

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (M/B) NO. 28 OF 2023

06TH JUNE, 2023

BETWEEN:

M/s Lakshay Constructions Petitioner.

And

State of Uttarakhand & others Respondents.

Counsel for the Petitioner : Mr. Nagesh Aggarwal and Mr. Rajendra Singh Azad, learned counsel.

Counsel for the State : Mr. Gajendra Tripathi, learned Brief Holder.

Counsel for the Respondent No.5 : Mr. Arvind Vashistha, learned Senior Counsel assisted by Mr. Imran Ali Khan, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

In pursuance of our order dated 17.05.2023, Mr. Anil Kumar, Superintending Engineer, is present in Court. We have interacted with him. He states that the petitioner had left the relevant column in its technical bid blank, and did not indicate expressly that the petitioner had not executed any work in the past. Therefore, it was assumed that the technical bid of the petitioner was incomplete and deficient, and that there was suppression of the relevant information by the petitioner.

2. In our view, since clause 'L', notice whereof, we have taken in our order dated 17.05.2023, applied only to those contractors, who had executed earlier works in the

same department, it could not be assumed by the respondent- department, if the bidder had left a blank in response to the query under clause 'L', that he had earlier executed the works, and did not make disclosure of the same. Pertinently, no clarification was sought by the respondents from the petitioner.

3. The Superintending Engineer states that there were several other bidders whose bids were rejected on the same ground.

4. In our view, the respondents, firstly, could not have assumed that there was suppression, and secondly, could have easily called for a clarification in case, there was any doubt in the mind of the respondent-department.

5. It is argued by learned counsel today that the petitioner had been awarded the work in the year 2017, which he did not execute, and there was an order of permanently debarment of the petitioner from executing any works in the respondent- department. It is also argued that the petitioner had suppressed the said fact.

6. Learned counsel for the petitioner submits that the petitioner had represented against the said debarment, and its representation has not been disposed of till date. Moreover, the petitioner's registration certificate was renewed on 19.01.2023, and the registration is valid till 31.06.2025.

Therefore, it could not be argued that the petitioner was debarred on the date of his participation in the tender, in question. The respondents have not taken the aforesaid as a ground for rejection of the petitioner's technical bid.

7. The debarment of the petitioner could not have been for an indefinite period, and open ended. The fact that the petitioner's registration has been renewed on 19.01.2023 by the Chief Engineer himself, shows that the respondents have lifted the debarment of the petitioner. The only purpose of registration of a contract with the respondent-department is to enable the registered contractor to participate in bids invited by the respondent-department for execution of works. Therefore, in our view, the rejection of petitioner's technical bid on the aforesaid ground is completely erroneous.

8. The petitioner claims that the petitioner's bid was lower than that of the successful bidder. The petitioner's financial bid was not opened, and therefore, on this aspect, no finding can be returned in these proceedings. The petitioner's technical bid was rejected as early as on 27.03.2023, whereafter, the work was awarded to respondent no.5, and he started execution of work in the beginning of April, 2023. This writ petition was preferred by the petitioner on 11.04.2023. However, it appears that the same was lying under defects, and came to be listed before this Court only on

17.05.2023. During this period, the successful bidder has continued to execute the work.

9. Mr. Vashisth, learned Senior Counsel for respondent no.5, submits that respondent no.5 has executed about 20% of the work till the passing of the *status quo* order dated 17.05.2023 by this Court.

10. Clearly, there is some delay and laches on the part of the petitioner in approaching this Court. We are, therefore, not inclined to interfere with the ongoing works by respondent no.5. We vacate our order of *status quo* dated 17.05.2023.

11. We dispose of this writ petition with liberty to the petitioner to pursue its claims for damages against the respondent-department.

12. The writ petition stands disposed of in the aforesaid terms.

13. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 06th June, 2023

NISHANT