
(2014) 07 AHC CK 0016
In the Allahabad High Court
Case No : Misc. Bench No. 6640 of 2013

Shobha Ram Sharma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 106 ALR 280

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Devendra Kumar Upadhyaya, J

Bench : Division Bench

Advocate : Kapil Misra and Sunil Kumar Chaudhary, Advocate for the Appellant;
L.P. Mishra and T.J.S. Makkar, Advocate for the Respondent

Judgement

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Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Devendra Kumar Upadhyaya, J.
—The petitioners have sought to question, in these proceedings under Article 226 of the Constitution, the legality of two orders dated 12 July, 2013 and 15 July, 2013 passed by the Chief Executive Officer and by the Director and Chief Engineer in the Rural Engineering Department of the U.P. Rural Roads Development Agency to withdraw a tender enquiry and to initiate the process of inviting fresh tenders. Bids were invited on 17 December, 2012 by the Superintending Engineer, Rural Engineering Department, Agra Circle, Agra to an e-procurement notice for the construction of roads and their maintenance, under the Pradhan Mantri Gramin Sadak Yojna (PMGSY). The notice was for the district of Mathura in seven packages. A corrigendum was published to the effect that those contractors who had either on their own or on lease gas operated Hot Mixed Plant within the Taj Trapezium Zone located not more than 50 kms. from the site of work or a diesel operated Hot Mixed Plant outside the TTZ area, located at a distance of not less than 50 kms. from the site, would qualify. The bids were opened and were evaluated by the Technical Evaluation Committee.

Financial bids were opened and it was found that the bid submitted by the first petitioner was the lowest bid for four packages while the bid submitted by the second petitioner was the lowest bid for the remaining three packages.

2. The National Rural Roads Development Agency of the Union Ministry of Rural Development, which is the supervisory authority, deputed a team of two independent monitors following the receipt of a number of complaints about irregularity in the evaluation or award of PMGSY projects in the State during February-April, 2013. These complaints, inter alia, pertain to the projects at Mathura and Bulandshahr districts. The two member team submitted its report on 2 May, 2013 and found that there were serious irregularities in the evaluation process. The report incorporated various suggestions. Following this, the National Rural Roads Development Agency addressed a communication dated 18 June, 2013 to the Principal Secretary (Rural Development) of the State calling for the fixation of responsibility and exemplary action against the officers found involved. The communication stated as follows:

"As you are aware, a large number of complaints about irregularities in evaluation/award of PMGSY Projects in the State were received at NRRDA during February-April, 2013. Many of these complaints pertain to the projects of Mathura and Bulandshahr districts. It was decided to depute a team of two NQMs to enquire into the allegations pertaining to the projects of these two districts.

2. Accordingly, a team of two NQMs namely Shri M.S. Chauhan, formerly Engineer-in-Chief, Himachal Pradesh and Shri S.L. Jadhav, formerly Secretary (PWD), Government of Maharashtra, had conducted the enquiry during 29th April - 2nd May, 2013 and sent the report. A copy of the enquiry report is forwarded for urgent corrective action, as the procurement of works is responsibility of the State Government. Copy of further letters received from various sources as per Annexure-I are also enclosed for appropriate action.

3. As can be seen from the findings, out of the three complaints pertaining to Bulandshahr district, the enquiry team has observed that the tender evaluation committee has erred in evaluation of bids in two of the three cases. For the projects of Mathura district, seven complaints were received and the common allegations were that the authorities had favoured particular bidders in award of works and that the other bidders had been purposefully disqualified. The enquiry team has found that the allegations are broadly substantiated.

4. The findings of the enquiry team point out serious concerns in the procurement process for PMGSY projects in the State. Therefore, I request you to take immediate corrective actions on the findings including further enquiry, if required. Based on the findings, the State may fix up the responsibility in each of these cases and take exemplary action against the officers found involved in committing irregularities, even if redressal has been done or re-tendering ordered after enquiry.

