
(2014) 08 MP CK 0160
In the Madhya Pradesh High Court
Case No : WP 4807/14

Pankaj Arora

APPELLANT

Vs

NFL

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Citation : (2014) 08 MP CK 0160

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : N.K. Gupta, Senior Advocate assisted by and S.D. Singh, Advocate for the Appellant; Prashant Sharma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. They are heard.
2. Petitioner in this petition has prayed for as relief that direction be issued to the respondents to open financial bid of the petitioner, because the petitioner has qualification for the contract.
3. Respondents invited bids for award of contract of Bagging of product Urea & loading the same into wagons/trucks, through press tendering. Petitioner and five others submitted their bids for the contract. Petitioner submitted his bid in the name of M/s. Arora Business Systems and other Firm M/s. B.L. Arora, H & T Contractor also submitted its bid. Bid of the petitioner was not found technically suitable on the ground that the petitioner had no experience of work of seven years, as required under the terms and conditions of the contract. As per the petitioner, he had aforesaid work experience and he has illegally been debarred from participating in the tender proceedings on the ground that his bid was not found technically suitable.
4. It is an admitted fact that earlier the contract was awarded to M/s. Bishamber Lal Arora H & T Contractor, Panipat from the year 2000-2014. It was a partnership firm. Deed of partnership has been filed as Annexure P/1 alongwith

the writ petition. In the aforesaid partnership firm, the petitioner was holding 50% shares of the firm. Subsequently, another deed of partnership was constituted, copy of the same has been produced by the learned Senior Counsel for the petitioner during the course of arguments. The deed is dated 1st April, 2014. In the aforesaid deed, Mr. Pankaj Arora was retired from the partnership business with effect from 01st April, 2014 and all the remaining partners accepted his retirement from the partnership firm. It is an admitted fact that M/s. Bishamber Lal Aora H & T Contractor and the present petitioner-both submitted their tenders for award of contract. Tender of the petitioner was not accepted on the ground that he did not fulfil the criteria of seven years' experience and his bid was rejected on technical ground.

5. Learned Senior Advocate appearing on behalf of the petitioner has contended that the petitioner was a partner of the firm M/s. Bishamber Lal Aora H & T Contractor and partnership experience gained by the petitioner is to be counted in favour of the petitioner also. In support of the aforesaid contention, learned Senior Advocate has relied upon a decision of Hon'ble the Supreme Court in *New Horizons Limited and Another Vs. Union of India (UOI) and Others*, and two decisions of Andhra Pradesh High Court in *S. Kireetendranath Reddy Vs. A.P. TRANSCO, Vidyut Soudha, Hyderabad and another*, and *Avula Contractions Pvt. Ltd., Secunderabad and another Vs. Senior Divisional Electrical Engineer, Traction Distribution, South Central Railway, Vijayawada and others*, In those judgments, it has been held that if a partner is retired from a partnership firm then the experience of the firm could be counted in favour of the retiring partner.

6. However, in the present case, both- M/s. Bishamber Lal Aora H & T Contractor from where the petitioner was retired as a partner, and the petitioner himself-submitted their tenders. It is also a fact that the bid submitted by the firm M/s. Bishamber Lal Aora H & T Contractor was not the lowest. The experience of the partnership firm M/s. Bishamber Lal Aora H & T Contractor has already been counted for the purpose of technical bid and if the experience of the firm is also counted in favour of the petitioner, who submitted his independent bid, then it would create an anomaly. In that situation, even 3/4 partners after retiring from the partnership firm can submit their bids and may also claim for counting of the experience for the purposes of technical bid which would facilitate cartelling. It is a fact that the petitioner is the son of Bishamber Lal Arora. In the present facts and circumstances of the case, in our opinion, the principle of law laid down by Hon'ble the Supreme Court in *New Horizons Ltd. (supra)* is not applicable.

7. Hence, we do not find any merit in this petition. It is hereby dismissed.

8. No order as to costs.