

(2018) 09 UK CK 0092

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2312 of 2017

Nishu Institutional Catering Services Pvt. Ltd

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Citation : (2018) 09 UK CK 0092

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : S.K. Posti, V.K. Kaparwan, Anurag Bisaria, Bhupesh Kandpal

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J.

1. The petitioner company is primarily into catering and food services. It runs canteen and similar mess facilities at Reserve Bank of India, New Delhi,

Indian Oil Corporation, IIT, Patna and at various other places. The petitioner applied in response to an advertisement given by the Govind Ballabh Pant

Institute of Engineering and Technology, Ghurdauri, Pauri, District Pauri Garhwal, which is a State Government Engineering College, inviting tender

bids for mess and catering services in the boys and girls hostels in the institute.

2. There were total 5 bidders, who had applied in response to the said advertisement, the petitioner being one such candidate. Admittedly, the

petitioner's bid was L-1. Consequently, he was issued a letter dated 24.07.2017 by the Registrar of the Institute which reads as under :

“We are pleased to inform you that you are lowest technical bidder for the mess facility at G.B. Pant engg college, pauri. The CPC meeting is

scheduled to be held on 26 July 2017 at 11.00 a.m. in College/Pauri. You are

requested to kindly send your representative so that if Committee seeks any clarification the same may be submitted by your company to the Committee.

Regards.â??

3. Thereafter, the petitioner received another letter on 16.08.2017 from the Registrar of the College, which reads as under:

â??Dear Sir,

We are pleased to grant a work order for the running of mess at our institute being a Lowest Bidder in the Tender of the Mess. As per the discussion

held with you on 16 August 2017 in Principal office with Chief Warden and you are agreed on the terms and conditions and given acceptance we are

offering you the mess for Approx. 1000 Students (Boys & Girls). Keeping in view of your performance the number of students can be increased. You

are requested to furnish the enclosed terms & Condition on Non-Judicial Stamp Paper so that we can release the work order to start the mess from 1

September 2017.

Please feel free to contact undersigned for any further clarification.â??

4. Therefore, it is an admitted case that in response to the advertisement, the petitioner was declared as the lowest bidder. The letter also shows the

intention of the employer to give the work to the petitioner and the only aspect which was left was the formal signing of the contract. Before that

could happen, however, the petitioner received a letter dated 30.08.2017 by the Director of the Institute saying that the entire process of calling for bid

is hereby rejected and fresh advertisement would be issued shortly. Hence, the petitioner was constrained to file the writ petition challenging the said

order dated 30.08.2017 before this Court.

5. Counter affidavit and rejoinder affidavit have been exchanged in this mater.

6. Averments have been made by the petitioner in the writ petition that the bid process has been cancelled by the respondent University in order to

give benefit to L-2, which is a local candidate, and it is being done under pressure of powers that be. In any case, during the pendency of the writ

petition, it appears that an inquiry has also been conducted by the State Government, wherein the State Government had passed the order dated

15.02.2018 directing that Mr. G.S. Tomar, Director, THDC Institute of Hydropower Engineering and Technology as the enquiry officer. The inquiry

officer has completed the inquiry, which is highly incriminating and shows that a deliberate and mala fide action is there on part of the University

Authorities, who were under pressure from certain political quarters, and it was done to oust the petitioner from the bid, even though he is the lowest bidder.

7. In the counter affidavit also, one of the reasons given by the University is that the process was cancelled, as the new regime of Goods and Service

Tax has now been introduced! After looking into in detail as to the new regime of Goods and Service Tax, the inquiry officer has come to the

conclusion, and rightly so, that "the issue of GST has been unnecessarily taken up as the government taxation is always followed as and when it is

changed. The party has to follow it as per the terms and conditions. This reason is beyond acceptance and also it has not been mentioned in notesheet

or cancellation order". The ultimate findings of the inquiry officer read as follows:

"On the basis of documentary proof and the sequence of event it has been clearly established that the tender cancellation has been done with

malice intensions without following legal process and it is beyond doubt that the cancellation has been done to benefit old mess contractors and the

responsibility is purely on Dr. SP Pandey and on the basis of analysis he is found guilty for cancellation of mess tender after completing full process. It

is further to mention here that by giving contradictory statements and trying to blame others for his own act raises questions on his being suitable for

administrative posts as such acts are not found at par with such posts. Therefore, it is beyond doubt that he has done it knowingly on account of some

motive, which cannot be justified by giving false and ambiguous reasons. By doing so he has compromised the image of reputed institute of the State

and students are suffering by his act and not getting proper and hygienic food in the messes.

NOTE " Here I would like to put facts of the conditions of running mess as the worst messes I have ever visited. On the day of my visit during

enquiry process I visited various messes and found that the quality of food is far below the normal standards and cleanliness and hygiene have been

compromised to the maximum extend. I found that the cloths of workers are being dried in the dining hall during lunch hour and kitchen was stinking

the vegetable prepared was not suitable to eat in girls hostel. In boys hostel no vegetable was prepared and only Dal was served and hygiene condition

was worst than girls hostel.â??

8. In view of this categorical finding by an unbiased person, who has seen the entire affairs of bid process and after examining the evidence has given

his findings, there must be absolutely no doubt that the entire process is flawed. The students in the institute must be given the best services in terms

of foods and beverages. The finding that â??the quality of food is far below the normal standards and cleanliness and hygiene have been

compromisedâ??, is, however, very discouraging.

9. There must also be a certainty on those matters and a person who is a bona fide bidder and has been declared as L-1 must be given the contract.

10. Under the Procurement Rules of the State Government, the Rules categorically state that though the State or its instrumentalities are not bound to

give the contract to L-1 but in case the contract has to be refused to L-1, valid reasons must be assigned. In the present case, absolutely no reason

has been assigned but by a telegraphic order the entire process has been cancelled. This cannot be done.

11. Learned counsel for the University has very fairly admitted that in this matter, an inquiry has been conducted and the report is in favour of the

present petitioner.

12. In view thereof, order dated 30.08.2017 is hereby quashed. The writ petition is disposed of with direction to the Secretary, Technical Education,

Dehradun to take appropriate action in this regard within a period of two weeks from the date of production of a certified copy of this order. It is

made clear that the authority shall take a decision on the basis of the inquiry report and in case any proceeding has been initiated either by the

courtâ??s order or any other order for fresh proceedings, the same shall wait and its fate will depend on the decision taken by the Government in the

case.