
(2016) 05 SHI CK 0099
In the High Court Of Himachal Pradesh
Case No : CWP No. 2387 of 2008

Navneet Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 24-05-2016

Acts Referred:

Citation : (2016) ILRHP 1438

Hon'ble Judges : Mr. Sandeep Sharma, J.

Bench : Single Bench

Advocate : Mr. N.S. Chandel, Advocate, for the Petitioner; Mr. Rupinder Singh Thakur, Additional Advocate General, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Sandeep Sharma, J.(Oral)—By way of present writ petition, petitioner has prayed for following reliefs:

(a) It is, therefore, most respectfully prayed that the writ in the nature of mandamus may kindly be issued by directing the respondents to allot the tenders dated 03.9.2007 to the petitioner.

(b) That writ in the nature of Certiorari may kindly be issued for quashing orders all the order issued pursuant to so called meeting dated 8.4.2008 whereby tenders awarded in favour of the petitioner has been recalled.

(c) Any such Writ, Order or Direction, as this Hon"ble Court may deem fit and proper in the peculiar facts and circumstances of the present case.

(d) That a writ in the nature of Certiorari may kindly be issued whereby the respondents be directed to produce the minutes of proceeding of scrutiny committee, dated 8.4.2008, whereby the tender dated 3.9.2007 awarded in favour of petitioner has been recalled and therefore it is humbly prayed that the same be quashed in the interest of justice.

2. Briefly stated facts necessary for adjudication of the case are that the

petitioner is a registered "A" class contractor duly registered with respondent PWD. Petitioner in the capacity of "A" class contractor has been executing various works of considerable amounts with the respondents. Vide Annexure P-1, respondent No. 2 invited tenders for periodical maintenance of various roads. Pursuant to the aforesaid tender notice, petitioner also participated in the work known as Thakurdwara Chowki Khalet Morla Phatta Chadrehar Harizen Basti Road Km. 0/0 to 3/995 (SW: earth filling, passing places, retaining walls, breast walls, CD work and parapets in Km.0/0 to 3/995). It also emerges from the pleadings that apart from petitioner, two other contractors namely Sanjeev Dadwal and Suresh Patyal also participated in the above tender. As per averments contained in the petition, petitioner was found to be lowest and accordingly, he was awarded the work (supra). Since the rates quoted by the petitioner were found to be lowest, he was called for negotiation on 11.1.2008 by the respondent department. However, negotiations could not be held on the given date for the reasons best known to the respondents. The petitioner has stated in the petition that he repeatedly inquired about the awarding of tender in which he was found lowest one but no reason whatsoever was assigned, however, petitioner applied for the documents under the Right of Information Act (RTI) vide application dated 23.7.2008 (Annexure P-2). He received a letter dated 7.8.2008 from respondent No. 4 intimating therein that tender dated 3.9.2007 qua the work namely Thakurdwara Chowki Khalet Morla Phatta Chadrehar Harizen Basti Road Km. 0/0 to 3/995 (SW: earth filling, passing places, retaining walls, breast walls, CD work and parapets in Km.0/0 to 3/995) allotted to the petitioner, has been received unapproved in view of the decision taken by the Scrutiny Committee chaired by the Engineer-in-Chief on 8.4.2008 (Annexure P-3). Petitioner also submitted that vide communication dated 25.2.2008, work had already been accorded/awarded by respondent No. 3, which was further approved by respondent No. 3. Petitioner also averred that after the Assembly Elections in December, 2007, with the change in the Government, certain people who had vested interest, managed to get the tender recalled in an arbitrary manner against the recognised principle of law. Tenders were scrutinised in the office of respondent No. 2 on 14.3.2008, wherein decision was taken to call the petitioner for negotiations, since the rates quoted by the petitioner were found to be on the higher Side (Annexure P-5). Meeting of the scrutiny committee chaired by respondent No. 2 was held on 8.4.2008 wherein decision with regard to work in question was taken and work awarded to the petitioner was not approved. It is also alleged in the petition that despite there being specific prayer for supplying the proceedings/minutes of the meeting of the scrutiny committee dated 8.4.2008, no information whatsoever was supplied to him.

