

(2021) 08 SHI CK 0203

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4411 Of 2021

Satish Vij

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 19-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2021) 08 SHI CK 0203

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Deepak Kaushal, Ashok Sharma, Ranjan Sharma, Ritta Goswami, Vikas Rathore, Seema Sharma

Final Decision : Dismissed

Judgement

Ravi Malimath, J

1. The case of the petitioner is that he is a Contractor registered with the Himachal Pradesh Public Works Department. That the respondents floated

tenders for the construction of the link road from Khatnol to Dandibag from Kms 0/00 to 6/150. The date of issuance of the notice inviting the bid was

10.5.2021 and the deadline for submitting the bid was 24.5.2021. The petitioner and others submitted various documents. By the impugned order, vide

Annexure P-3 the Bid Evaluation Committee decided to recall the tender for this work. Questioning the same, instant writ petition is filed.

2. Learned counsel for the petitioner contends that the cancellation of the bid is improper. That it attracts Article 14 of the Constitution of India. He

submits that Article 14 gets invited in view of the fact that in another tender, certain conditions were not insisted upon, whereas in this case it is being

insisted upon. Therefore, it attracts Article 14 of the Constitution of India. Hence,

he prays that the petition be allowed.

3. Heard learned counsels.

4. We do not find any merit in this petition. So far as the contention regarding Article 14 of the Constitution of India is concerned, we are of the view

that the same does not attract the case on hand. Contracts or bids are offered by the State on various terms and various conditions. Terms and

conditions may vary from one tender to another. There cannot be a fixation of conditions in a tender with all tenders that are called for by the State.

Just because there is a variation in the tender conditions, does not mean that Article 14 of the Constitution of India gets attracted.

5. Therefore we do not find any force in this contention. We are also of the considered view that the withdrawal of the tender for the work in question

does not result in violation of any right to the petitioner. That no right accrues to him to challenge the said order. However, learned counsel for the

petitioner relies upon the judgment of the Honâ??ble Supreme Court in Dutta Associates Pvt. Ltd. Vs Indo Merchandiles Pvt. Ltd. and others,

reported in (1997) 1 SCC 53, that has been affirmed in various other judgments. He, therefore, contends that the principle as laid down in the said

judgment requires to be accepted. That the Honâ??ble Supreme Court held that the entire process leading to the acceptance of the tender of the

appellant is vitiated since it is opposed to the norms of transparency, fairness and openness in Government contracts.

6. We have considered the judgment. In the said judgment, the tender was already awarded to the appellant. After the tender was awarded, disputes

arose and that is how it gave rise to a contest before the Court. It is only when a tender is awarded that anyone of the tenderers get a right to

challenge it or otherwise. A contract has been entered into by accepting the tender by the State. In the absence of an offer or acceptance, no right

accrues to any party. Therefore, on facts, the judgment of the Honâ??ble Supreme Court may not be of much relevance, since, the contract was

awarded in the aforesaid judgment. It stands on a different footing. In this case, there is no acceptance of any tender by the State. Even before

acceptance could take place, the tender has been recalled. Therefore, there is no right for the petitioner to challenge the same. Hence, we find no

good ground to entertain this petition.

Consequently, the petition being devoid of merit is dismissed.

Pending miscellaneous applications are also disposed off.