

M/S Akshat Construction Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Dec-04-2012

Appellant : M/S Akshat Construction

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Shyam Yadav

Judgement :

R.P. No. 20012/2012 4.12.2012 Shri Shyam Yadav, learned counsel for the petitioner.

Heard.

Communication dated 6.11.2012 (Annexure P5) and Notice Inviting Tender dated 21.11.2012 is being challenged by this petition under Article 226 of the Constitution of India.

That, in order to facilitate earth work of Dam, Flush bar, Head Sluice, Approach Channel and Construction of Sagari Tank Spill Channel, Block Banda, district Sagar, respondent Water Resources Department, Government of M.P. issued the NIT on 20.9.2012. The petitioner was the only Contractor who was finally shortlisted. The respondent taking into consideration that there was a single tender for the work in question decided to cancel the NIT and call for fresh NIT by order dated 6.11.2012 by rejecting the tender of the petitioner and has now invited a fresh tender vide NIT dated 21.11.2012.

Contention of the petitioner is that the decision taken by the respondent in cancelling the NIT dated 20.9.2012 will prejudicially affect the petitioner as he had already disclosed his rates and that the action of respondents in cancelling the tender is contrary to their own decision dated 4.1.2011 which provides for that in respect of single bid proclamation the department should not open the C envelope of the financial bid. It is urged that since the department has opened the financial bid by the petitioner they are not justified in not accepting the same and cancelling the NIT.

It is further contended that, besides the petitioner there was one Balaji Construction who had also applied but whose form was rejected at prequalification stage.

It is accordingly contended that the respondents are not justified in treating the single tender case while cancelling the NIT.

We gave thoughtful consideration to the submissions put forth by learned counsel for the petitioner.

Apparent it is from the documents on record that no final decision in favour of the petitioner has been taken in respect of NIT dated 20.9.2012 as would create any right in favour of the petitioner to seek a mandamus to respondents not to cancel the NIT and issue fresh NIT. There being no concluded contract in favour of the petitioner, therefore, no right accrues. Regarding the action of respondents in opening the financial bid, we are not apprised to any such clause in the NIT as would indicate that on such happening it would be binding on respondents to accept such tender even if it is a single tender. It is the respondents who are the best judge to ascertain as to accept the single tender or to go for second call. In the case in hand since the respondents have decided No. to accept the single tender, the decision to cancel the same cannot be faulted with.

It is also within the competence of respondents to go for the second call by issuing fresh NIT.

In view whereof we are not inclined to interfere with the action taken by the respondents.

In the result petition fails and is hereby dismissed.

(AJIT SINGH) (SANJAY YADAV) JUDGE JUDGE VT

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