

(2024) 01 UK CK 0121

In the Uttarakhand High Court

Case No : Writ Petition (M/B) No. 365 Of 2023

Shiva Corporation India Ltd.

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 22-01-2024

Acts Referred:

Citation : (2024) 01 UK CK 0121

Hon'ble Judges : Vivek Bharti Sharma, J

Bench : Single Bench

Advocate : N.S. Nadkarni, Amit Mendiratta, Megha Karnwal, S.N. Babulkar, C.S. Rawat, P.C. Bisht

Judgement

Vivek Bharti Sharma, J

1. By means of present writ petition, petitioner has sought the following reliefs:-

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 13.12.2023 passed by respondent no.4 (Annexure No.4).

(ii) Issue a writ, order or direction commanding the respondent no.2 to allow the petition to participate in the bidding/auction process in pursuance of the tender notice dated 22.11.2023.

2. Learned senior counsel appearing for the petitioner would submit that there was a condition in the tender notice at para no.6(5) that the Earnest Money Deposit (EMD) amount should be deposited as security amount along with the tender by way of bank guarantee/ FDR issued by the nationalized bank. He would further submit that the petitioner, however, submitted the FDR issued by ICICI Bank and, on this count, his technical bid was rejected by respondent no.2.

3. He would further submit that the Hon'ble Supreme Court in re Poddar Steel Corporation Vs. Ganesh Engineering Works and Others, reported in (1991) 3 SCC 273 has laid down a law in para 6 that there may be some conditions/ requirements in a tender notice, which can be classified in two categories, one

which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition; that, in the first case the Supreme Court opined that the authority issuing the tender may be required to enforce the conditions rigidly but in the second category of the condition it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.

4. Learned senior counsel would further submit that condition to submit FDR of a nationalized bank is of the second category and thus it was not essential and could have been waived of or ignored by the respondent authority. He would submit that the rejection of the technical bid on this ground was unwarranted.

5. Per contra, learned State Counsel would submit that the petitioner should have followed submitted the FDR of a nationalized bank as per the condition of the tender notice but the petitioner submitted FDR of a private bank. He would further submit that the condition of FDR/Bank Guarantee of a nationalized bank was introduced in order to secure money. He would further submit it is not for the petitioner to decide and dictate the terms and conditions of a tender.

6. He would further submit that the contract has already been awarded and the petitioner has not impleaded the successful bidder as party respondent and therefore the writ petition is not maintainable for non-joinder of necessary party.

7. Learned counsel for the State would place reliance upon the case of M/s Om Gurusai Construction Company vs. M/s V.N. Reddy & Ors., reported in (2023) SCC OnLine SC 1051 and would refer para 35 of this judgment and would submit that the attempt by unsuccessful tenderers, like petitioner in present case, with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation has to be resisted.

8. Having heard the rival submissions of learned counsel for the parties, this Court finds that on 15.12.2023 a Division Bench of this Court had adjourned the case with direction that award of contract, if any, shall abide by outcome of this writ petition. Thereafter, the matter was listed before the Vacation Bench on 16.01.2024 but on the said date the fact that contract has been awarded to a third party was not brought on record by the State.

9. Learned counsel for the petitioner would submit that in the LOI the respondent should have mentioned that final award of contract shall abide by the final outcome of the present writ petition.

10. In view of the above, the State is directed to file a detailed counter affidavit within two weeks.

11. List on 12.02.2024.

12. Till the next date of listing, no further action shall be taken by the respondents in furtherance of the award of contract.