

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/S) NO. 1512 OF 2021

09TH OCTOBER, 2023

Aryan Construction & Associates Petitioner.

Versus

State of Uttarakhand Respondent.

Counsel for the Petitioner : Mr. Arvind Vashisth, learned Senior Counsel assisted by Mr. Ketan Joshi, learned counsel.

Counsel for the Respondent : Mr. Rajeev Singh Bisht, learned Additional Chief Standing Counsel.

The Court made the following:

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

The challenge in this writ petition by the petitioner is to the order dated 05.09.2020, and the notification dated 19.06.2017, issued by the respondent.

2. The petitioner had participated in the tender invited by the respondent for the work called "*Improvement/ Strengthening of Roads under Package No. C4A to C2J in Almora District of Uttarakhand*". The petitioner emerged as the successful bidder. However, the petitioner failed to execute the work. The tender gave an option to the bidders to, either submit the bid security, or submit the bid security declaration. The bid security declaration was to the effect that in case the bidder fails to execute the contract after its

award, the respondent could debar the bidder for a period of ten years from award of further works. The petitioner consciously gave that declaration. Since the petitioner failed to execute the contract, the bid security declaration was invoked, after issuance of notice, and *vide* order dated 19.06.2017, the petitioner was barred from award of any work by the respondent for a period of ten years w.e.f. the date of receipt of the notification dated 19.06.2017.

3. The petitioner earlier preferred a writ petition, being Writ Petition (M/S) No.683 of 2020, which was disposed of on 04.08.2020, with a direction to the respondent to decide the petitioner's representation. That representation has been rejected on 05.09.2020, which too has been assailed before us in this petition.

4. The submission of Mr. Arvind Vashisth, learned Senior Counsel for the petitioner, is that the period of ten years for debarring the petitioner is too large, and this tantamounts to virtually killing the petitioner's business.

5. The condition that the bidder, who fails to perform the contract, would be debarred for a period of ten years, was a condition well-known to the petitioner even before submitting his bid. The petitioner opted not to submit the bid security, but to submit bid security declaration. Even when the show-cause notice was issued to the petitioner, the

petitioner did not offer to submit the bid security amount, and invited the order, debarring him for a period of ten years from the date of issuance of the order dated 19.06.2017.

6. At this stage, it is not permissible for the petitioner to challenge the condition requiring the debarment of the petitioner- who does not fulfill the contract when awarded, for a period of ten years. The challenge to the said clause could, and should, have been raised before participation in the bidding process.

7. Mr. Vashisth submits that six years have elapsed, out of ten years period, and four years remain. He submits that the petitioner may be permitted to make a representation to the respondent to consider charging of proportionate bid security, which the petitioner would be willing to pay so as to waive the remaining debarment period of four years.

8. We dispose of this writ petition with liberty to the petitioner to make such a representation. If the petitioner makes a representation, the same be considered and disposed of by the respondent within two weeks from the date of receipt of such representation by passing a reasoned and speaking order, under intimation to the petitioner.

9. The writ petition is disposed of in the aforesaid terms. We have not examined the merits of the aforesaid submission recorded in Paragraph No.7 above.

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

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 09th October, 2023

NISHANT