5. I am sure the stern action taken against the guilty would act as a deterrent for

others willfully trying to influence the procurement process under PMGSY. The action taken in this regard may please be shared with us at the earliest."

3. By the two communications dated 12 July, 2013 and 15 July, 2013, which are impugned in these proceedings, a decision has been taken to (i) hold the officers responsible for the breaches in the tendering process responsible by following departmental procedures; and (ii) invite fresh bids.

4. On behalf of the petitioners, it has been submitted that two writ petitions were filed before this Court by two bidders whose bids have been rejected. The first of those writ petitions by M/S. Akashdeep Construction Company (Writ Petition No. 12627 of 2013) was dismissed by a Division Bench on 6 March, 2013. The second writ petition (Writ Petition No. 13549 of 2013) by Naval Kishore Sharma is pending. It was urged that the State had filed a counter-affidavit in response to the second writ petition supporting the rejection of two bids. It was sought to be submitted that the Evaluation Committee had correctly evaluated the bids by following a transparent procedure. Hence, it was urged that it was not open to the State Government to turn around and to revoke the entire tender enquiry. It was submitted that a few complaints were received from political personalities from the same fax number within a short period of time. It was urged that, in consequence, the withdrawal from the tender enquiry has been unfair and arbitrary.

5. While dealing with the submissions, it would, at the outset, be necessary to advert to the basic legal position. A bidder who submits a bid in response to a tendering process initiated by a public body, has a right to be considered fairly and objectively in accordance to the norms which are stipulated by the authority inviting the tenders. A bidder has no vested right to the award of a contract. An authority which invites bids, is entitled to determine as to whether the tender enquiry should be proceeded with to its logical conclusion by the award of the contract or whether there are circumstances which would justify withdrawing from a tender and inviting fresh tenders. A tender enquiry, which is floated by the authority, is an invitation to offer. A bid is an offer. A bidder who participates in the tendering process, has no other right except a right to equality and fair treatment in the evaluation of competitive bids. The authority is not bound to accept the lowest bid where the expenditure is to be incurred by the authority or, as the case may be, the highest bid where the tender is for generating revenue for the authority. A bidder cannot insist that the authority must necessarily accept a particular bid or the lowest. Undoubtedly, a public body is governed by the requirements of Article 14 of the Constitution and cannot act for extraneous reasons or motivated by arbitrariness or favoritism. But, it is open to a body to determine whether the public interest would justify closing the tendering process and inviting fresh bids.

6. In the present case, during the course of the tendering process, the bids of two bidders were rejected. One of those bidders challenged the rejection in writ proceedings before the Court which resulted in an order of dismissal. The issue in

those proceedings was whether the rejection of the bid was proper on the ground on which the bid had been rejected. The Division Bench in its judgment dated 6 March, 2013, rejected the writ petition holding that the bid was justifiably found to be the non-responsive. This decision was rendered by the Division Bench on 6 March, 2013. An enquiry was instituted by the National Rural Roads Development Agency, the supervising authority. The two member committee constituted by the agency, which is a wing of the Union Ministry of the Rural Development found serious flaws in the tendering process. The agency in its letter dated 18 June, 2013 to the Principal Secretary of the State Government, in the Ministry of Rural Development, pointing out the report and the findings therein, drew the attention of the State Government to the serious concerns in the procurement process for PMGSY projects in the State and called upon the State to take immediate corrective actions on the findings including a further enquiry. There is no suggestion before the Court at the hearing to the effect that the two member committee was actuated by mala fides or that the Union Ministry of Rural Development has acted for extraneous reasons. During the course of the submissions, we have not heard learned Counsel urge any submission questioning the bona fides of the decision which was taken by the two member committee or in regard to the decision of the agency of the Union Ministry of Rural Development. In this view of the matter, we see no reason to interfere in the writ petition. The petition is dismissed. There shall be no order as to costs.