
(2003) 03 MP CK 0076

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5465 of 2002

Vinod and Associates and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 299

Citation : AIR 2004 MP 65 : (2004) 1 CTLJ 549

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : S.C. Sharma, for the Appellant; Seema Agrawal, for No. 1, M.L. Jaiswal, Mohd. Asif, for Nos. 2 and 3 and Anil Khare, for No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Petitioner in this writ petition is challenging the notice inviting tender (P.1) dated 20th September, 2002. Petitioner is mainly aggrieved by the imposition of the condition of submitting the security of 1/3rd amount of the total quantity of the sand proposed to be removed; to be worked out at the rate of 75.00 per cubic meter of sand. The other ground of challenge is giving of only seven days time which is insufficient for such a huge tender.

2. Petitioner submits that amount of the security is non-static; the same has to vary as per the quantity which is to be offered by a tenderer though 1/3rd to be worked out at the rate of 75.00 per cubic meter is fixed but as quantity of sand has to be offered by a tenderer by the mode adopted huge amount of security has been demanded which is with a view to keep out the small tenderer from the fray. On the earlier occasions, such amount of security was not insisted. The other ground urged by the petitioner is that with a view to oblige only few persons having more money; only seven days time was granted. Hence, the relief is prayed to quash the tender notice (P. 1) and to direct the respondents to issue fresh tender notice in accordance with law and with lawful conditions and giving it wide publication in the public interest and in the interest of revenue

affording opportunity to all interested persons to participate therein and to direct the respondents to accept the tender form of petitioners irrespective of condition No. 3 and the order (P. 4) granting contract in favour of respondent No. 4 dated 30th September, 2002 and agreement (P. 5) dated 8-10-2002 be declared illegal and void.

3. State Mining Corporation/Respondents No. 2 and 3 have set in return, that 10 persons purchased the tender. The five tenderers have submitted their tenders. Tenders were opened and the tender of respondent No. 4 being of highest amount, has been accepted. Respondent No. 4 had offered that he Would lift/ excavate 1.55 lakh cubic meter sand within a period of one year i.e. from 1-10-2002 to 30-9-2003 at the rate of Rs. 75/- per cubic meter. The total bid amount came to Rs. 1,10,25,000/-. Contract has been awarded, Agreement (P. 5) has been entered into and work order has also been issued. The earnest money of other bidders was returned on 7-10-2002. With respect to the condition of security it is submitted that condition is just & proper so that unscrupulous and incompetent persons may not come forward, who after the award of contract of this magnitude may default in payment after extracting huge quantity leaving the Corporation in a helpless condition to make recovery of its dues. The condition cannot be said to be unreasonable or arbitrary. Time given is reasonable: Earlier contract was to expire on 30th September. 2002. It was necessary to award fresh contract before the expiry of date. NIT was issued on 20-9-2002.

4. Respondent No. 4 has also filed the return. The stand taken by respondents Nos. 2 and 3 has been supported.

5. Shri S. C. Sharma, counsel for petitioner, has submitted that condition of security is illegal, arbitrary and 7 days time was inadequate to submit huge security required.

6. Shri M. L. Jaiswal, Senior counsel appearing for respondents Nos. 2 & 3, has supported the action and contends matter is such in which scope of interference in a writ petition is narrow. Action is proper, matter is contractual.

7. Shri Anil Khare, counsel appearing for respondent No. 4, has submitted that contract has been awarded in just & fair manner in best of interest of revenue.

8. In my opinion, condition of security which has been imposed, cannot be said to be arbitrary or illegal condition designed so as to oust the small contractors from the fray. Same is to safeguard interest of the State Mining Corporation/ respondents Nos. 2 and 3. The condition was similar to everybody and it cannot be said that any person who is interested of obtaining such a contract, cannot be asked to furnish security of 1/3rd amount. The condition cannot be said to be unjust, arbitrary or unreasonable in any manner. Same is to ensure that non-serious contractors do not make offers which they may not be able to keep. Even otherwise, fixation of condition for inviting tender is in realm of the contract as held by the Apex Court in Tata Cellular Vs. Union of India, , it has been held in

para 113 that :

"113. The principles deducible from the above are :

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.
- (3) 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.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts."

9. Coming to the second submission that seven days" time was given. Ten tenders were purchased. Petitioners also purchased the tender and did not submit it. Five tenders were submitted. Considering the fact that prior contract was coming to an end on 30th September, 2002 and on 20th September NIT was issued, time given was proper and equal for all. I do not find considering the number of tenders purchased and number of tenders submitted that action was taken in undue haste so as to oust the persons from fray.

10. No other submission is raised.

11. Resultantly writ petition is dismissed. No order as to costs.