3. Petitioner by way of present petition challenged action of the respondents, wherein decision was taken to recall the tender. It is specifically averred in the petition that decision to recall the tender has actually effected at the instance of certain vested interests and same is a politically motivated one. Petitioner

averred that 29 numbers of the tender cases were scrutinised by respondent No. 3 in the meeting of scrutiny committee but he was singled out that too without any reason. Petitioner contended that once his rates were found to be the lowest one and he was awarded work, it could not be cancelled without assigning any reasons. Moreover, in the instant case, where the petitioner was called for negotiations but for the reasons best known to the respondents, no negotiation proceedings were held. Petitioner specifically alleged that aforesaid decision was taken by the respondents to please some vested interest, who are influential persons. Pursuant to the notice issued by this Court, respondents filed reply to the petition, wherein in Para -3, it was held as under:-

"That the present CWP is also liable to be dismissed on the ground of maintainability being without any cause of action. In fact the tender for the balance work of Thakurdwara Chowki Khalet Morla Phatta Chadrehar Harizen Basti road Km. 0/0 to 3/995 (SW: Earth filling, passing places, retaining walls, breast walls, CD work and parapets in Km.0/0 to 3/995 was invited and opened on 3.9.2007. Since the tendered amount of lowest Contractor/Petitioner was Rs. 75.92.988/- which was beyond the competence of respondent No. 4 viz. Executive Engineer, the case for approval was submitted to the Chief Engineer, (North), HPPWD Dharamshala (Respondent No. 3) through Superintending Engineer, 5th Circle, HPPWD Palampur. It is further submitted that due to imposition of Modal Code of conduct on account of Assembly Election, the Govt. of H.P. circulated instructions vide Principal Secretary (PW) to the Government of H.P. Shimla office letter No. PBW (B&R) (B) 17(1)3/2006 IV dated 1.2.2008 (Annexure-R-1), wherein it was decided by the Government that all the tenders floated between 10.10.2007 to 31.12.2007 should be scrutinised by concerned Zonal Chief Engineers to see whether those are in order in terms of sanctions/ approvals following appropriate procedure and final decision on them will be taken with the prior approval of Administrative Department of PWD. The respondent No. 3, Chief Engineer (North), HPPWD Dharamshala sent the case of petitioner to the Engineer-in-Chief (PWD) Shimla (respondent No. 2) as per instructions of Principal Secretary (PW) to the Govt. of HP, Shimla office letter No. PBW (B&R) (B) 17(1)3/2006 IV dated 1.2.2008 (Annexure-R-1). The Govt. had constituted a Scrutiny Committee consisting of seven well experienced technical and financial Senior Officers namely: Engineer-in Chief, HPPWD Shimla, Superintending Engineer, (Design-III) O/o Engineer-in-Chief HPPWD Shimla, Superintending Engineer, 5th Circle, HPPWD Palampur, Superintending Engineer, 7th Circle, HPPWD Dalhousie, Superintending Engineer, 9th Circle, HPPWD Nurpur, Executive Engineer, HPPWD Division. Dharamshala, Deputy Controller (F & A) O/o Engineer-in-Chief, HPPWD Shimla and during meeting total 29 cases were placed before the said Committee. The Scrutiny Committee, after evaluating financial aspect, considering technical implication and also capabilities, experience and nature and style of working of contractors, had arrived at conscience decision after due deliberations and application of mind to continue, recall or cancel the process of tendering of different works. In some

cases, process was cancelled and in some cases continued and in some cases it was decided to review in accordance with budgetary provisions, some tender cases were cancelled and in the case of petitioner it was decided to recall and process. It is therefore submitted that since the work was still in process of being awarded and could not be awarded due to non-approval of Scrutiny Committee of Administrative Deptt., of PWD, the petitioner has no enforceable cause of action."

