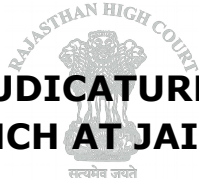




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 15034/2023

Yashi Consulting Services Pvt. Ltd., having its Office at 501-510,
5th Floor, Kailash Tower, Tonk Road, Lalkothi, Jaipur, Rajasthan
302015, through Managing Director Sanjay Gupta

-----Petitioner

Versus

1. State of Rajasthan, Local Self Government Department, through Director Having Office at G-3, Rajmahal Residential Area, C-Scheme near Civil Line Phatak, Jaipur-302016
2. Ajmer Municipal Corporation, Ajmer Ward No.52, Prithvi Raj Marg, Chudi Bazar, Ajmer, Rajasthan 305001, through Commissioner.
3. Deputy Commissioner (Development), Ajmer Municipal Corporation, Ajmer Ward No.52, Prithvi Raj Marg, Chudi Bazar, Ajmer 305001.
4. All India Institute Of Local Self Government, through Director having Head Office at Plot No. 6, F-Block, M.N. Roy Human Development Campus, T.P.S. Road-12, behind Teacher Colony, Bandra (East) Mumbai 400051.

-----Respondents

For Petitioner(s)	:	Ms. Suruchi Kasliwal Mr. Vikram Singh
For Respondent(s)	:	Mr. Anurag Sharma Mr. Harsh Sharma Dr. Prakash Chandra Jain Mr. Raj Singh Rathore Mr. Sajjan Singh Rathore Dr. Shivendra Singh Rathore

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

30/11/2023

1. Instant writ petition has been filed by the petitioner with the following prayer:-



"1. By issuing an appropriate writ, order or direction it may kindly be held that constitution of the Grievance Redressal Forum consisting of Respondent No.3 appearing in Annexure-C of the Request for Proposal dated 12.05.2023 is bad in law;

2. An appropriate writ, order or direction may kindly be issued while holding that Respondent No.4 is disqualified due to non-deposit of the EMD in breach of condition no. 3.5 of the Request for Proposal;

3. All actions as taken by the Respondent Nos. 2 and 3 in favour of Respondent No.4 under the subject Tender may kindly be held to be bad in law and be quashed and set-aside;

4. Respondent Nos. 2 and 3 may kindly be directed to consider the technical & financial bids submitted by the Petitioner Company under the subject Tender and to issue the LOI/LOA in favour of the Petitioner Company; &

5. Such other and further writs, orders, directions or reliefs as may be deemed to be fit and proper may also kindly be passed."

2. Counsel for the petitioner submits that the respondent No.2 issued a Request for Proposal on 12.05.2023 through respondent No.3 inviting tenders for implementing the GIS Enabled Cloud Based Property Tax Information Management System (for short 'PTIMS') for a period of five years. Counsel submits that the petitioner as well as the respondent No.4 participated in the above tender process and the respondent No.4 was declared as lowest bidder No.1 while the petitioner was declared as lowest bidder No.2. The bid submitted by the respondent No. 4 was accepted by the respondent Nos. 2 and 3 in violation of the terms and conditions. Feeling aggrieved by the said action of the respondent Nos.2 and 3, the petitioner submitted first appeal under Section 38 of the Rajasthan Transparency in Public Procurement Act, 2012 (for short 'the Act of 2012'). Counsel submits that the procuring entity was Deputy Commissioner (Development), Ajmer Municipal



