(2019) 05 UK CK 0039

In the Uttarakhand High Court

Case No : Writ Petition No. 457, 470, 472 (MS) Of 2019

Sugam Infratech & Others APPELLANT

Vs

National Project Construction Corporation And Others RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 05 UK CK 0039

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Shobhit Saharia, S.S. Chauhan

Final Decision : Dismissed

Judgement

Alok Singh, J

1. Issue raised in all the aforesaid writ petitions is common, therefore, all the three writ petitions are heard together and decided by this common

judgment.

2. Brief facts of the present case, inter alia, are that respondent no. 1 issued a notice inviting tenders for construction of different roads under Pradhan

Mantri Gram Sarak Yojna. Petitioner, which is a proprietorship firm, submitted its bids on 3.01.2019 for three roads mentioned at serial no. 1, 5 and 7.

On 21/24.01.2019, Bid Evaluation Report of Part I of bids was uploaded. Technical evaluation of the bids was carried out and as per Clause 6.6,

petitionerâ??s bids were rejected as they were not technically qualified. Technical bids of petitioner were rejected on the ground that Super

Construction experience was counted for qualification of similar nature of work but ongoing work of the Super Construction was not submitted as deed was still alive and petitioner had not submitted balance sheet of previous three years and petitioner has submitted its balance sheet of 31.03.2018

only. Feeling aggrieved, petitioner has approached this Court.

3. Heard Mr. Shobhit Saharia, Advocate for the petitioner and Mr. S.S. Chauhan, Advocate for the respondents and perused the record.

4. Mr. Shobhit Saharia, Advocate for the petitioner submits that petitioner is a proprietorship firm and Mr. M.K. Joshi is only partner in Super

Construction, therefore, it was neither necessary on the part of the petitioner to show ongoing work of Super Construction nor there is any provision in

the Standard Bidding Document to show that same is mandatory. He further submits that for the M/s Super Construction is different entity and for the

ongoing work of M/s Super Construction, the net bid capacity of M/s Super Construction would be deducted, if it applies for any tender; petitioner has

nothing to do with its ongoing work, he is only partner in that firm.

5. Mr. S.S. Chauhan, Advocate for the respondents submits that present petition is liable to be dismissed for non joinder of necessary parties as

petitioner has not made Uttarakhand Rural Roads Development Agency, which is a nodal agency for awarding the tenders and petitioner has not

made party to a firm to whom tender has been awarded, prior to passing of interim order. He further submits that present is a contract matter,

therefore, writ petition is not maintainable as disputed facts are involved and decision, which is under challenge, is taken by an Expert Committee.

Petitionerâ??s bids were rightly rejected as petitioner did not fulfil the criteria mentioned in the bid document.

6. Learned counsel for the parties have placed reliance on the judgment passed by three-Judge Bench of Honâ??ble Supreme Court in the case of

Municipal Corporation Ujjain Vs. BVG India Ltd. reported in 2018 (5) SCC 462. Relevant paragraphs of the aforesaid judgment read as under:

â??9 The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and

award of contract, have been considered in great detail by this Court in Tata Cellular v. Union of India, wherein this Court observed that the principles

of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However,

there are inherent limitations in exercise of that power of judicial review. The

Government is the guardian of the finances of the State. It is expected

to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the

principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of

infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an

arbitrary power. Of course, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down.

10. The modern trend points to judicial restraint in administrative action. The Court does not sit as a Court of Appeal but merely reviews the manner in

which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision

is permitted, it will be substituting its own decision without the necessary expertise which itself may be fallible. The government must have freedom of

contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or a

quasi-administrative sphere. However, the decision must not only be tested by the application of the Wednesbury principle of reasonableness, but must

also be free from arbitrariness and not affected by bias or actuated by mala fides. (See the judgment in the case of Master Merin Services (P) Ltd. v.

Metcalfe & Hodgkinson.

7. Without going into the technical argument of non joinder of necessary parties, let me examine this matter on merits.

8. Clause 4.2 (f) of the Standard Bidding Document reads as under:

â??4.2 (f) Reports on the financial standing of the bidder, such as profit and loss statement and auditorâ??s report for the past three years.â??

9. Clause 4.7 of the Standard Bidding Document reads as under:-

â??4.7 Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have:

(i) made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements;

and/or

(ii) record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures etc; and/or

(iii) participated in the previous bidding for the same work and had quoted unreasonably high or low bid prices and could not finish rational justification

for it to the Employer.â??

10. From perusal of the record, it clearly transpires that petitioner has not submitted balance sheet of previous three years. Petitioner has only

enclosed its balance sheet and audit report of 31.03.2018 and for rest of the year, it has annexed balance sheet and audit report of Super Construction.

In order to enhance its bid capacity, petitioner used the turnover of Super Construction but has not shown the liabilities and ongoing work of Super

Construction.

11. In my opinion, petitioner cannot blow hot and cold the same time. If petitioner used the turnover and balance sheets of Super Construction in order

to enhance its bid capacity, then at the same time, petitioner was also liable to show liabilities and on going work of Super Construction. Petitioner

clearly failed to fulfil the criteria laid down in the Standard Bidding Document.

12. So far as judgment relied upon by the parties in the case of Municipal Corporation Ujjain (supra), in my opinion, Expert Committee has rejected the

bid of the petitioner on the ground of not fulfilling the criteria. In tender matters, the scope of judicial review is very limited. Present is not case of

arbitrariness or favouritism. Petitioner itself failed to fulfil the criteria.

13. In view of the above discussion, I do not find any illegality or perversity in the impugned orders. Accordingly, all the writ petitions fail and are

hereby dismissed.

14. Let copy of this judgment be placed in all the connected petition.