(2015) 05 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : CWP No. 709 of 2015

Sudarshan Kumar APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Citation : (2015) 05 SHI CK 0004

Hon'ble Judges : Rajiv Sharma, J;Sureshwar Thakur, J

Bench : Division Bench

Advocate : Bimal Gupta, for the Appellant; Anup Rattan, Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.

1. The respondents had floated tenders for execution of work nomenclatured as "Channelization of Chhounchh Khad in Tehsil Indora District Kangra, H.P. (SH;-C/o EARTHEN Embankment including crated apron, stone pitching etc. from RD 1000 to 5000 i.e. increased slopping width of pitching NSL to LWL." The estimated cost of work aforesaid to be executed through a Contractor was a sum of Rs. 11,62,75,450/-. The petitioner herein avers that he fulfilled all the requisite enjoined conditions to compete with other Contractors for allocation of the work aforesaid to him, qua which through tenders floated by the respondents, quotations from him as well as from other competing bidders were invited. The petitioner was declared qualified for the technical bid by the respondents. The declaration of the petitioner herein by the respondents to be qualified for the technical bid rendered him fit and eligible for the financial bid. The imperative enjoined conditions for constituting the petitioner herein to be eligible to participate and be declared eligible for allocation of work was vis-?-vis the petitioner his having during the last seven years previous to the floating of tenders by the respondents for execution of work aforesaid, completed three similar works costing not less than an amount equal to 40% of the estimated

cost.

2. The respondents herein, while considering the apposite material placed before them, for construing whether the material hence portrayed the factum of the petitioner herein having complied with the conditions aforesaid and its being in abundant or not, issued a communication, comprised in Annexure P-5, to the petitioner eliciting therein from the petitioner the details of works certified by the authorities concerned showing/demonstrating the awarded amounts, completion cost as well as the copy of the final bill. The petitioner proceeded to make a representation to the respondents comprised in Annexure P-6 in which he appended material in purported satisfaction of the enunciation in Annexure P-5. Moreover, the petitioner after forwarding his representation comprised in Ext. P-6 also furnished to the respondents Annexure P-7. Nonetheless, the respondents vide Annexure P-10 rejected the representation of the petitioner herein.

3. The petitioner is aggrieved by the orders rendered by the respondents comprised in Annexure P-10 and seeks its being quashed and set aside besides the petitioner ventilates a grievance that Annexures P-6 and P-7 while constituting compliance with the mandated condition of his having completed during the seven years previous to the floating of tenders by the respondents three completed works costing not less than the amount equal to 40% of the estimated cost of the work proposed to be executed by the respondents, he be declared eligible for participation in the financial bid.

4. The respondents in the reply to the writ petition contend that the prayer made by the petitioner in the writ petition is untenable and Annexure P-11 is discardable, besides it is contended that the works in purported compliance by the petitioner within the enjoined mandate of the apposite rules entailing upon him to furnish proof qua his having completed three works during the 7 years previous to floating of tenders by the respondents for execution of the contemplated work, cost whereof is equivalent to 40% of the estimated cost of the work proposed to be awarded to the successful bidder, is not a single consolidated work rather is a plurality of jobs/works performed by the petitioner herein. In aftermath, it is contended that the petitioner herein has not begotten compliance with the enjoined mandate of the aforesaid rules.

5. The petitioner in his rejoinder has controverted the factum as enunciated in the reply. Tritely, the controversy can be put to rest by dwelling upon the import of Annexure P-11. Even though, Annexure P-11 is a single award. However, for construing whether the works comprised therein are to be reckoned to be consolidated or compact works or not, as such, constituting them to be a single complete work or not, cost/costs whereof are to be concomitantly segregated or not so as to render them falling within the ambit of the mandate, as referred to herein-above inasmuch as they/it bearing a complete cost equivalent to 40% of the estimated cost of the work contemplated to be executed, there ought to have been an element of jointness or un-segregability inter-se each of the works qua which Annexure P-11 was issued by the authority concerned. For fathoming and

determining as well as disinterring whether the above element of consolidation of works qua which Annexure P-11 was issued by the authority concerned exists, an advertence is necessarily required to be made even to Annexure P-12 appended with the rejoinder filed by the petitioner herein, in repudiation to the contention of the respondents. Even though, Annexure P-12 does fortify the submission of the learned counsel for the petitioner herein that the items of work qua which approval was rendered by the authority concerned for theirs being awarded in favour of the petitioner was a singular approval, however, the above factum of each of the items of works comprised in Annexure P-12 having been accorded a joint approval or a singular approval would not per se ipso facto by the factum of theirs having been allotted under a singular order of the authority concerned render them to constitute a single completed work. Singularity of a complete job or allotted work bearing a cost equivalent to 40% of the amount of the estimated cost of the proposed work is cullable from the factum of each of the works being interconnected or inter-related or un-segregable from each other. However, a perusal of Annexure P-12 and theirs displaying the factum of the items of work comprised therein being not consolidated works rather being segragable or distinctive works makes them loose the element of consolidation which is the hallmark of a singularly completed job, whose completed costs is also reckonable for determining the fulfilling or non-fulfilling of the enjoined conditions cast upon the petitioner herein. Consequently, the disclosures in Annexure P-12 of distinct or segragable items of work allotted to the petitioner herein even though under a single order of allotment/allocation would not render the works comprised therein to be a single completed work rather are separately completed disjoined works or each is a distinct work, hence each work loses the character of jointness, besides theirs being plural. Consequently, the cost of each of the separate items of work divulged in Annexure P-12 are to be separately taken into account as tenably done by the respondents while discarding the posture of the petitioner displayed in Annexures P-6 and P-7 as well as Annexure P-11, as such, the rendition of orders by the respondents comprised in Annexure P-10 are, hence, legitimized.

6. In aftermath, there appears to be no force in the contention of the petitioner that the respondents in discarding the details furnished by the petitioner in proof of his having completed three works with each costing not less than the amount equal to 40% of the estimated cost of the works proposed to be executed by the respondents and they having not thoroughly applied their mind to the material as placed before them, have proceeded unlawfully. The decision, as arrived at by the respondents, in concluding that each of the works displayed by the petitioner in Annexures P-12 and P-13 was not a single work rather were segregated plural works is tenable. Cost of each of the works was reckonable as reckoned for determining the eligibility of the petitioner. As a natural concomitant when none of the individual items of work displayed in Annexure P-12 and P-13 bore a completed cost equivalent to 40% of the estimated cost of the proposed work, the petitioner was rendered ineligible to participate in the financial bid. The act of

the respondents was, hence, tenable and apt.

7. With the aforesaid observations, the petition is dismissed, so also the pending application(s), if any. However, there will be no order as to costs.

