

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Case Number	Writ Petition No.9780/2021
Parties Name	Piyush Kumar Sheth Vs. State of Madhya Pradesh & Others
Date of Judgment	15.06.2021
Bench	<u>Division Bench:</u> Justice Sujoy Paul Justice Shailendra Shukla
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri A.K. Sethi, learned Senior Counsel along with Shri P.C. Mehta, learned counsel for petitioner. Shri Pushyamitra Bhargav, learned Additional Advocate General for respondent/ State.
Law laid down	<u>1</u> Government contract/tender-- Notice inviting tender (NIT)-- Cancellation of – Judicial review – Judicial review is limited to see whether order/action is arbitrary, capricious, malafide or hits wednesbury principle – The element of public interest is also relevant which needs to be looked into. <u>2.</u> Single tender – CVC guidelines – In the light of CVC guideline, it cannot be said that the decision to cancel the single tender is either arbitrary or unreasonable or actuated with malafide. Hence interference is declined.
Significant paragraph numbers	9,10,11,12,14,15 &16

ORDER
15/06/2021

Sujoy Paul J:-

In this petition filed under Article 226 of the Constitution of India, the challenge is mounted to order dated 27.05.2011 (Annexure-

P/9 and P/10), whereby the tender of petitioner has been cancelled. The challenge is also made to the new N.I.T. issued on 27.05.2021.

2. Shri Sethi, learned Senior Counsel urged that the pivotal question in the case is whether the respondents are justified in cancelling the tender of the petitioner when admittedly his bid was of more than 75 crores, whereas the reserve price was only 72.6 crores. His technical and financial bids were accepted. The reserve price fixed was much above the price to be fixed as per Collector guidelines. Petitioner's bid was shown to be accepted on 26.05.2021 on the portal of the Government. The decision of cancellation of bid could have been taken by Finance Committee and not by the Cabinet. The new N.I.T. again quotes the same reserve price of rupees 72.61 crores. Since the petitioner's bid was much above the reserve price aforesaid, there was no justification in cancelling the bid.

3. It is further submitted that although the petitioner was the single bidder, there is no justification for cancelling his tender. The decision to cancel the tender is arbitrary and runs contrary to the judgment of Supreme Court reported in *(2001) 8 SCC 491 (Union of India & Others v/s Dinesh Engineering Corporation & Another)*.

4. Lastly, learned Senior Counsel submits that the Supreme Court by order dated 27.07.2019 issued directions to the Department to undertake an exercise pursuant to which they were required to initiate tender process within two years. The tender so cancelled was issued in obedience of Apex Court's order. Cancellation thereof violates Court order.

5. Shri Pushyamitra Bhargav, learned Additional Advocate General opposed the prayer by contending that various clauses of N.I.T. namely 2.1.11, 3.3, 3.7 and 3.8 permit the respondents to cancel

the tender at any stage. No right has been created in favour of the petitioner. A conscious decision was taken at apex level which is reflected in the letter dated 28.05.2021 to cancel the tender which cannot said to be arbitrary, malicious and capricious in nature. Moreso, when petitioner was admittedly the single person who submitted his bid. Reliance is placed on certain judgments namely *(2012) 8 SCC 216 (Michigan Rubber (India) Limited v/s The State of Karnataka, (2000) 5 SCC 287 (Monarch Infrastructure (P) Limited v/s Commissioner Ulhasnagar Municipal Corporation & Others)* and *MANU/KA80618/2009 (Mahendra Labs Pvt. Ltd. v/s Principal Secretary to Government Animal Husbandry and Fishries Department)*.

6. In rejoinder submissions, Shri Sethi, learned Senior Counsel submits that petitioner's tender was cancelled on 27.05.2021, whereas document dated 28.05.2021 filed with the return shows that Cabinet took decision on 28.05.2021. For this reasons also, impugned order is arbitrary and bad in law.

