

Court No. - 40

Case :- WRIT - C No. - 32975 of 2023

Petitioner :- M/S Jitendra Kumar Contractor And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Abhishek Kumar Srivastava, Arvind Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioners and learned Standing counsel for the State respondents.

2. Present writ petition is preferred *inter-alia* with following reliefs:-

"(a) Issue writ, order or direction in the nature of certiorari to quash the order dated 30.06.2023 (Annexure no.1) and letter dated 30.06.2023 (Annexure No.12) passed by Superintending Engineer, RED, Circle-Meerut (respondent no.3).

(b) Issue writ, order or direction in the nature of mandamus directing to the respondent no.3 to execute award dated 19.06.2023 (Annexure no.7) within stipulated time.

(c) Issue writ, order or direction in the nature of certiorari to quash the tender notice dated 10.08.2023 (Annexure no.14) issued by the Superintending Engineer, RED, Circle-Meerut (respondent no.3).

(d) Issue writ, order or direction in the nature of mandamus directing to the respondent no.3 not to open technical bid and financial bid pursuant to tender notice dated 10.08.2023."

3. It is contended that the petitioner firm is sole proprietorship firm in the name and style "M/s Jitendra Kumar Contractor & Suppliers" having its principal place of business at Town Sisoli, Tehsil Budhana, District Muzaffarnagar. The petitioner firm is also registered with the respondent department upto 30.06.2024 and the Chief Engineer of the department vide order dated 20.04.2023 upgraded the petitioner firm in Category 'A' contractor from Category 'B'. The office of Superintending Engineer, Rural Engineering Department, Meerut Circle, Meerut invited E-tenders through e-tendering system from registered 'A' category contractors for construction of building of twelve Government I.T.I. institutes. The petitioner firm participated in the aforesaid E-tender process and finally the bid of the petitioner firm was accepted by the respondent-Rural Engineering Department,

Meerut, which was approved vide order dated 17.06.2023. Later on it has been requested to furnish Performance Security (Additional Security). It is also contended that pursuant to letter of acceptance dated 19.6.2023, the petitioners got prepared the demand drafts dated 28.6.2023 one of Rs.20,23,000/- and another demand draft of Rs.2,10,000/- and after completion of other requisite formalities and documentations, on 28.6.2023 the proprietor of the petitioner firm visited the office of the respondent department for execution of agreement along with FDRs of the amount and the affidavit but the same could not be deposited by the petitioners on that day as no one was present to execute the agreement. It is claimed that since 29.6.2023 was a Gazetted Holiday and as such, on 30.6.2023 the petitioners again went and tried to deposit the documents as well as the demand drafts but the same were not accepted by the respondent concerned. By order dated 30.6.2023, the respondent authority has cancelled the tender of the petitioner firm due to non-filing of FDR and non-executing the agreement within the stipulated period, the acceptance letter has been rejected and the EMD amount of Rs.7,20,000/- deposited in respect of bid has been forfeited.

4. Record in question transpires that earlier petitioner firm have filed Writ C No.23122/2023 challenging the order dated 30.06.2023 passed by Superintending Engineer, Rural Engineering Department, Meerut Circle, District Meerut, whereby, letter of acceptance dated 19.06.2023 issued in favour of petitioner regarding construction work upgradation of Government I.T.I. at Hastinapur, Meerut was cancelled. The said writ petition was entertained on 10.08.2023 and disposed of with observation that in case the petitioners move a detailed representation ventilating its grievances to the authority concerned within three weeks from today, the same will be considered and decided strictly in accordance with law expeditiously.

5. The matter was entertained on 19.10.2023 and the Court has asked the Chief Engineer (West), Rural Engineering Department, U.P. at Lucknow (respondent no.2) to file his personal affidavit. In response thereof, learned Standing counsel has placed a personal affidavit sworn by Chief Engineer (West), Rural, Engineering Department, U.P. at Lucknow in the matter indicating therein that the respondent no.3, in its turn, by detailed order dated 20.09.2023 rejected/decided the representations dated 30.08.2023 and 06.09.2023 moved by the petitioners pursuant to order dated 10.08.2023 passed by this Court. The order dated 20.09.2023 is appended at Annexure No.1 to the writ petition. Thereafter re-

tender was invited in the matter on 30.06.2023, wherein, M/s Anuj Interlocking was found eligible and his tender was approved by the office of Chief Engineer (West) Rural, Engineering Department, U.P. at Lucknow on 22.09.2023 and subsequently letter of acceptance was also issued in favour of M/s Anuj Interlocking and agreement was also executed.

6. Considering the facts and circumstances, once the Competent Authority has addressed the aforesaid representations of the petitioner by order dated 20.09.2023 pursuant to order passed by this Court dated 10.08.2023 and thereafter re-tender was invited wherein one M/s Anuj Interlocking was found eligible and consequently agreement took place, then we are not at all inclined to proceed further in the matter.

7. Confronted with this situation, learned counsel for the petitioners submits that FDRs submitted by the petitioners may be returned, otherwise they may face irreparable loss and injury.

8. In the facts and circumstances of the case, in the interest of justice, the respondent no.2 and 3 are directed to return FDRs so submitted by the petitioners within two weeks from the date of production of certified copy of this order.

9. With these observations, the writ petition is ***disposed of***.

Order Date :- 24.11.2023

A. Pandey