Corporation, Ajmer (for short 'the Deputy Commissioner') and as per Annexure-C, attached with the tender document, the First Appellate Authority was designated as the Deputy Commissioner. Counsel submits that the procuring entity as well as the First Appellate Authority cannot be one and the same. Counsel submits that as per the notification dated 12.06.2019, issued by the Department of Local Bodies, Government of Rajasthan, the First Appellate Authority would be the Director, Department of Local Bodies and the Second Appellate Authority would be the Principal Secretary, Department of Local Bodies, Government of Rajasthan. Counsel submits that the respondents have committed an error by designating the Deputy Commissioner as First Appellate Authority and the Commissioner, Ajmer Municipal Corporation, Ajmer as the Second Appellate Authority. Their such action is in contravention of the notification dated 12.06.2019. Counsel submits that while submitting the first appeal, before the Deputy Commissioner, an objection in this regard was taken and, thereafter, on realization of its mistake, the Deputy Commissioner vide letter dated 13.09.2023 admitted that the First Appellate Authority is the Director, Department of Local Bodies and the petitioner was directed to file an appeal before the Director, Department of Local Bodies. Counsel submits that in spite of above, the objections taken by the petitioner were rejected by the Deputy Commissioner on the same day i.e. 13.09.2023 and the action of the respondents was treated as justified. Counsel submits that the aforesaid order dated 13.09.2023, passed by the Deputy Commissioner, is per se illegal and the same is against the





statutory provisions of the Act of 2012, hence, interference of this Court is warranted.

3. Per contra, counsel for the respondents opposed the arguments raised by the counsel for the petitioner and submitted that without availing the alternative statutory remedy of filing second appeal under Section 38(4) of the Act of 2012, the petitioner has approached this Court by way of filing this writ petition under Article 226 of the Constitution of India. Counsel submitted that when alternative statutory remedy is available with the petitioner, the petitioner cannot be allowed to bypass the jurisdiction of the Appellate Authority, hence, under these circumstances, interference of this Court is not warranted and the writ petition is liable to be rejected.

4. Heard and considered the submissions made at Bar and perused the material available on record.

5. A perusal of the tender document indicates that a Grievance Redressal Mechanism has been provided for the procurement process. As per Annexure C attached with the tender document, the First Appellate Authority is designated as the Deputy Commissioner and the Second Appellate Authority is designated as the Commissioner, Ajmer Municipal Corporation, Ajmer. Annexure-C is contrary to the Notification / Order dated 12.06.2019 issued by the Director, Department of Local Bodies, when the First Appellate Authority against the Procuring Entity i.e. Municipal Council/Board is/was prescribed as Director, Department of Local Bodies and the Second Appellate Authority was prescribed as the Secretary, Department of Local Bodies, then there was no reason to designate the Deputy Commissioner and the Commissioner as



First and Second Appellate Authority respectively. Such action of the respondents is not sustainable in the eye of law. However, this mistake was rectified by the Deputy Commissioner by issuing a clarification order/letter dated 13.09.2023.

6. It is quite surprising and shocking that the procuring entity/authority is the same as the First Appellate Authority i.e. the Deputy Commissioner. It is well settled proposition of law that the procuring entity and the First Appellate Authority cannot be one and the same, though the orders in this regard were passed by the Department of Local Bodies way back in the year 2019 by issuing an order dated 12.06.2019, wherein, the First and Second Appellate Authorities were designated as the Director, Department of Local Bodies and the Secretary, Department of Local Bodies respectively. In spite of knowing the above fact, the wrong Appellate Authorities were mentioned in the grievance redressal mechanism form annexed as Annexure-C. However, the respondents rectified their mistake by issuing a letter to the petitioner on 13.09.2023 indicating therein that the First Appellate Authority is the Director, Department of Local Bodies and the petitioner was directed to file an appeal before the Director, Department of Local Bodies. In spite of the above, the Deputy Commissioner on the same day i.e. 13.09.2023 decided the objections taken by the petitioner and justified the action of the respondent Nos.2 and 3.

7. In the considered opinion of this Court, the aforesaid action / order of the Deputy Commissioner is per se illegal and is not sustainable in the eye of law as the same is in contravention of the provisions, contained under the Act of 2012. Instead of deciding



the objections raised by the petitioner, the Deputy Commissioner could have relegated the petitioner to approach the Director, Department of Local Bodies by filing an appeal for redressal of his grievance.

