petition being WPMS No.

1348 of 2018, wherein a joint venture was challenged by the electrical contractors, this Court dismissed the said writ petition on 16.05.2018 on the ground that it is not the violation of the Article 14 of the Constitution of India as the joint venture is permissible. Against this order, special appeal filed by the writ petitioner was also dismissed.

10. This Court, therefore, is of the considered view that considering the nature of the work where admittedly the major component is civil work, there is no illegality if a composite contract is called for as that would best serve the interest of the State and also save the time and money of the department. In case, civil contractor is the Lead Contractor, the same is again on consideration of the nature of the work. Definitely, in a case where the major component would be the electrical work, it is quite logical that the electrical contractor would be the Lead Contractor.

11. In view thereof, I find no ground to interfere in the matter. Writ petition is hereby dismissed. No order as to costs.