4. Perusal of the averments contained in reply filed by respondents suggests that tender for the balance work of Thakurdwara Chowki Khalet Morla Phatta Chadrehar Harizen Basti Road was invited and opened on 3.9.2007, wherein admittedly, petitioner being the lowest contractor was to be awarded contract but since the tender amount of lowest contract was Rs. 75,91,988/-, same was sent for approval of the Chief Engineer, Dharamshala through Superintending Engineer, Dharamshala but it also emerges that before aforesaid tender could be finalized, Modal Code Of Conduct was imposed on account of ensuing assembly elections in the State of Himachal Pradesh. In the meanwhile, Principal Secretary, Government of Himachal Pradesh circulated instructions vide order dated 1.2.2008 (Annexure-R1), wherein it was decided that all the tenders floated between 10.10.2007 to 31.12.2007 could be scrutinised by concerned Zonal Chief Engineers to see whether they are in order in terms of sanctions/approvals following prior approval of Administrative Department of PWD. Pursuant to the aforesaid decision of the Government, scrutiny committee was constituted and 29 cases were placed before the committee. Scrutiny committee after evaluating financial aspects, considering technical implication and also capabilities, experience and nature and style of working of contractors, arrived at a collective decision to continue, recall or cancel the process of tendering of different works and in the case of the petitioner, it was decided to recall and reprocess, meaning thereby, tender which was actually allowed to the petitioners being the lowest for the work, as mentioned above, was ordered to be cancelled and decision was taken to invite the fresh tender.

5. I have heard learned counsel for the parties as well carefully gone through the record.

6. Admittedly, in the present case, petitioner being lowest tender was allotted work for the construction of Thakurdwara Chowki Khalet Morla Phatta Chadrehar Harizen Basti road amounting to Rs. 75,91,988/-. Perusal of communication dated 25.2.2008 (Annexure-P-4) clearly suggests that tender submitted by the petitioner was found to be lowest and accordingly, decision was taken by the competent authority to call him for negotiation. Annexure P-4 is reproduced as under:-

"It is submitted that the A/A & E/S of the above cited work has been accorded by the Pr. Secy. (PW) to the Govt. of HP. Shimla vide letter No. PBW(B)-3(7)5/2006 dated 19.2.2007 for Rs. 191.95 lacs. The working estimate approved vide this office letter No. PW/NZ/CTR-I-2006-07-36 26-28 d. 10.7.2007 amounting to Rs. 50,13,397/- only.

The DNIT for the above work approved by the Superintending Engineer, 5th Circle, HPPWD. Palampur vide his office letter No. PW-SEV-WS-III-B&R-2006-07-8644-45 dated 31.8.2007 amounting to Rs. 50,13,392/- only. The tender for the above cited work was invited by the Executive Engineer, HPPWD, Palampur which scheduled to be opened/received on 3.9.2007. In response to this call three Nos. tenders were sold to various contractors and all of them have put their rates as under:

1.

Sh. Sanjeev Dhadwal,

Rs. 7700705/-

53.60% above.

2.

Sh. Suresh Patial,

Rs. 7655163/-

52.69% above

3.

Sh. Navneet Singh,

Rs. 7591988/-

51.43% above.

The tender case along with other documents were submitted by the Superintending Engineer, 5th Circle, HPPWD, Palampur in this office vide his letter No. PW-SEV-WS-II-Reads-09-06-09 dated 5.11.2007. The tender case was scrutinised in this office and the technical implication of the tender case is given as under:-

1.

A/A & E/S.

Rs. 191.95 lacs.

2.

Corresponding Provision :-

Rs. 91.55 lacs

3.

DNIT amount :-

Rs. 50,13,397/-

4.

Justification amount :-

Rs. 69,01,236/-

5.

Lowest contractor's amount :-

Rs. 75,91,988/-

6.

Percentage of lowest tender to the amount put to tenders

51.43 % above.

7.

Percentage of lowest Bidder with Justification :-

10 % above.

In view of the rates quoted by the lowest contractor the rates need to be negotiated. Now as per instruction received by the Pr. Secy. (PW) to the Govt. of HP. Shimla, letter No. (PBW) B&R-(B)-17(1)-06-IV dated 1.2.2008, the tender case received/opened on 3.9.2007, has not been awarded as prior approval of Administrative Department of PWD is required.

