



HON'BLE THE ACTING CHIEF JUSTICE MR. MANOJ KUMAR TIWARI
AND
HON'BLE MR. JUSTICE VIVEK BHARTI SHARMA

07TH NOVEMBER, 2024

Versus

Nagar Nigam, Dehradun Respondent

Counsel for the petitioner : Mr. Sagar Kothari, learned counsel

Counsel for the respondent : Mr. Ashish Joshi, learned counsel

The Court made the following:

JUDGMENT: (per Hon'ble The Acting Chief Justice Mr. Manoj Kumar Tiwari)

Petitioner is an advertising agency.

2) By means of this writ petition, petitioner has sought the following reliefs :

“(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned tender notice dated 26.10.2024 (Annexure No. 3 to this writ petition) as well as impugned e-tender document dated 27.10.2024 (Annexure No. 3 to this writ petition), specifying terms and conditions of tender notice dated 26.10.2024, which are in direct violation



and contravention to the Uttarakhand Procurement Rules, 2017.

(ii) Issue a writ, order or direction in nature of certiorari quashing the term & condition stipulated in clause 3(3) of impugned e-tender document dated 27.10.2024 (Annexure No. 3 to this writ petition) issued in pursuance of impugned tender notice dated 26.10.2024 (Annexure No. 3 to this writ petition), as the same is in violation of the provisions contained under Indian Stamp Act, 1899.

(iii) Issue a writ, order or direction in the nature of certiorari quashing the term & condition stipulated in clause 4(10) of impugned e-tender document dated 27.10.2024 (Annexure No. 3 to this writ petition) issued in pursuance of impugned tender notice dated 26.10.2024 (Annexure No. 3 to this writ petition) to the extent of deposit of earnest money deposit (Tender Security) in violation of Rule 36 of the Uttarakhand Procurement Rules, 2017.

(iv) Issue a writ, order or direction in the nature of certiorari calling for entire records of the tender process in pursuance to impugned tender notice dated 26.10.2024 (Annexure No. 3 to this writ petition) and quashing all the actions taken and decisions made in pursuance of the same.”

3) Petitioner is aggrieved by Clause No. 4(10) of the e-tender document published on 27.10.2024. According to him, the condition contained in Clause 4(10)



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is contrary to provision contained in Uttarakhand Procurement Rules, 2017.

4) Clause No. 4(10) of the e-tender document is extracted hereunder :

“4(10) निविदादाता को निविदा में प्रतिभाग करने से पूर्व समस्त तकनीकी दस्तावेजों को स्कैन कर ई0 निविदा पोर्टल पर अपलोड करते हुए निविदा में प्रतिभाग करने की अंतिम तिथि से पूर्व दिनांक 08.11.2024 की सांय 4:00 बजे तक रू0— 71,51,870/— की धनराशि कार्य प्रतिभूति—सी0डी0आर0/ एफ0डी0आर0 जो कि वरिष्ठ वित्त अधिकारी नगर निगम देहरादून के नाम प्लेज होगी को मूल में तथा समस्त तकनीकी दस्तावेजों की मूल प्रति नगर निगम कार्यालय में जमा करना अनिवार्य है। दस्तावेज एवं मूल में प्रतिभूति—सी0डी0आर0/ एफ0डी0आर जमा न होने की दशा में निविदादाता को असफल माना जायेगा।”

5) According to the petitioner, Municipal Corporation, Dehradun issued tender notice on 26.10.2024, inviting bids from persons interested in award of contract for advertising rights in certain areas within Municipal limits of Dehradun, and the reserve price for the said contract was fixed as Rs.7,15,18,700/-. He contends that as per Rule 36 of the Uttarakhand Procurement Rules, 2017, the amount required to be deposited by a bidder as tender security / earnest money should not be more than two per cent of the value of the contract subject to minimum of Rs. 75,000/- where the valuation of the contract is more than rupees 25 lacs. He



further submits that the said provision further provides that earnest money to the extent of three per cent can be required to be deposited by the bidders, if the valuation of the contract is less than rupees 25 lacs. Thus, he submits that as, in the present case, valuation of the contract is more than rupees 700 lacs, therefore, the condition put in the e-tender document asking the bidders to deposit earnest money to the extent of ten per cent of the reserve price is unsustainable in the eyes of law.

