
(2010) 09 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12541 of 2010

Sarvodaya Sales

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

General Finance and Accounts Rules — Rule 59, 61

Citation : (2010) 09 RAJ CK 0032

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Judgement

Ajay Rastogi, J.—Instant petition has been filed by the petitioner basically with the grievance that without the process of public notice inviting tenders dt.19.3.2010 being finalized, the subsequent/later public notice inviting tenders published by the respondent dt.27.8.2010 is in violation of Rule 59 and 61 of the General Financial & Account Rules.

2. Respondent-2 issued an open Notice Inviting Tender dt.19.5.2010 for cluster-3 for supply of construction material to Panchayat Samiti Phagi, Jaipur and all such intended bidders who intends to participate have to deposit earnest money @2% of the estimated cost while participating in the process of bid.

3. It appears from the record that in the process which the respondent initiated in reference to NIT dt.19.3.2010 petitioner was L-2 and since L-1 did not turn up as evident from the document dt.2.8.2010 (Annx.2) his earnest money was forfeited and a communication was sent to Additional District Programme Coordinator & chief Executive Officer, Zila Parishad, Jaipur to call upon L-2, the petitioner herein, for negotiation. However, copy of the said letter was endorsed to the petitioner also and on the said premise the petitioner was under the impression that he would be called upon for negotiation but before finalizing the process in reference to NIT dt.19.3.2010 by negotiation a fresh notice inviting tenders dt.27.8.2010. has been published by the respondent

4. Counsel submits that before fresh process inviting tenders being initiated by the respondent, the respondents were under an obligation to call upon the petitioner for negotiation as indisputably he was L-2 in the earlier tender process initiated in reference to NIT dt.19.3.2010 and entails for his right of consideration and negotiation in the process, denial whereof is in violation of Rule 59 of General Financial & Account Rules. Counsel further submits that calling for negotiation is his right and the same could not have been denied by the respondent in an arbitrary manner that too without refunding his earnest money which he had deposited, while issuing fresh process inviting tenders in reference to NIT dt.27.8.2010 and denial of the negotiation which is part of the process, is in violation of Rule 61 of the Rules, of which reference has been made supra.

5. In support of the submissions counsel has placed reliance on the judgment delivered in the case of Madhukar Chaturvedi v. Rajasthan Financial Corporation and Anr. 1997 (2) RLR 661 and Vinod Kumar Goyal v. Jaipur Development Authority 2004 WLC 383.

6. The submissions made are without substance for the reason that the petitioner having participated in the process initiated in reference to NIT dt.19.3.2010 appears to be L-2 and the applicant who was L-1 since he did not turn up his earnest money in terms of the conditions of NIT dt.19.3.2010 was forfeited by the respondent and without proceeding any further in reference to NIT dt.19.3.2010 the respondent took a decision to initiate the tender process afresh by issuance of NIT dt.27.8.2010 and merely because the petitioner had participated and was one of the tenderer/bidder and L-2 in reference to NIT dt.19.3.2010 no legal or statutory right is conferred upon him to seek mandamus from this Court to be called upon for negotiation being L-2 in reference to NIT dt.19.3.2010 and the document dt.2.8.2010 (Annx.2) calling upon for negotiation is in fact a letter which the Block Coordinator has sent to the Additional District Programme Officer-cum-Chief Executive Officer, Zila Parishad, Jaipur to consider L-2 for negotiation since L-1 has not come forward and his earnest money was forfeited, but there is no material on record on the basis of which this Court can infer that the present petitioner-tenderer was called upon for negotiation by the authorities in reference to NIT dt.19.3.2010. At the same time, this Court finds substance in the submission made that if the respondents have failed to comply with the conditions referred to in NIT dt.19.3.2010 they are under an obligation to refund the earnest money to the petitioner to which he is otherwise legally entitled and that is what has been considered by the Division Bench of this Court in the judgment reported in RLR 1997 (2) 661 and on a query being put to the counsel as to whether the petitioner has at all submitted his application/tender in reference to NIT dt.27.8.2010, he is unable to inform about his participation in reference to NIT dt.27.8.2010 (Annx.3).

7. So far as Rule 59 and 61 of the Rules are concerned, it only lays down the procedure which the authority has to follow while initiating process inviting

tender notice but there appears to be no violation committed by the authority in taking decision to hold tender process afresh while publishing an open NIT dt.27.8.2010.

8. So far earnest money deposited by the petitioner in reference to NIT dt.19.3.2010 is concerned, this Court considers it appropriate to directd the respondents to refund the same along with interest @9% per annum within two weeks from the date a certified copy of this order being produced in their office.

9. With these directions/observations, the writ petition stands disposed of.