
(2006) 01 MP CK 0077

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13972 of 2005

Shephali Builders and Contractors

APPELLANT

Vs

Bharat Sanchar Nigam Ltd. and Others

RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 2 CTLJ 350 : (2006) 1 MPHT 476 : (2007) 1 MPJR 363 :
(2006) 2 MPLJ 102

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : D.K. Dixit, for the Appellant; Rohit Arya and Bhagwan Singh, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

By filing this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the condition No. 10 of the notice inviting tender ("NIT" for short), dated 24-10-2005 for laying underground cable and for optical fibre work issued by the fourth respondent. Condition No. 10 in the said NIT read thus:--

10. Tender forms will be issued on submission of written application. Enlistment certificate with BSNL, (Attested copy only), Attested copy of partnership deed and NOC from partners if any. The prospective bidders must submit attested copy of EPF/RPF registration certificate alongwith bids documents.

The petitioner contends that the nature of the work for which NIT has been issued is a short duration work of few weeks only. It is stated that the said work and the work which the petitioner/firm performs does not require more than 20 labourers. In support, the petitioner has filed a certificate issued by the Assistant Labour Commissioner, Jabalpur (Annexure P-2).

The respondents in their reply stated that in view of the letter received by them from the Regional Provident Fund Commissioner, the said condition No. 10 was incorporated in the tender documents. It is also stated that the petitioner having sought time from the respondents by filing application seeking extension of time for submission of the said registration, the petition is liable to be dismissed.

Shri D.K. Dixit, learned Counsel for the petitioner contended that in view of provisions contained in Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short "EPF Act") and the Provident Fund Scheme framed thereunder, the liability to pay contribution rests on the principal employer. In support of his contention, he placed reliance on the judgment passed by this Court in the case of B.S.P. Contractors' Association v. Steel Authority of India Limited 1999(1) MPLSR 49.

On the other hand, Shri Rohit Arya, learned Senior Counsel for the respondents contended that the aforesaid condition being neither unreasonable nor contrary to any law, the same is not assailable. He further contended that there is no prohibition under the EPF Act for registration of the contractor. In the circumstances, he contended that the petition is liable to be dismissed.

In the case of B.S.P. contractors' Association (supra), the challenge was on the insistence of the principal employer on the contractors that they must obtain a separate provident fund code number under the EPF Act as preconditions for being allowed to submit tenders and their acceptance for the works and jobs proposed to be undertaken through contract labour. Hon'ble Shri Justice D.M. Dharmadhikari as He then was, set aside the said condition and directed the principal employer to desist from insisting on the contractor desiring to obtain tender forms or submitting tenders to obtain job and works through contract labour for the principal employer, to have separate provident fund code number as a precondition for submitting tender or awarding work. It was also held that the statutory liability to extend provident fund coverage to contract labour is on the principal employer. The principal employer can not be allowed to shirk its legal responsibility by directing the contractor to obtain separate code number from the Provident Fund Commissioner.

Having considered the rival contentions and the judgment of this Court in case of B.S.P. Contractors' Association in my view the said condition is wholly unjustified and being contrary to the provisions of the EPF Act is liable to be quashed. Merely because the petitioner sought time to produce the EPF registration certificate would not make the position different. In this view of the matter, this petition is allowed. The impugned condition No. 10 of NIT being contrary to the provisions of EPF Act is quashed. As a result, the respondents shall consider the bids received pursuant to NIT dated 24-10-2005 without insisting upon compliance of condition No. 10. No orders as to costs.