The three Nos. Tenders document (in original) along with comparative statement/ Justification Statement/Approved DNIT and copy of Press cutting of Giri Raj News Paper form A&B are submitted herewith for obtaining approval of the component authority."

7. Perusal of the last para of the aforesaid communication suggests that lowest rates quoted by the contractor were required to be negotiated but in view of the instructions received from the Government, tenders received/opened as on 3.9.2007, could not be awarded for want of approval of the Administrative Department of PWD.

8. Further perusal of the document (Annexure P-5) suggests that ten cases were sent by Chief engineer (North) HP Dharamshala vide letter 48-74-77 dated 25.2.2007 along with justification/comparative statement, D.N.I.T., if approved, for the scrutiny of that committee constituted in terms of the instructions issued by the State of Himachal Pradesh, which reads as under:-

"PW.CTR.29.949/08 (loose Noting)

Diary No. 4026 dated 28/2

Subject: Thakurdwara Chowki Khalet Morla Phatta Chadrehar Harizen Basti Road Km. 0/0 to 3/995

The subject cited ten cases has been received from C.E. (North) HP PWD, D/shala vide their letter No. 4874-77 dated 28.02.20008 a.w. justification/comp. statement, D.N. if approved we may send the tender case in Drawing Section (Building) for scrutiny of the case."

Submitted please.....

..... The rates by the contractor Shri Navneet Singh are on higher side. The contractor may be called for negotiation.

Chief Engineer North Zone has submitted the case without negotiations however worthy Engineer-in-chief has discussed the matter with Chief Engineer north Zone on 8.4.04 and decided to recall and process the tender. Hence we may send the document to chief engineer North zone with approval please."

9. Last para of the communication suggests that since rates quoted by the contractor Navneet Singh were on higher side, he was to be called for negotiation. The Chief Engineer (North) submitted the case to the Scrutiny Committee without any negotiation and merely his having discussed the matter with Chief Engineer North on 8.4.2004, matter was sent to the Scrutiny committee, which decided to recall and process the tender. Perusal of the documents available on record nowhere suggests that Scrutiny Committee while taking into consideration with regard to recalling and re-processing of the tender in question ever deliberated on the rates quoted by the petitioner, rather, perusal of the communication supra suggests that the case of the petitioner, which was admittedly the lowest tender was placed before the Scrutiny Committee without calling him for negotiation. Further, Scrutiny Committee without discussing the matter with the authority, who had actually found the petitioner lowest, decided to recall and process the tender. Perusal of the communication supra nowhere suggests that matter was discussed at length, wherein pros and cons with regard to awarding of the work to the petitioner were ever discussed. Rather, it suggests that matter was simply listed before the committee, wherein without any discussion, decision to recall and reprocess tender was taken by the Committee, as has been observed above. There is no document worth the name, which could suggest that notice was ever issued to the petitioner indicating therein the circumstance and reasons for recalling and reprocessing of the tender. Once, the petitioner was found to be lowest tender and in case, his rates were above justification, respondents were bound to call him for negotiation in the present case. Though decision was taken by the respondent to call petitioner for negotiation but there is no document available on record to suggest that actually negotiation took place, meaning thereby, respondent department purposely without having negotiation with the petitioner sent the case to the scrutiny Committee, who also without looking into the rates quoted by the petitioner decided to recall and reprocess the tender.

10. While going through the file of the present case, this court is unable to find any document on record either filed by the petitioner or respondent, which may

be suggestive of the fact that case of the petitioner for allotment of work in question was rejected for some plausible reasons. Only explanation rendered in the reply is that matter was sent to scrutiny committee, which decided to recall and reprocess the tender. Admittedly, there is no discussion/justification on record available which could persuade this Court to hold that the decision of the respondents to recall and reprocess the tender in question was justified. To the contrary, perusal of the material available on record compels this Court to conclude that tender of the petitioner was purposely sent to the Scrutiny Committee that too without having any negotiations with the petitioner, on some extraneous considerations.

