



HIGH COURT OF UTTARAKHAND AT NAINITAL

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

Writ Petition (M/ B) No. 571 of 2024

18TH DECEMBER, 2024

Nashik Waste Management Pvt. Ltd.
through its authorized representative
Shri Surya PrakashBahuguna --Petitioner

Versus

State of Uttarakhand and others --Respondents

Presence:-

Mr. Bhupendra Singh, learned counsel for petitioner
Mr. Sunil Khera, learned Deputy Advocate General assisted by Mr.
Naveen Tewari and Ms. Pooja Banga, learned Brief Holder for State of
Uttarakhand/respondent Nos. 1 & 4.
Mr. Vipul Sharma and Mr. Lalit Sharma, learned counsel for respondent
Nos. 2 & 3.

The Court made the following:

JUDGMENT: (per Hon'bleThe Acting Chief Justice Sri Manoj Kumar Tiwari)

1. Nagar Nigam, Rudrapur invited bids in two-bid
system for the following work:-

“Development of Integrated Municipal Solid Waste
Management including Door-to-Door Collection,
Transfer and Transportation, Material Recovery cum
RDF Facility, Wet Waste Processing Facility & Scientific
Sanitary Landfill for Disposal of Residual Inerts in
Municipal Area of Rudrapur Nagar Nigam on Long
Term DBOT Basis on Public Private Partnership Mode.”

2. Three bids were received pursuant to the notice
issued by Nagar Nigam, including that of petitioner.
According to petitioner, out of three bids which were
received for the aforesaid work, only two were declared
to be technically responsive, including the one



submitted by petitioner and thereafter petitioner was declared to be the lowest bidder.

3. Petitioner is aggrieved by the recommendation made by the Committee headed by Administrator, Nagar Nigam, Rudrapur, District Udham Singh Nagar, to cancel tender process. Petitioner has also challenged subsequent E-tender notice, issued on 28.11.2024, whereby bids were again invited for the aforesaid work.

4. According to petitioner, since he was found to be the lowest bidder in the tender process initiated by notice dated 14.10.2024, therefore, the Municipal Corporation could not have scrapped the tender process which had concluded; it is further contended that after declaration as lowest bidder in the tender process, petitioner acquired a right of award of contract which could not have been denied to him.

5. Learned counsel for petitioner contended that, decision to cancel earlier tender process is bereft of reason and is thus, arbitrary. Annexure-1 to writ petition is recommendation made by the Committee headed by Administrator, Nagar Nigam, perusal thereof reveals that due to some technical glitch, while uploading Technical Evaluation Report, submitted by Tender Committee, Financial Bid of bidders was displayed in web portal due to which purity of tender process was compromised and, one of the bidder also made complaint against the incident, therefore, the Committee recommended to the cancel tender process and invite fresh bids.



6. Petitioner does not dispute the reasons indicated in the recommendation of the Committee for cancelling tender process. He asserts that since he has been declared as lowest bidder, therefore, his right to get the contract was crystallized which could not be denied to him under any circumstances. The said contention raised by petitioner is without any force.

7. In the case of Haryana Urban Development Authority and others Vs. Orchid Infrastructure Developers Private Limited, reported in (2017) 4 SCC 243, it was held that the highest bidder has no vested right to have the auction concluded in his favour and further that the Government or its authority has the power to accept or reject the highest bid in the interest of public revenue. Para 13 of the said judgment is reproduced below:-

“13. It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount. As per Regulation 6(2) of the 1978 Regulations, allotment letter has to be issued on acceptance of the bid by the Chief Administrator and within 30 days thereof, the successful bidder has to deposit another 15% of the bid amount. In the instant case, allotment letter has never been issued to the petitioner as per Regulation 6(2) in view of non-acceptance of the bid. Thus, there was no concluded contract. Regulation 6 of the 1978 Regulations is extracted hereunder:

“6. *Sale of lease of land or building by auction.*—

(1) In the case of sale or lease by auction, the price/premium to be charged shall be such reserve price/premium as may be determined taking into consideration the various factors as indicated in sub-regulation (1) of Regulation 4 or any higher amount determined as a result of bidding in open auction.

(2) 10 per cent of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft in the manner specified in sub-regulation (2) of Regulation 5. The successful bidder shall be issued allotment letter in Form CC or C-II by registered post and another 15 per cent of the bid accepted shall be payable by the



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successful bidder, in the manner indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the Chief Administrator; failing which the 10 per cent amount already deposited shall stand forfeited to the authority and the successful bidder shall have no claim to the land or building auctioned.

(3) The payment of balance of the price/premium, rate of interest chargeable and the recovery of interest shall be in the same manner as provided in sub-regulations (6) and (7) of Regulation 5.

(4) The general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot.”

