
(2005) 04 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 66 of 2005

Rajesh Thakur

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 20-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 ShimLC 226

Hon'ble Judges : L.S. Panta, J;K.C. Sood, J

Bench : Division Bench

Advocate : G.D. Verma and B.C. Verma, for the Appellant; M.S. Chandel, General, R.M. Bisht, D.A.G. for Respondents 1 and 2 and Navlesh Verma, for the Respondent

Judgement

K.C. Sood, J.—Government of Himachal Pradesh, in the Department of Public Works, issued NIT (Notice Inviting Tender), by a notification dated November 19, 2004, from the eligible Contractors/Firms enlisted with the Himachal Pradesh Public Works Department for the construction of multi-storeyed building at Bal Ashram, Tuti Kandi, Shimla (SH: Civil work and WS and ST etc.) for an estimated cost of rupees 17,83,673/- so as to reach the office of the Executive Engineer, Shimla Division No. 3 up to 11.00 a.m. of December 20, 2004. The tenders were to be opened on the same day at 11.30 a.m. in the presence of the intending Contractors/Firms who may be present. The sale of the tenders was to be closed on December 18, 2004 at 4.00 p.m. Four tenders that of Respondents No. 3 to 6 were received in the Office of the Executive Engineer, Respondent No. 2. The tender of the Respondent No. 5 Himkailash Builders being lowest, was accepted after examination and completion of the formalities. The construction work was started by the Respondent No. 5 immediately after the award of the work to him.

2. The grievance of the Petitioner is that he, being a registered Government Contractor, with the Respondents No. 1 and 2 was entitled to tender for the work in question. He went to the Office of the Executive Engineer, Division No. 4,

Respondent No. 2, on December 18, 2004 at about 11.00 a.m. along with one Harvinder Singh. He applied for the supply of the tender documents by an application and also paid/deposited rupees 250/- as cost of the tender document. Harvinder Singh also moved similar application for the supply of tender form at the same time. After the deposit of the cost of the tender documents, the Petitioner asked for tender documents but one Hira Lal Chauhan Dealing Assistant and Mukand Lal Sharma, another Dealing Assistant, informed the Petitioner and the said Harvinder Singh that estimates in respect of the tender have not been sanctioned therefore, the tenders are being cancelled and corrigendum to this effect is being issued. The Respondent No. 2, Executive Engineer, also confirmed this fact. The Petitioner was told to enquire about the date of the issuance of fresh notice after a week or so. The Petitioner went to the office of the Respondent No. 2 on December 29, 2004 but to his dismay, he found that the tender documents were issued for this work on December 18, 2004 to Respondents No. 3 to 6 and contract has been awarded to the Respondent No. 5.

The case of the Petitioner is that the Respondent No. 2 with mala fide intention and to keep away the Petitioner from the tender process misled the Petitioner that the estimate for the work in question has not been sanctioned and NIT is being cancelled which led to the awarding of the contract to the Respondent No. 5. This was done to exclude the Petitioner from tender process and give undue benefit to the Respondents No. 3 to 6. It is the further case of the Petitioner that the Respondents No. 3 to 6 did not deposit the earnest money yet, their tenders were considered. The entire process was completed in a hush hush manner only to exclude the Petitioner.

3. The Respondents No. 1 and 2 in their return, controvert the allegations. According to the Respondents No. 1 and 2, an application was received on behalf of the Petitioner for the issue of the tender document. The Executive Engineer allowed this application with endorsement "may issue" but the Petitioner did not deposit or pay rupees 250/- the price of the tender documents nor any of his representatives came to receive the tender document. This application was received on December 17, 2004. Even though tender documents were prepared for him but he did not come even on December 18, 2004, the last date for the sale of tender documents. Only four tenders that of Respondents No. 3 to 6 were received and the work was awarded to the Respondent No. 5 being the lowest tenderer after completing the formalities, including the approval of the Superintending Engineer in accordance with rules. It is denied that the earnest money was not paid or deposited by the Respondents No. 3 to 6. It is the stand of the Respondents No. 1 and 2 that the earnest money was deposited by the Respondents No. 3 to 6 in the shape of fixed deposit receipts and national saving certificates. The earnest money of lowest tenderer Respondent No. 5, was retained by the Respondent No. 2 and the earnest money in shape of Fixed Deposit by the Respondents No. 3, 4 and 6 were returned to them being unsuccessful tenderers.

