

(2005) 08 UK CK 0022

In the Uttarakhand High Court

Case No : Writ Petition No. 412 of 2005 (M/B)

Vikram Singh Negi

APPELLANT

Vs

Uttaranchal Pey Jal Nigam and Others

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Citation : (2006) 1 UC 479

Hon'ble Judges : Cyriac Joseph, C.J;B.C.Kandpal, J

Bench : Division Bench

Advocate : Sharad Sharma, for the Appellant; D.S. Patni, for the Respondent

Final Decision : Dismissed

Judgement

1. By means of the present petition, a writ has been sought in the nature of certiorari quashing the impugned notice dated 17-03-2005 (annexed 2 to this petition) as well as order dated 31-03-2005 (annexure 3 to this petition) issued by Respondent No. 3.

2. Brief facts giving rise to this petition are that an advertisement (annexure 1 to the petition) dated 25-11-2004 was issued by the Executive Engineer, Additional Construction Division, Uttaranchal Pey Jal Nigam, Ranikhet (Respondent No. 3) inviting tenders for the work of laying pipes in reorganized area in Dwarahat. The tenders so invited were scheduled to be opened in the forenoon of 30-04-2005.

3. Clause-4 of the advertisement provided that the security amount would be accepted in the form of National Saving Certificate/Post Office Fixed Time Deposit Certificate issued during the current Financial Year and only those contractors who were registered with the Department were eligible to apply against the particular category of work.

4. Only four persons purchased the tender forms, out of whom two persons submitted the tender forms i.e. the Petitioner and the Respondent No. 4 Ravindra Chandra Joshi. On 17-01-2005, the tenders were opened. The tender submitted

by Respondent No. 4 was the lowest, having a bid of Rs. 11,28,468.00 (Rupees Eleven Lakh Twenty Eight Thousand Four Hundred and Sixty Eight Only) while the tender submitted by the Petitioner was having a bid of Rs. 14,97,793.00 (Rupees Fourteen Lakh Ninety Seven Thousand Seven Hundred and Ninety Three Only).

5. The tender of the Respondent No. 4 was not found acceptable as the security deposited along with the tender was found to be defective on the ground that it was not of the current Financial Year i.e. 2004-2005.

6. The Respondent No. 4 thereafter, submitted a representation to Respondent No. 3 requesting that his tender also should be considered. But Respondent No. 3 rejected the representation vide order dated 24-01-2005 (Annexure-2 to the Intervention Application).

7. The Respondent No. 4, thereafter, filed a representation to the Secretary, Uttaranchal Pey Jal Nigam with copies to the Chief Engineer, Pey Jal Nigam, Kumaon, Nainital and the Superintending Engineer, Construction Division, Uttaranchal Pey Jal Nigam, Almora on 05-02-2005.

8. On the representation of Respondent No. 4, the Superintending Engineer (Respondent No. 2) issued a letter on 01-03-2005 directing the Respondent No. 3 to cancel the tender and invite fresh tenders.

9. The Respondent No. 3 i.e. Executive Engineer, Additional Construction Division, Almora on 14-03-2005 cancelled the earlier notification/advertisement dated 25-11-2004. A fresh notification/advertisement was issued on 17-03-2005 inviting fresh tenders. Thereafter, on 31-03-2005, the Respondent No. 3 returned the security money to the Petitioner. Therefore, this writ petition was filed by the Petitioner challenging the impugned advertisement dated 17-03-2005 as well as the order dated 31-03-2005 issued by the Respondent No. 3 refunding the security money of the Petitioner.

10. By an interim order dated 29-04-2005, this Court stayed further proceedings pursuant to the fresh notification inviting fresh tenders. On 09-05-2005, the said interim order was modified permitting the Respondents to open the fresh tenders and to submit a report to this Court, but not to award the work to anyone. On 16-05-2005, Respondent No. 2 filed a counter affidavit containing the details of the fresh tenders received pursuant to the fresh notification. The Petitioner had not submitted any fresh tenders. The lowest tender was submitted by one Girish Bhagat (Ranikhet) who quoted Rs. 9,79,212/- (Rupees Nine Lakh Seventy Nine Thousand Two Hundred and Twelve Only) as against the estimated cost of Rs. 13,28,415.44 (Rupees Thirteen Lakh Twenty Eight Thousand Four Hundred Fifteen and Forty Four Paise Only). Though Respondent No. 4 also submitted tender, the amount quoted is higher than the amount quoted by Girish Bhagat. Thus, if the work is to be awarded on the basis of the fresh tenders received, the said Girish Bhagat is the lowest bidder.

11. In the above circumstances, we enquired whether the Petitioner is interested and willing to do the work at the rate quoted by the said Girish Bhagat. But learned Counsel for the Petitioner submitted that the Petitioner is neither interested nor willing, as the amount is too low.

12. Learned Counsel for the Petitioner first of all argued that the bid/tender of the Petitioner had been accepted by the Respondents and it could not have been cancelled later. But to our mind the said assumption is wrong as the Petitioner could not produce any material to show that his bid/tender was accepted by the Respondent No. 3. The record reveals that the Respondent No. 3 found the lowest tender of Respondent No. 4 defective and hence unacceptable, but before taking any decision regarding the acceptance of the Petitioner's tender and executing any agreement between the Petitioner and the Respondent, the Superintending Engineer directed Respondent No. 3 to cancel the notification and to invite fresh tenders. Accordingly the earlier notification was cancelled and a fresh notification was issued inviting fresh tenders. Thus, there was no act on the part of the Respondent No. 3 which conferred any right on the Petitioner or created any obligation for Respondent No. 3 to award the work to the Petitioner.

13. The learned Counsel for the Petitioner further contended that since the Petitioner's tender was the only valid tender, it should have been accepted. We do not see any merit in the contention. The Petitioner has no enforceable legal right to have his tender accepted by the Respondent No. 3 on the ground that he was the only and the lowest bidder. It is settled law that even the lowest tenderer has no enforceable legal right to have his tender accepted and that it is open to the party concerned either to accept the tender or to reject it for valid reasons. Hence, the question is whether the cancellation of the first notification and the consequential rejection of the Petitioner's tender were for valid reason. Though the letter of the Superintending Engineer did not spell out specific reasons for directing to invite fresh tenders, the reasons are quite clear and obvious. There were only two tenders. The tender submitted by Respondent No. 4 was defective as per the tender conditions and hence it could not have been accepted, even though it was the lowest tender. The only remaining tender was that of the Petitioner. But it was much above the estimated cost of the work. In such circumstances, if the Superintending Engineer decided that it was better to invite fresh tenders, we do not find anything wrong or illegal about it. Hence, the cancellation of the first notification and the consequential rejection of the Petitioner's tender were for valid and sufficient reasons. There is no material on record to suggest that the decision of the Superintending Engineer was influenced by any extraneous consideration.

14. By subsequent events also, the decision of the Superintending Engineer stands vindicated. The lowest tender received pursuant to the fresh notification is not only lower than the estimated cost, but also less by Rs. 5,18,581/- (Rupees Five Lakh Eighteen Thousand Five Hundred and Eighty One Only) compared to the Petitioner's tender received pursuant to the first notification. Even though an

offer was made to the Petitioner that the work could be awarded to him if he is willing to do the work at the lowest rate now quoted, he is not willing to accept the offer.

15. Hence, we do not find any valid reason to interfere with the fresh process of tender initiated by the Respondents. Accordingly, the writ petition is dismissed and the interim orders stand vacated.