8. Mere declaration as a lowest bidder in a tender process for execution of a work does not create a right in his favour and it is always a condition of Notice Inviting Tender that the employer can reject any or all the bids without assigning any reason. A bidder can be said to be aggrieved only when the tender process is scrapped after award of contract. In the present case, offer made by petitioner was not accepted by the employer, therefore, it is not a case of concluded contract.

9. Hon’ble Supreme Court in the case of Indore Vikas Praadhikaran (IDA) & Another Vs. Shri Humud Jain Samaj Trust and Another, decided on 25.11.2024, while dealing with a similar case, where neither the bid was accepted nor any allotment letter was issued to bidder, held that, no relief could have been granted in the absence of a concluded contract.

Para 14 of the said judgment is reproduced below:-

“14. Keeping in view of the aforesaid judgments, this Court is of the considered opinion that in the absence of allotment letter and acceptance of highest bid, no relief could have been granted in favour of respondent No.1 as there was no concluded contract in the matter and the decision taken by the Tender Evaluation Committee to generate more revenues could not have been interfered with in the manner and method as has been done by the Division Bench of the High



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Court of Madhya Pradesh at Indore Bench. The bidder has no right in the matter of bid except of fair treatment and cannot insist for further negotiation as has been done in the present case. The terms and conditions of NIT, particularly condition No. 6, empowers the IDA to accept or reject any or all bids. In the present case, the bid was rejected for valid and cogent reasons and, therefore, the order passed by the Division Bench of the High Court of Madhya Pradesh is set aside.”

10. Learned counsel for Nagar Nigam refers to Clause 2.3.5(i) of the instructions to bidders. Said Clause enables Nagar Nigam to accept or reject any bid and to annul the bidding process without assigning any reasons thereof. For ready reference, Clause (i) of condition No. 2.3.5 is reproduced below:-

“i. Notwithstanding anything contained in this RFP, the Department reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.”

11. Learned counsel for petitioner submits that decision taken by Competent Authority, Nagar Nigam to cancel tender process is arbitrary and unjust, right of award of contract was crystallized on account of his lowest bid, therefore, he was entitled to award of contract and respondents have acted illegally while denying contract to petitioner. He, relied upon judgment rendered by Hon’ble Supreme Court in the case of Subodh Kumar Singh Rathour Vs. Chief Executive Officer and Others, reported in (2024) SCC OnLine SC 1682. Paragraphs 12, 60, 69, 70, 71, 72, 126, 127 and 128 of said judgment are reproduced below :-

“12. However, on 07.02.2023, the respondent issued one another notice to the appellant stating that the tender for work of maintenance has been cancelled on account of a technical fault in the tender. It was stated therein that the tender was found to be ‘non-specific’ & ‘not well defined’ and that had created ambiguity



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resulting in financial losses to the respondent. The said Notice of Cancellation reads as under:—

“Date : 07.02.2023

To,
V.S. Advertising,
65/268, M.N. Sarkar Road,
Siliguri, West Bengal 7340001

Sub : Cancellation of Work/Tender

Sir,

The cited tender is hereby cancelled by the Authority in KMDA. We would state with regret that the tender has been found having technical fault, non-specific and not well defined thus creating ambiguity for obvious reasons. By this, the Authority is incurring financial loss as well.

We regret for the inconvenience caused to you and are ready to reimburse the cost you have so far incurred in the work. This has been decided that the license fee deposited by you and the cost incurred for construction activity and maintenance work would be refunded as per actual assessment by the divisional engineers based upon the approved drawing and execution.

This is for your information with kind compliance please.

Sd/-

Chief Engineer-II (Bridge)
Roads & Bridges Sector, KMDA”

60. Now coming to the facts of the case at hand, the appellant has challenged the cancellation of the tender at the instance of the respondent on the ground of being manifestly arbitrary and influenced by extraneous considerations. It is evident from the notice of cancellation dated 07.02.2023, that the tender was not terminated pursuant to any terms of the contract subsisting between the parties, rather, the respondent ‘cancelled’ the tender saying that there was technical fault in the tender that was floated.

69. To ascertain whether an act is arbitrary or not, the court must carefully attend to the facts and the circumstances of the case. It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action.

70. One another way, to assess whether an action complained of could be termed as arbitrary is by way of scrutinizing the reasons that have been assigned to such an action. It involves overseeing whether the reasons which have been cited if at all genuinely formed part of the decision-making process or whether they are merely a ruse. All decisions that are taken must earnestly be in lieu of the reasons and considerations that have been assigned to it. The Court must be mindful of the fact that it is not supposed to delve into every minute details of the



reasoning assigned, it need not to go into a detailed exercise of assessing the pros and cons of the reasons itself, but should only see whether the reasons were earnest, genuine and had a rationale with the ultimate decision. What is under scrutiny in judicial review of an action is the decision-making process and whether there is any element of arbitrariness or *mala fide*.