11. True, it is that discretion lies with the department whether to accept the tender or not but certainly once the tender of the petitioner was held to be the lowest, he had every right to know, for what reasons, his tender was not being accepted. Had department called him for negotiation and in that event, if he had not agreed to the rates proposed by the department at the time of negotiation, respondents were well within right to reject the tender. But in the present case, no negotiation actually took place and case was sent to the committee, who also without looking into the merits/demerits of the case, decided to recall and reprocess the tender. Aforesaid action of the respondent cannot be termed to be justified in the present facts and circumstances of the case and such practise of the respondents deserves to be highly deprecated and condemned. Respondents being instrumentality of the State are expected to work/perform its duties without any bias and mala-fides. As has been observed above, it was well within the rights of the respondents to accept or reject the tender but such decision should not be based on some extraneous considerations as appears in the present case.

12. This Court after perusing the material available on record as well as pleadings available on record, has no hesitation to conclude that respondents purposely did not negotiate with the petitioner and without affording him any opportunity of being heard, decided for re-tendering qua the work in question. It has been observed by the Court in many cases, where authorities like the respondents, as in the present case, act /work like autocrats while issuing tender forms and thereafter awarding works to the contractors or construction agencies. Respondents are expected to deal very fairly and without any bias while dealing with tender matters. In the present case, where the tender of the petitioner was certainly lowest but without any rhyme and reason, decision was taken by the respondents to re-tender and re-process the work, which was to be awarded to him.

13. However, during the pendency of this petition, pursuant to the directions dated 9.5.2012 issued by this Court, respondents filed supplementary affidavit detailing therein the status of the work in question, para 3 of which affidavit reads as under :-

"3. That the deponent has all the respect for the order of the Hon"ble Court

dated 24.2.2009. The order of the Hon''ble Court has been fully complied with and has not been violated in any manner.

4. That a few works which were not covered under the scope of the work specified for this tender of the instant case were allotted to some other contractors in order to maintain and keep this road in use for public in general. The detail of the maintenance/construction works carried out has been annexed as Annexure RA-1."

14. Perusal of the averments contained in para supra suggests that respondent could not re-invite tender for the balance work during the pendency of the petition and as such budget, which was made available by Nabard authorities lapsed, meaning thereby, authorities concerned need to get allocated fresh budget for the construction of the road in question.

15. At this Stage, Mr. Rupinder Singh Thakur, learned Additional Advocate General submitted that in view of the averments contained in Para-3 of this affidavit, this petition does not survive and as such same can be disposed of accordingly.

16. In view of the aforesaid discussion, it is ample clear that decision of the respondents in rejecting the tender of the petitioner and thereafter, their decision to recall and re-process the tender in the given facts and circumstances cannot be held to be justified, rather, same appears to be result of colourable exercise of powers. Though, in view of the subsequent development occurred during the pendency of present petition, no effective relief can be granted to the petitioner at this stage but decision taken by the respondents to reject the offer of the petitioner without assigning any reason, is declared illegal and unjustifiable and in this regard, petitioner is at liberty to seek appropriate remedy in the appropriate court of law for damages, if any, caused to him due to illegal and unjust action of the respondents. Before parting, this Court deems it necessary in the facts and circumstances of the case to direct Secretary PWD, to issue necessary instructions/guidelines specifically detailing therein the procedure and manner with regard to issuance of tender forms to the contractors so that no scope for complaint of bias and malafide is left to the contractors, if any. Though, while dealing with the tender matters, department is always at liberty to reject or accept tenders but certainly, same cannot be done without assigning any reason. Right of accepting/rejecting tenders should not be allowed to become tool in the hand of officers/officials of the department, who may for certain extraneous considerations, misuse the aforesaid power. Accordingly, Secretary PWD is also expected to explore some mechanism to deal with such like situation and issue necessary directions in this regard to avoid misuse of so called unbridled powers of acceptance/rejection of tenders. Needless to say that principle of natural justice is strictly required to be adhered to while rejecting tender of a lowest bidder. This Court expects that needful would be done, as observed above, within a period of three months and necessary circular, detailing therein uniform procedure to be adopted by the officials, shall be circulated thereafter

immediately. In view of the aforesaid discussion, petition is allowed and disposed of accordingly, so also pending applications, if any.