

SL 2
18.10.2024
Ct. No. 03
Jayanta/AMR

WPA 26164 of 2024

**K. D. Resources Pvt. Ltd.
Vs.
Damodar Valley Corporation & Ors.**

Mr. Subhankar Das
Mrs. Ananya Chakraborty
Mr. Arijit Tiwari

....For the Petitioner.

Mr. S. Das

....For the DVC.

This writ petition has been filed for quashing and/or setting aside the tender notice being No. GEM/2024/B/5478899, dated 8th October, 2024. The petitioner's case in brief is that the petitioner participated in a tender process in respect of bid No. GEM/2024/B/5183983, dated 20th July, 2024. It is the contention of the petitioner that it was the lowest bidder. However, subsequently it has come to the knowledge of the petitioner that the previous notice inviting bid was cancelled by the Damodar Valley Corporation Ltd. (hereinafter referred to as 'DVC') without assailing any reason whatsoever.

The petitioner was not also informed of such cancellation of the previous bid.

Hence this writ petition challenging the subsequent notice inviting bid.

Mr. Subhankar Das, learned advocate appearing for the petitioner submits that the respondent/DVC ought to have accepted the bid of the petitioner. Since it was the lowest, however, without informing the

petitioner the respondent/DVC has cancelled the previous bid and floated a fresh notice inviting bid. Such action of the respondent/DVC has infringed the right of the petitioner so far as the acceptance of its bid is concerned. He seeks for appropriate order for setting aside under cancellation of the bid No. GEM/2024/B/5183983, dated 20th July, 2024.

On the contrary, Mr. S. Das, learned advocate appearing for the respondent/DVC submits that as per Clause no 4 of the General Information of the 'GeM ATC Document'. The DVC reserves its right to accept or reject any bid and annul the bid process. Therefore, the action of the respondent/DVC cannot be questioned since on the ground that it has annulled the bid without informing the petitioner. Further, the respondent/DVC is not under obligation to assign any reason. While rejecting the tender the authority inviting the tender is not required to give reasons since those are purely administrative decisions.

The reasons if given at other stage in the Commercial activities to the authority would come to a grinding halt. The authority is well within its right to reject the bid without assigning any reason thereof.

In support of his contention he relied on the following decisions of the Hon'ble Supreme Court *State of Jharkhand & Ors. – vs.- Cwe-Soma Consortium*, reported in, (2016) 14 SCC 172 and *Silppi*

Constructions Contractors – vs.- Union of India & Anr., reported in, (2020) 16 SCC 489.

He submits that the petition is being dismissed *in limine*. He also submits that the petitioner has suppressed the Clauses as provided in ‘GeM ATC Document’ which gives the right to the respondent DVC to cancel the bid.

Upon hearing the learned advocates and perusal of the averments made in the application the precious ground raised by the petitioner challenging the subsequent notice inviting bid is that the previous bid was cancelled without any assigning any reason and the petitioner was not involved.

Learned advocate for the respondent/DVC has produced the ‘GeM ATC Document’. It would be profitable to reproduce Clause IV of the General Information as hereunder:-

‘iv) DVC reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of contract, without thereby incurring liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the DVC’s action. Decision of DVC will be final and binding in this regard.’

The Hon’ble Supreme in Cwe-Soma Consortium (supra) as observed as follows:-

The appellant State was well within its rights to reject the bid without assigning any reason thereof. This is apparent from Clause 24 of NIT and Clause 32.1 of SBD which read as under :

“Clause 24 of NIT. ‘Authority reserves the right to reject any or all of the tender(s) received without assigning any reason thereof.’

Clause 32.1 of SBD.- ‘... the employer reserves the right to accept or reject any bid to cancel the bidding process and reject all bids, at any time prior to award of contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the employer’s action.’ ”

In terms of the above Clause 24 of NIT and Clause 32.1 of SBD, though the Government has the right to cancel the tendere without assigning any reason, the appellant State did assign a cogent and acceptable reason of lack of adequate competition to cancel the tender and invite a fresh tender. The High Court, in our view, did not keep in view the above clauses and right of the Government to cancel the tender.’

In Silppi Constructions Contractors (supra), that brings us to the most contentious issue as to whether the learned Single Judge of the High Court was right in holding that the appellant

orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a State without the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. Respondents 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done.

Bearing in mind the aforesaid Clause and the observation of the Hon'ble Supreme Court, the cancellation of the previous bid made by respondent/DVC cannot be called in question.

Accordingly, the writ petition stands dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Bivas Pattanayak, J.)