4. Respondent No. 5 in his return also controverts the allegations and maintain that tender of Respondent No. 5 was rightly accepted being the lowest after completion of the formalities. It is his case that he had undertaken the execution of the work which is fairly at advance stage.

5. Heard Mr. G.D. Verma, learned Senior Advocate instructed by Mr. B.C. Verma for the Petitioner and learned Advocate General assisted by Mr. R.M. Bisht learned Deputy Advocate General. We also perused the record of this case maintained in the office of the Executive Engineer, Respondent No. 2.

6. It is interesting to note that the Petitioner would have us believe that he went to the office of the Respondent No. 2 for the purchase of tender documents on December 18, 2004. He deposited the money, yet tender documents were not supplied to him on the pretext that tender is being cancelled. We are not impressed. It is incredible to believe that the office of the Respondent No. 2 would not only allow the application of the Petitioner for the purchase of the tender documents but also accept the money for the tender documents on the pretext that the tender process was under cancellation which in fact was not. Equally incredible is the version of the Petitioner that he deposited the cost of the tender documents even though the tender process was under cancellation. Office of the Executive Engineer or the Executive Engineer could have simply told the Petitioner that the tender documents are not being issued as the process of tender is under cancellation.

7. This apart, the record shows that the Petitioner filed application for the purchase of tender documents on December 17, 2004 though he maintains that he went to the office of the Respondent No. 2, Executive Engineer only on December 18, 2004 to purchase the tender documents. On this application, the Executive Engineer has permitted the issuance of the tender documents to the Petitioner. The record further shows that on his application, the tender documents were prepared in his name but he neither deposited the amount nor approached the authority for the delivery of the tender documents. The record also shows that the amount by the Respondent Nos. 3 to 6 for the purchase of tender document was deposited with the Cashier and the Cash Book reflects the receipt of this amount. This register does not show the receipt of the cost of the tender document from the Petitioner. In fact, only four tenderers namely, Respondents No. 3 to 6 purchased the tender documents relating to this work. There are several other entries in the succeeding pages and the entries relating to this work cannot be said to be manipulated or forged. A composite receipt was issued regarding the receipt of this amount on December 18, 2004 which is on the record.

8. The case of the Petitioner that he was not supplied the tender documents though he had deposited the price of the tender document on December 18, 2004 is without any foundation.

9. Lastly, Mr. Verma, learned Senior Counsel contends that the procedure as laid

down in the Manual for the Public Works Department for the opening of tenders has not been followed. According to him, the manual for the Department lays down that there should be two days clear notice between the last date of the sale of the tender documents and receipt of the tender but in the present case, as the notice inviting tender shows the sale of the tender was to close at 4.00 p.m. on December 18, 2004 whereas, the last date for the receipt of the tender was 11.00 a.m. on December 20, 2004 which makes it less by few hours. The Petitioner having not participated in the tender process, cannot have any grievance for this reason.

10. We hardly need to say that the Courts, in its writ jurisdiction under Article 226, would not interfere with the terms of the tender process unless it is shown to be arbitrary or discriminatory or actuated by malice. This apart, the terms of invitation of tender are not open to judicial scrutiny the same being in the realm of contract. The scope of interference by the Court is limited in judicial review to the extent of preventing arbitrariness or favouritism.

11. In the present case, the Petitioner did not participate in the tender process. He did not even purchase the tender document though applied for the same. Four tenderers participated and work was awarded to the lowest tenderer. In the facts and circumstances of this case, no interference is called for.

12. Dismissed with no costs.

CMP No. 88 of 2005.

Infructuous.

CMP No. 89 of 2005.

Does not survive in view of the disposal of the writ petition.