6) Municipal Corporation, Dehradun was granted time to get instructions in the matter. Today, on instructions, learned counsel appearing for Municipal Corporation relies upon a Notification dated 16.02.2016, issued by the Government of Uttarakhand by invoking its rule making power under Section 540 of the U.P. Municipal Corporation Act, 1959 (as applicable in State of Uttarakhand). By the said notification, State Government has framed exhaustive Rules regulating grant of advertising rights by Municipal Corporations. Reliance is placed upon Rule 6(2) of the said Rules, which provides that every person submitting bid for award of contract for advertising right will be required to deposit 10 per cent of the reserve price as earnest money / tender security with his bid. Thus, he submits that the condition challenged



by the petitioner is as per mandate of Rule 6(2) of the aforesaid Rules notified on 16.02.2016, therefore, the challenge to the said condition is without any substance.

7) Learned counsel appearing for respondent Municipal Corporation, Dehradun further submits that Rule 36 of the Uttarakhand Procurement Rules, 2017, is not applicable in the present case as the said provision is attracted only when a Government department procures goods or commodities from a private supplier. He refers to the expression 'सामग्री' used in Rule 36(1) of Uttarakhand Procurement Rules, 2017. Rule 36 of Uttarakhand Procurement Rules, 2017 is reproduced below for ready reference :

“(1) विज्ञापन या सीमित निविदा पृच्छा के प्रकरण में निविदा देने के बाद निविदा वापस लेने या वैध अवधि में निविदा में परिवर्तन करने के सापेक्ष सुरक्षा प्रदान करने की दृष्टि से निविदादाताओं से, उनको छोड़कर जिन्हे विधि एवं नियमों के विशिष्ट प्राविधानों के अन्तर्गत छूट दी गई हो, निविदा प्रतिभूति (जिसे धरोहर धनराशि कहा जाता है) ली जाएगी। निविदा प्रतिभूति सामान्यतः सामग्री के अनुमानित मूल्य के 2 व 3 प्रतिशत तक ली जाएगी। प्रतिशत का निधारण सामग्री के सम्पूर्ण मूल्य पर निम्नानुसार किया जायेगा :—

(एक) रु0 25.00 लाख तक 3 प्रतिशत

(दो) रु0 25.00 लाख से अधिक 2 प्रतिशत (न्यूनतम रु0 75000)

(2) इन दरों का शासन द्वारा समय-समय पर पुनरीक्षण किया जा सकता है, धरोहर धनराशि को डिमान्ड ड्राफ्ट, सावधि जमा रसीद, बैंकर्स चेक, बैंक गारन्टी या संगठन में ई-बैंकिंग सुविधा होने पर, तदनुसार निर्धारित स्वरूप में जैसा भी सक्षम प्राधिकारी की सन्तुष्टि तथा क्रेता के हितों की सभी प्रकार से



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सुरक्षा के लिए आवश्यक हो, जमा किया जा सकेगा। सामान्यतः धरोहर धनराशि की वैधता निविदा की अंतिम वैध अवधि के पश्चात् 45 दिन होगी परन्तु इस अवधि को आवश्यकतानुसार बढ़ाया जा सकता है।

(3) सफल निविदादाताओं की निविदा प्रतिभूति की अन्तिम वैधता अवधि की समाप्ति पर यथाशीघ्र, परन्तु सम्बन्धित विभाग/प्राधिकारी द्वारा संविदा करने के उपरान्त 30 (तीस) दिन के अन्तर्गत ही सम्बन्धित निविदादाताओं को लौटा देनी चाहिए।”

8) The expression ‘सामग्री’ used in Rule 36 is defined in Rule 2च of Uttarakhand Procurement Rules, 2017. Rule 2च of said Rules is reproduced hereunder for ready reference :

