
(2009) 01 P&H CK 0100
In the Punjab And Haryana At Chandigarh

Shiv Shakti Constructions	Vs	APPELLANT
Chief Administrator HUDA and Others		RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Citation : (2009) 3 PLR 715

Hon'ble Judges : Nawab Singh, J;J.S. Khehar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, J.

CM. No. 1335 of 2009

C.M. allowed. Annexures P11 to P15 are taken on record, subject to all just exceptions.

C.W.P. No. 600 of 2009.

1. Through the instant writ petition, the petitioner M/s Shiv Shakti Constructions has impugned the order dated 8.12.2008 (Annexure P8) whereby the claim of the petitioner in response to the notice inviting tenders dated 3.11.2008 (Annexure P11), issued by the respondents, has been denied consideration on account of the fact that the petitioner stands blacklisted by the Dakshin Haryana Bijli Vitran Nigam (hereinafter referred to as "DHBVN").

2. The first contention of the learned Counsel for the petitioner emerges from the Form F-1 enclosed with the notice inviting tenders (Annexure P11). Clause 18 relied on by the learned Counsel for the petitioner is being extracted hereunder:

18. The successful tenderer shall have to sign an affidavit to the effect that he has no relation or connection with firm/contractor blacklisted by HUDA/Haryana Government/Govt. of India, from time to time. The form of affidavit is annexed at page of DNIT.

On the strength of the aforesaid clause, it is the vehement contention of learned Counsel for the petitioner, that blacklisting at the hands of DHBVN is irrelevant for purposes of present notice inviting tenders, on account of the fact that the persons desirous of responding the aforesaid notice inviting tenders were required to file an affidavit affirming that they had not been blacklisted either by Haryana Urban Development Authority (hereinafter referred as "HUDA") or by Haryana Government or by Government of India. It is, therefore, the submission of learned Counsel for the petitioner that blacklisting by HUDA, Haryana Government or Government of India only, could have resulted in denial of consideration, and since the petitioner had not been blacklisted by either of the three organizations aforementioned, denial of consideration to petitioner is uncalled for.

3. We have considered the first submission advanced by the learned Counsel for the petitioner. Since it is not a matter of dispute that the appellate has been blacklisted for future contracts by DHBVN vide order dated 31.10.2007 (Annexure P12), it is apparent that the reliability of the petitioner herein was subject matter of distrust. It is not a matter of dispute that the aforesaid blacklisting order was passed as far as back on 31.10.2007, and that, the same still subsists. In such circumstances, we are of the view that the respondents had considered a relevant aspect of the matter and were fully justified in declining to consider the tender of the petitioner on the basis of tender documents submitted by the petitioner. Accordingly, we find no merit in the first submission advanced by the learned Counsel for the petitioner.

4. The second submission advanced by the learned Counsel for the petitioner was, that irrespective of the blacklisting order dated 31.10.2007 (Annexure P12), the petitioner has regularly been awarded contracts by the HUDA. In order to demonstrate the aforesaid factual submission, the learned Counsel for the petitioner has invited Court's attention to orders dated 18.9.2008 (Annexure P10) and 18.12.2008 (Annexure P15). It is, therefore, the contention of the learned Counsel that the instant non-consideration is wholly arbitrary and uncalled for.

5. We have considered the second submission advanced by the learned Counsel for the petitioner. The impugned action has been taken against the petitioner on the basis of information made available to the respondents, as is apparent from the impugned order dated 8.12.2008 (Annexure P8) by the rival tenderers. In the absence of the aforesaid information having been brought to the notice of the respondents the impugned order may never have been passed and the petitioner may yet again have been awarded another contract by the HUDA. Since the information as brought to the notice of the respondents emerged only in December 2008, orders issued earlier accepting tenders submitted by the petitioner are inconsequential and will not determine the merit in the claim of the petitioner. As such, we are of the view that the plea of arbitrariness is wholly misfounded. In view of the above, we find no merit even in the second submission

advanced by the learned Counsel for the petitioner.

6. The last submission advanced by the learned Counsel for the petitioner was that irreparable loss would be caused if claim of the petitioner is not considered by the HUDA in response to the notice inviting tenders. In this behalf, it is submitted that petitioner was ready and willing to discharge the work under reference at a rate of 2% above the DNIT whereas none of the other tenders has agreed to implement the work under reference at a rate equivalent or lesser than the rate at which the petitioner was willing to discharge the contract. As such, it is submitted that non-acceptance of the lowest tender offered by the petitioner is wholly unfair.

7. We find no merit even in the last submission advanced by the learned Counsel for the petitioner. Rates submitted by the petitioner are inconsequential. Before the actual award of a contract it is necessary to evaluate the credibility of the concerned tenderer. The petitioner having been blacklisted was not trustworthy enough to be offered a contract so as to discharge the contractual obligation for the HUDA.

For the reasons recorded here-in-above, we find no merit in the instant writ petition and the same is accordingly dismissed.