SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Tirupati Constructions Vs. South Eastern Coalfields Ltd. and ors.

Tirupati Constructions Vs. South Eastern Coalfields Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/510271

Court : Madhya Pradesh

Decided On : Oct-21-2002

Reported in : 2003(2)MPHT17

Judge : Arun Mishra, J.

Appeal No. : Writ Petition No. 4839/2002

Appellant : Tirupati Constructions

Respondent : South Eastern Coalfields Ltd. and ors.

Advocate for Def. : Vivek Rusia, Adv.

Advocate for Pet/Ap. : V.R. Rao, Adv.

Disposition : Writ petition allowed

Judgement :
ORDER

Arun Mishra, J.

1. Petitioner is assailing the order contained in document No. 6 passed on20-6-2002 debarring the petitioner from participating in any tender process for two years from the date of issue of the letter (D-6).

2. Petitioner submits that petitioner is a registered contractor with respondent No. 1 and is registered as A-5 Class contractor with Public Works Department of M.P. Municipal Council, Shahdol, required JCB machine to remove encroachment in Shahdol. At the instance of General Manager, SECL petitioner sent JCB machine to Shahdol for about eight days. Petitioner as per letter (D-2), dated 27-4-1999 called upon the General Manager to release hire charges amounting to Rs. 1,30,500/-. Amount was not paid, hence suit was filed. Petitioner was asked to withdraw the suit; petitioner failed to oblige respondent No. 2 Chief General Manager, SECL. During the period January to April, 2002 petitioner firm purchased 12 Nos. of tender documents. On going through the tender schedule, petitioner did not consider it right to make an offer. Petitioner was not bound to make an offer and for this he owed no explanation to the Coalfields. However, Deputy Chief Engineer (C), Sohagpur has issued letter (D-6), dated 20th June, 2002 whereby petitioner has been debarred from participating in any tender for two years. Petitioner submits that omission to make offer could not be a ground to debar petitioner from purchasing tender documents and participating in process in subsequent NITs; no show-cause notice was issued; the order amounts to depriving the petitioner of his right to carry on business in unreasonable manner.

3. A return has been filed by respondents; in the return it is contended that JCB machine was not called at the instance of respondent No. 2; no request was made by respondent No. 2 to petitioner to withdraw the suit; the conduct of the petitioner in purchasing the tender documents and in not submitting the same delayed the work. It seems that petitioner was not interested in the work. In the circumstances it was not necessary to issue any notice to the petitioner requiring him to show cause. It is also contended that similar action was taken against other person Shri Shashi Kant Upadhyay who submitted a representation R-2 and the ban has been removed by order (R-3). It is open to the petitioner to submit a representation to respondents.

4. Shri V.R. Rao, learned Counsel appearing for petitioner submits that order amount to debarring the petitioner from participating in any tender process for two years for no good cause. There was no stipulation under tender document or the conditions inviting tender that in case the tender document is purchased and is not

submitted may entail in debarment for participation in tender process to take place in future. He submits that the order is bad in law; same is violative of principles of natural justice.

5. Shri Vivek Rusia, learned Counsel for respondents submits that the order is justified and proper and it has rightly been inferred by respondentsthat petitioner is no more interested in the work as he had purchased the tender documents and had not submitted the same. Thus, order (P-6) is proper and calls for no interference.

6. Perusal of the order (P-6) indicates that petitioner had been debarred for a period of two years from participating in any tender process; the order is bad in law for the reason that it was not stipulated in the tender document or in the condition inviting tender that in case tender is purchased and is not submitted that may entail in debarment from participating in any tender process to take place in future. Secondly, the order is bad in law as petitioner has not been heard. Principles of natural justice are attracted in such circumstances. The order impugned has been passed even without issuing show-cause notice to the petitioner hence, cannot be said to be sustainable.

7. For the aforesaid reasons, order (P-6) deserves to be quashed and is hereby quashed.

8. Resultantly, the writ petition is allowed. Costs on parties.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com