

Court No. - 40

Case :- WRIT - C No. - 32746 of 2023

Petitioner :- Ajay Yadav

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

Counsel for Petitioner :- Mukesh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and Sri Devesh Vikram, learned Additional Chief Standing Counsel for the State-respondent.
2. The present writ petition has been preferred for quashing the order impugned dated 25.8.2023 and consequential order dated 28.8.2023 passed by the respondent.
3. The petitioner claims to be proprietor of M/s Ajay Yadav, which is engaged in business activities being service provider of work contracts. The respondent no. 3 issued an online advertisement dated 7.7.2023 inviting bid from the prospective firms and service providers who are desirous and interested to work in the Government Medical College, Azamgarh for health care kitchen and dietary service. The petitioner being eligible proceeded to apply online as per the instruction and direction contained in the brochure on 7.7.2023, which is brought on record as Annexure No. 2 to the writ petition. The respondent no. 4 vide letter dated 10.8.2023 informed the petitioner that some infirmity was detected in the GST registration paper provided by the petitioner and accordingly clarification was sought from the petitioner for further action. Copy of the said letter is also brought on record as Annexure No. 3 to the writ petition. Pursuant to the said letter, the petitioner verified the status of his GST registration from Chartered Accountant and after getting the infirmity removed, he made available GST status on the GEM portal on 12.8.2023. Thereafter, the respondent proceeded to conclude bid proceeding on 26.8.2023 and rejected the claim of the petitioner on the ground that on the date the bid was closed, the GST registration paper provided by the petitioner was cancelled, therefore, he was disqualified. In this backdrop, we have asked learned Additional Chief Standing Counsel to seek instructions in the matter vide order dated 19.10.2023.
4. In response thereof, learned Additional Chief Standing Counsel has placed the instructions dated 6.11.2023 sent by Principal, Government Medical College, Azamgarh, which is taken on record. He submits that the entire proceeding had to be finalised within 90 days and the last date for submission of relevant documents was 26.7.2023. The applications received by the respondent were opened on

26.7.2023 and it was found that 21 firms have participated. While evaluating the documents of the petitioner, GST Certificate of the petitioner was showing the status as "Cancelled". It is not in dispute that prior to cut-off date i.e. 26.7.2023, the petitioner's GST certificate was not valid. Even though it is claimed that he has taken all remedial measures for revival of the said certificate. In support of his submissions, he has placed reliance upon Full Bench dictum of this Court in **Gaurav Sharma vs. State Of U.P. And Ors.** (Special Appeal No. 156 of 2017, decided on 4 May, 2017), wherein, the Full Bench had held that the relevant documents which are submitted by the candidate on or before the last date of submission of form would only be considered, therefore, the controversy is no more res integra as already settled by the Full Bench in **Gaurav Sharma** (supra) and no reprieve can be extended to the petitioner.

5. Heard rival submissions and perused the record. In terms of advertisement dated 7.7.2023 whereby the respondent had invited bids from the prospective firms and service providers who are desirous and interested to work in the Government Medical College, Azamgarh, detailed procedure was given in the broucher. After submission of forms, the respondent had verified the documents. While evaluating documents of the petitioner, it transpired to the respondent while submitting the documents at the time of submission of form, the status of GST certificate was "Cancelled". Even on the last date of submission of tender form, petitioner did not have GST certificate in his hand, whereas, he had submitted all his documents including the GST certificate, which was not valid. Even though inadvertently, the department had made some correspondence to the petitioner wherein it was indicated that the petitioner's GST certificate was not valid. Taking shelter of the said communication, petitioner obtained the GST certifiante and claimed that shortcoming, if any, at the time of submission of tender form, the same stood rectified in view of the subsequent communication. The said claim is also resisted by learned ACSC in the backdrop of Full Bench in **Gaurav Sharma** (supra), wherein, after the last date of submission of form, no leave can be accorded to the prospective bidders even to rectify any discrepancy or shortcoming while submitting the form in question in case the same is not provided to every prospective bidders. The Full Bench had considered the following issues in Gaurav Sharma (supra).

"A. Whether the candidature of an OBC candidate is liable to be rejected on the ground of the caste certificate having been submitted after the last date for submission of applications?"

B. Whether the decision in Arvind Kumar Yadav lays down and represents the correct position in law ?

C. Whether there exists any irreconcilable difference or repugnancy between the norms fixed by the Union and State Governments with regard to certification of creamy layer? If not, its effect."

6. The relevant question No. A was answered in the negative. Therefore, merely on

the basis of solitary communication to the petitioner, it cannot be pressed that the discrepancy was rectified on account of submission of subsequent certificate in view of Full Bench dictum of this Court in ***Gaurav Sharma*** (supra).

7. In view of the aforesaid discussion, we do not find any irregularity or infirmity in the order impugned which may warrant interference of this Court.

8. The writ petition sans merit and is accordingly **dismissed**.

Order Date :- 30.11.2023

A.K.Srivastava