“2(च) ‘सामग्री’ से सभी वस्तुएं, उत्पात, पदार्थ, पशुधन, फर्नीचर, फिक्सचर, कच्चा माल, कल पुर्जे, उपकरण, मशीनें, आधोगिक सयंत्र, वाहन, हवाई जहाज, दवाईयां, अमूर्त उत्पाद जैसे सॉफ्टवेयर टेक्नॉलॉजी स्थानांतरण, लाइसेंसज, लेखन सामग्री (स्टेशनरी) आदि अभिप्रेत हैं। सामग्री के अंतर्गत कार्य एवं सेवायें जो इस प्रकार के सामग्री की आपूर्ति के लिए आवश्यक है, जैसे कि ढुलान, बीमा, इन्स्टॉलेशन एवं कमिश्निंग, प्रशिक्षण एवं रखरखाव। परन्तु यह कि पुस्तकालय के लिए क्रय की जाने वाली पुस्तक, प्रकाशन, पत्रिकाएं आदि इसमें सम्मिलित नहीं होंगी।”

9) Thus, counsel appearing for the Municipal Corporation submits that here the tender was issued by the Municipal Corporation, Dehradun for award of contract for advertising rights, which is totally different from a contract for procurement of goods or commodities. He further submits that provision contained in Rule 36 of the Procurement Rules is in the nature of guidelines and it



cannot be read as a mandatory condition, violation whereof may nullify the tender process. He submits that the present case is regarding grant of advertising rights which is not akin to procurement of goods, therefore, applicability of Rule 36 is doubtful. Moreover, the field is covered by special law framed by the State Government in exercise of its rule making power under Section 540 of the U.P. Municipal Corporation Act, 1959, therefore, the provision contained in the general law would not be applicable. The condition impugned by petitioner has the backing of Rule 6(2) of the aforesaid Rules notified by State Government on 16.02.2016.

10) Rule 6(2) of the Notification dated 16.02.2016 is extracted here-in-below for ready reference :

“6(2) विज्ञापनकर्ता द्वारा प्रस्तावित प्रीमियम की 10 प्रतिशत धनराशि प्रतिभूति के रूप में निविदा प्रपत्र के साथ जमा करनी अनिवार्य होगी।”

11) This Court finds some substance in the submission made by learned counsel appearing for the respondent Municipal Corporation, Dehradun that Rule 36 of Procurement Rules 2017 would be attracted while awarding contract for supply of goods. Moreover, the condition of the tender document is as per the statutory Rules framed by State Government, which deal with



award of contract of advertising rights alone. The said Rules are applicable only to Municipal Corporations established under Municipal Corporation Act and the Rules have been framed in exercise of rule making power under Section 540 of the Municipal Corporation Act. Thus, these Rules are special in nature, which will override the General Law. Therefore, the condition mentioned in Clause 4(10) of the e-tender document, cannot be said to be arbitrary or illegal.

12) Even otherwise also, the said condition would apply across the board to all interested persons, who submit bid for award of contract for advertising rights. Therefore, no special prejudice is going to be caused to the petitioner. Every organization, Government or otherwise, before entering into contract with other persons, is entitled to put such conditions in the Notice Inviting Tender, as are deemed necessary to safeguard its interest. Many a times, it is seen that bidders with weak financial status or bidders who are not serious in doing the work, succeed in getting a contract, however, they are not able to cope with the work pressure and they abandon the work midway, resulting in difficulty and financial loss to the employer. Thus, to safeguard the interest of Municipal Corporation in the matter of grant of advertising



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rights, State Government has provided in the Statutory Rules that every bidder should deposit tender security / earnest money to the tune of 10 per cent of the reserve price. The said condition cannot be said to be unjust or discriminatory, especially when it has the statutory backing of Rule 6(2) of the Rules applicable to Municipal Corporations. Thus, there is no scope for interference with the impugned tender notice dated 26.10.2024, as well as e-tender document dated 27.10.2024.

13) For the reasons stated, this writ petition is liable to be dismissed. The same is, accordingly, dismissed. No orders as to cost.

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 7TH NOVEMBER, 2024
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