

Court No. - 3

Case :- WRIT - C No. - 39170 of 2023

Petitioner :- M/S Suddhtam Enterprises

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ashutosh Tiwari, Himanshu Srivastava, Madan Lal Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Jayant Banerji, J.

Heard Shri Mukesh Prasad, learned Senior Advocate for the petitioner and Shri Ankur Tandon, learned Standing Counsel for the State-respondents.

The petitioner has challenged the letter/order dated 21.10.2023 passed by the Chief Treasury Officer, Banda as also an Advertisement No.784/Khanij-30, Banda dated 28.10.2023 issued by the District Magistrate, Banda.

It appears that e-tender-cum-e-auction notice no.344/Khanij-30 was published on 11.09.2023 inviting bids for short term permit, also regarding Gata No.62 and 63/1 Area 42.00 acre, Village Khapatiha Kala, Tehsil Pailani, District Banda.

In the said e-auction, four companies participated for the aforesaid two plots. The highest bid was that of respondent no.6 M/s G.D.S. Infrastructure through its Proprietor, at Rs.231 while the petitioner's bid at Rs.205 was the second highest.

The petitioner is stated to have filed an application stating that the copies of the Aadhaar Card, Pan Card and Character Certificate filed by G.D.S. Infrastructure were not self attested and its bid was therefore irregular, contrary to the tender notice and not liable to be considered.

Thereafter, a letter was written on 21.10.2023 by the Chief Treasury Officer, Banda to the A.D.M. (Finance and Revenue) indicating that the deficiency in the bid documents had not been noticed at the time of opening of the technical bid and thereafter financial bids were wrongly opened. It was recommended that e-auction was cancelled and the fresh e-auction be resorted to. Thereafter a fresh e-auction notice was issued.

When the matter came up for admission, the Court directed

learned Standing Counsel to seek instructions as to the role of the Chief Treasury Officer, Banda in the bidding process.

A copy of the instructions received have been made available for perusal by the Court.

In paragraph 2 of the instructions, it has been stated that the District Magistrate, Banda had constituted a Committee to examine the applications received in response to the e-auction notice. This Committee opened the technical bids on 05.10.2023 and found that all required documents were attached along with bid of G.D.S. Infrastructure and other bidders. Thereafter, the financial bids were also opened on 05.10.2023. The bid of the G.D.S. Infrastructure was found to be the highest at Rs.231. The financial bid of G.D.S. Infrastructure was wrongly opened as condition no.6 of the tender notice had not been complied as some documents had not been self attested.

On coming to know of this fact that the documents accompanying e-bid of G.D.S. Infrastructure were not self attested, the opinion of the Chief Treasury Officer, Banda was sought, whereupon the letter dated 21.10.2023 was written. The e-auction was cancelled and a fresh e-auction notice was issued by the order of the District Magistrate on 27.10.2023, which is also under challenge in this writ petition.

From the instructions received, it emerges that a Committee had been constituted by the District Magistrate to process bids received consequent to publication of a e-tender notice. The constitution of this Committee has not been disclosed. However, what clearly emerges from the record is that this Committee did not perform its functions properly and did not scrutinize the tender documents. It was on account of this laxity that the financial bid of the respondent was opened, although it should not have been opened as it did not comply with all the conditions of the e-tender notice.

We also find substance in the submission of learned counsel for the petitioner that since the bid of the petitioner was above the reserve price and did not suffer from any legal defect as it complied with all the conditions of the tender notice, the ineligible bid should have been discarded and the petitioner was liable to be declared the highest bidder and was liable to be awarded the contract and in failing to do so, the respondents have committed patent illegality.

It is also not clear from the instructions received as to who referred the matter to the Chief Treasury Officer, Banda. It is not the respondent's case that the Chief Treasury Officer was a

member of the Committee constituted to examine and process the e-tenders and, therefore, the Chief Treasury Officer, Banda for all practical purposes was an unconcerned person. Therefore, he had no right to recommend cancellation of the e-tender notice as a whole.

There is also substance in the contention of learned counsel for the petitioner that petitioner is being penalized for no fault on his part, especially when his bid, amongst all valid bids, was the highest. The respondents have tried to gloss over the laxity and dereliction duty on the part of the Committee constituted to process the e-tenders received and the petitioner is being penalized for this fault.

Accordingly, the writ petition is liable to be and is hereby, allowed. The letter/order dated 21.10.2023 passed by the Chief Treasury Officer, Banda as also the Advertisement No.784/Khanij-30, Banda dated 28.10.2023 issued by the District Magistrate, Banda, are hereby quashed with the observation that the petitioners' bid being the highest among all valid and complete bids, and was above the reserve price, the same was liable to be accepted.

It is ordered accordingly.

Order Date :- 26.2.2024
Mayank