8. When the Deputy Commissioner was well aware of this fact that he is the Procuring Entity and he was not the First Appellate Authority and he clarified this situation to the petitioner by writing a letter on 13.09.2023, then it may have been more apposite for him to have recused from being First Appellate Authority. Being Procuring Entity, the Deputy Commissioner should not accepted the charge of First Appellate Authority. He should have restrained himself to justify his own stand, by hearing the appeal against the decision taken by himself. His role as First Appellate Authority reflected his interference in the matter. Hence, under these circumstances, there was likelihood of biasness. Such action of Deputy Commissioner was not justified and the same is not sustainable in the eye of law.

9. The question is not that whether the authority was actually biased or decided partially, but when the circumstances are such as to create a reasonable apprehension in the mind of others that there is likelihood of bias, affecting the decision, then the proceedings cannot be upheld.

10. It is well established principle, both in Indian Legal Jurisprudence and across the World, that the principles of natural justice must be followed before passing any adverse order against the affected party. The first rule is "nemo iudex in causa sua" means, no one should be a judge in his own cause and the second



rule is "audi alteram partem" that is 'hear the other side'. Over the years by a process of judicial interpretation, the above two rules have been evolved as representing the principles of natural justice in judicial process including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men.

11. A Constitutional Bench of the Hon'ble Supreme Court has elaborately considered and explained the principles of natural justice in the case of **A.K.Kraipak Vs. Union of India** reported in **(1969) 2 SCC 262** and has held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. Initially recognized as consisting of two principles, that is, no one shall be a judge in his own cause and no decision shall be given against a party, without affording him a reasonable hearing, various other facets have been recognized. In para 20 the following has been held:

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.-The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon there- after a third rule was envisaged and that is that quasi- judicial enquiries



must be held in good faith, without bias and not arbitrarily or unreasonably....”

12. The other Rule of Law, as defined by the maxim “**nemo debet esse judex in propria sua causa**” means "justice should not only be done but should manifestly be seen to be done". Whenever, an order is struck down as invalid, being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated. By relegating the petitioner to real First Appellate Authority, the procurement authority i.e. Director, should not have decided the objection of the petitioner.

13. It is the well settled proposition of law and the principle of natural justice that one cannot act as a Judge in his own cause but in the instant case, the Deputy Commissioner has violated the aforesaid principle of natural justice by acting as a Judge in the matter when the Deputy Commissioner himself was the procuring entity.

14. In view of the above, the order dated 13.09.2023 passed by the Deputy Commissioner is not sustainable in the eye of law and the same is liable to be quashed and set aside.

15. Since the respondents have rectified their mistake by writing a letter to the petitioner that the First Appellate Authority is the Director, Department of Local Bodies, the petitioner is directed to file a statutory appeal under Section 38 of the Act of 2012 before the Director, Department of Local Bodies alongwith an application under Section 39 of the Act of 2012. If such appeal is submitted



before the Director, Department of Local Bodies within a period of ten days from today, the First Appellate Authority i.e. the Director, Department of Local Bodies is expected to hear and decide the appeal after affording due opportunity of hearing to all the respective parties including respondent No.4 strictly in accordance with law and expeditiously as early as possible preferably within a period of 15 days thereafter filing of the appeal

16. The interim order dated 12.10.2023 passed by this Court shall remain effective till filing of appeal. Thereafter, the First Appellate Authority is expected to decide the said appeal filed under Section 38 of the Act of 2012 and the stay application filed under Section 39 of the Act of 2012 in accordance with law after hearing arguments of all sides.

17. It goes without saying that any observation made by this Court would not be treated as any expression of opinion by this Court, the Appellate Authority would decide the matter, on merits, independently.

18. Accordingly the instant writ petition stands disposed of.

19. The stay application as well as the other applications (pending, if any) also stand disposed of.

(ANOOP KUMAR DHAND),J

MR/85