7. No other point is pressed by the learned counsel for the parties.

8. We have heard learned counsel for the parties at length and perused the record.

9. This is trite that in matters of contract the scope of interference by this Court is limited. This Court cannot sit in appeal on the decision of the department unless such a decision is shown to be arbitrary, capricious or malicious in nature or it attracts wednesbury principles. (See:- *Tata Cellular vs. Union of India, (1994) 6 SCC 651* and *Elektron Lighting Systems (P) Ltd. vs. Shah Investments Financial Developments & Consultants (P) Ltd., (2015) 15 SCC 137, Sterling Computers Ltd. v. M & N Publications Ltd., (1993) 1*

SCC 44, *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.*, (2005) 6 SCC 138, *Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8 SCC 216)

10. Interference can also be made if decision runs contrary to the public interest. (See:- *Raunaq International Ltd. v. I.V.R. Construction Ltd.*, (1999) 1 SCC 492, *Air India Ltd. v. Cochin International Airport Ltd.*, (2000) 2 SCC 617, *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517, *Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.*, (2007) 8 SCC 1, *Sanjay Kumar Shukla v. Bharat Petroleum Corpn. Ltd.*, (2014) 3 SCC 493 and *Siemens Aktiengesellschaft & Siemens Ltd. v. DMRC Ltd.*, (2014) 11 SCC 288).

11. Indisputably, the present case is a case of single tender. The department decided to cancel the same and decided to issue fresh NIT.

12. After considering CVC guidelines, the Apex Court opined in *State of Jharkhand v. CWE-SOMA Consortium*, (2016) 14 SCC 172 as under :-

“20. Admittedly, in the pre-bid meeting held on 24-3-2014, ten tenderers have participated. After conclusion of the pre-bid meeting on 24-3-2014, as a result of stringent conditions prescribed in Clauses 4.5(A)(a) and 4.5(A)(c), only three tenderers could participate in the bidding process and submit their bids. As noticed earlier, upon scrutiny two were found non-responsive. In our considered view, the High Court erred in presuming that there was adequate competition. In order to make the tender more competitive, the Tender Committee in its collective wisdom has taken the decision to cancel and reinvoke tenders in the light of SBD norms. As noticed earlier, the same was reiterated in a subsequent meeting held on 9-7-2014. While so, the High Court was not justified to sit in judgment over the decision of the Tender Committee and substitute its opinion on the

cancellation of tender. Decision of the State issuing tender notice to cancel the tender and invite fresh tenders could not have been interfered with by the High Court unless found to be mala fide or arbitrary. When the authority took a decision to cancel the tender due to lack of adequate competition and in order to make it more competitive, it decided to invite fresh tenders, it cannot be said that there are any mala fides or want of bona fides in such decision. While exercising judicial review in the matter of government contracts, the primary concern of the court is to see whether there is any infirmity in the decision-making process or whether it is vitiated by mala fides, unreasonableness or arbitrariness.”

(Emphasis Supplied)

13. A microscopic reading of communication dated 29.05.2021, shows that it is an internal correspondence between Public Property Management Department and MP Road Development Corporation wherein the Additional Secretary informed the Managing Director about the decision of cabinet to cancel the tender. This document nowhere shows that the cabinet took a decision on 28.05.2021. Thus, argument of learned senior counsel that the tender is cancelled prior in time on 27.05.2021 and decision was taken by cabinet on 28.05.2021 pales into insignificance.

14. The administration is best suited to take decision in the matter of contracts. As noticed above, such decisions can be interfered with, when the same are shown to be arbitrary, malicious, against the public interest or hitting wednesbury principles. The cancellation of single tender and resultant issuance of N.I.T. will encourage competition and may fetch better rates / results. Thus, it cannot be said that cancellation of tender is wholly impermissible. No enforceable right was created in favour of the petitioner. Putting it differently, no legal

vested or constitutional right was crystallized in favour of the petitioner before cancellation of tender. Thus, no writ of Mandamus can be issued in favour of the petitioner.

15. In case of single tender, the Hon'ble Apex Court in the case of State of *State of Jharkhand v. CWE-SOMA Consortium (supra)* opined that such decisions cannot be said to be malafide or want of bonafides. In such case, judicial interference must be astute.

16. In the factual backdrop of this case, we are unable to hold that there exists any such ingredient on which interference can be made in a contract matter. The respondents have taken a possible and plausible decision which does not warrant interference by this Court.

17. Thus, the petition fails and hereby **dismissed**.

(SUJOY PAUL)
J U D G E

(SHAIENDRA SHUKLA)
J U D G E

Ravi