71. Thus, the question to be answered in such situations is whether the decision was based on valid considerations. This is undertaken to ensure that the reasons assigned were the true motivations behind the action and it involves checking for the presence of any ulterior motives or irrelevant considerations that might have influenced the decision. The approach of the court must be to respect the expertise and discretion of administrative authorities while still protecting against arbitrary and capricious actions. Thus, now the only question that remains to be considered is whether the action of the respondent to cancel the tender could be termed as arbitrary?

ii. Whether the action of cancelling the tender is arbitrary or unfair and in consequence of violation of Article 14 of the Constitution?

72. The principal contention of the appellant is that the notice of cancellation dated 07.02.2023 that was issued by the respondent is manifestly arbitrary, unreasonable and influenced by *mala fide* and extraneous considerations.

126. The sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness. Once a contract has come into existence through a valid tendering process, its termination must adhere strictly to the terms of the contract, with the executive powers to be exercised only in exceptional cases by the public authorities and that too in loathe. The courts are duty bound to zealously protect the sanctity of any tender that has been duly conducted and concluded by ensuring that the larger public interest of upholding bindingness of contracts are not sidelined by a capricious or arbitrary exercise of power by the State. It is the duty of the courts to interfere in contractual matters that have fallen prey to an arbitrary action of the authorities in the guise of technical faults, policy change or public interest etc.

127. The sanctity of contracts is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered, there is a legitimate expectation, that the obligations arising from the contract will be honoured and that the rights arising from it will not be arbitrarily divested except for a breach or non-compliance of the terms agreed thereunder. In this regard we may make a reference to the decision of this Court in *Sivanandan C.T. v. High Court of Kerala* reported in (2024) 3 SCC 799 wherein it was held that a promise made by a public authority will give rise to a legitimate expectation that it will adhere to its assurances. The relevant portion reads as under:—

“18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The



legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure

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45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.”

(Emphasis supplied)

128. Cancellation of a contract deprives a person of his very valuable rights and is a very drastic step, often due to significant investments having already been made by the parties involved during the subsistence of the contract. Failure on the part of the courts to zealously protect the binding nature of a lawful and valid tender, would erode public faith in contracts and tenders. Arbitrary terminations of contract create uncertainty and unpredictability, thereby discouraging public participation in the tendering process. When private parties perceive that their contractual rights can be easily trampled by the State, they would be dissuaded from participating in public procurement processes which may have a negative impact on such other public-private partnership ventures and ultimately it is the public who would have to bear the brunt thereby frustrating the very object of public interest”.

12. The reason for cancellation of tender process can be culled out from the recommendation of the Committee which is enclosed as Annexure-1 to the Writ Petition. It reveals that, purity of tender process was compromised due to accidental display of price bid in the web portal while uploading the report of Tender Committee regarding technical evaluation of bids. Thus, the decision to cancel the tender process cannot be said to be arbitrary. Moreover, the decision applies equally to all the bidders and no special prejudice is caused to petitioner. No case of malice has been set up by petitioner and it is not his case that the decision to scrap the tender process was targeted at him.

13. For the reasons indicated in the recommendation of the Committee headed by Administrator (Annexure 1



to the writ petition), the decision to cancel tender process cannot be said to be against public interest. In fact, the decision appears to have been taken to maintain purity of tender process. The judgment rendered in the case of Subodh Kumar Singh Rathour (Supra), relied upon by learned counsel for petitioner is distinguishable on facts, therefore it do not help the case of petitioner. As held by Hon'ble Supreme Court in the case of Haryana Urban Development Authority and others (Supra), in a tender process for granting a right or license e.g., liquor license, mining license or to run parking lot, a person, whose bid is found to be the highest, has no vested right to have the auction concluded in his favour. Similarly, in the case of works contract e.g., construction of road, bridge, building etc., a bidder, whose bid is found to be lowest, does not have any vested right to have the auction concluded in his favour and the employer can always reject the highest or lowest bid as the case may be, till such bid is accepted and contract is awarded.

14. In the present case, the decision to cancel the tender process is saved by Clause 2.3.5(i) of instructions to the bidders. Since it was made known to petitioner that employer can accept or reject any bid without assigning any reason thereof, therefore, petitioner cannot now raise grievance regarding cancellation of tender process. Thus, grievance raised by petitioner is without any substance.

15. Learned counsel for petitioner submitted that tender process could not have been cancelled without



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giving notice or opportunity of hearing to petitioner. Said submission is bereft of merit. In the absence of any concluded contract, no right is accrued in favour of the bidder who is found to be lowest. Thus, there is no legal requirement of giving notice to the lowest bidder by the employer while taking decision to cancel tender process.

16. In view of aforesaid reasons, there is no scope for interference in the matter. The Writ Petition fails, and is, dismissed.

MANOJ KUMAR TIWARI , A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 18th. December, 2024
Mahinder

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Digitally signed by MAHINDER SINGH
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