

(2012) 02 JH CK 0154

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4325 of 2011

S.K. Bikes Pvt. Ltd.

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 21

Citation : (2012) 02 JH CK 0154

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Rohit Roy, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari

1. In this writ petition, the petitioner has challenged the Notice Inviting Tender (N.I.T.) for supply of ladies bicycles on rate contract for the year 2011-12 issued by the respondents-department. According to the petitioner, the terms and conditions incorporated in the impugned N.I.T. are violative of Articles 14, 19(1)(g) & 21 of the Constitution of India.

2. In course of hearing, learned counsel for the petitioner invited the Court's attention on the terms contained in Section 1, particularly. Clauses 2.2(ii), 5 & 6 of the impugned N.I.T. in support of his contention that the said terms are arbitrary and discriminatory. It has been submitted that the respondents have incorporated the said terms, which cannot be fulfilled by any tenderer. The said terms are obviously incorporated for favouring some of the tenderers and are arbitrary and illegal.

3. The respondents have contested the writ petition. In their counter affidavit, it has been, inter alia, stated that the said contentions of the petitioner are wholly false and baseless. The respondents had floated the impugned N.I.T. for supply of ladies bicycles on rate contract for the year 2011-12 by following a very

transparent procedure terms and condition was incorporated in the impugned N.I.T., which prevented S.S.I. Units or any other prospective bidders from participating in the impugned N.I.T. All the terms and conditions were incorporated in the impugned N.I.T. after carefully considering by in detail in public interest and after approval of the competent authorities. The terms and conditions of the impugned N.I.T. are rational, reasonable and constitutional.

4. I have heard learned counsel for the parties and considered their submissions. and also perused the relevant clauses of the impugned N.I.T. particularity, which were referred to above by learned counsel for the petitioner.

5. Learned counsel for the petitioner referred to Clauses 2.2(ii), 5 & 6 of Section 1 of the impugned N.I.T., which are reproduced herein below.

2.2(ii) The manufacturer should furnish information on past supply and performance in the format enclosed in section IV to the extent of having supplied at least 25000 cycles each year during the last 5 years to any PSU / State Government Body to qualify for each group. To qualify for multiple groups the requirement shall be cumulative.

The past performance of the manufacturer shall be taken into account for evaluation.

The manufacturer shall disclose instances of previous past performances that may have resulted in adverse action taken against manufacturer in the last five years. An affidavit to this effect by the managing director of the company has to be enclosed duly notarized, that his company has never been blacklisted.

5. SCHEDULE TO THE INVITATION OF TENDER

Tender for Ladies Bicycles (Refer to Section-II for technical specifications)

6. Earnest Money

6.1 Rs. 3, 50,000/- in the shape of Bank draft of nationalized bank will have to be submitted per group drawn in favour of Tribal Welfare Commissioner payable at Ranchi with every set of tenders.

6.2 Any bid not accompanied with earnest money will be rejected.

6.3 The amount of earnest money will be forfeited if the bidder withdraws his bid after the opening of bids or if the bidder fails to furnish performance security after awarding of contract.

6. On plain reading of the said clauses, I find that the same are reasonable and in the public interest. The requirement of information regarding the past supply and performance, the proof on annual turnover of the bicycle manufacturer, the client certificate that the cycles have been supplied to the department in good condition and are working satisfactorily since past two years from the date of supply and there shall be no adverse report regarding the supply for at least three years, cannot be said to be arbitrary and discriminatory in any way. Since

the said supply is meant for school children, those documents are relevant in public interest.

7. In view of the above, I find no ground made out in this writ petition to interfere with the impugned N.I.T. This writ petition is, accordingly, dismissed.