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WA-1654-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 27th OF JUNE, 2025

WRIT APPEAL No. 1654 of 2025

SHIV SHAKTI DAL MILL

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Vipin Yadav - Advocate for the appellant.

Ms. Janhavi Pandit - Additional Advocate General for the respondent/State.

Shri Naman Nagrath - Senior Advocate with Shri Qasim Ali - Advocate for the respondent.
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ORDER

Per. Sanjeev Sachdeva, Acting Chief Justice

1. Appellant impugns order dated 06.05.2025, whereby the writ petition of the appellant has been disposed of relying on an order passed in a connected Writ Petition being W.P. No.2948/2025. The connected Writ Petition No.2948/2025 was filed by One Shri Ashwin Richhariya.
2. Learned senior counsel appearing for Ashwin Richhariya seeks leave to intervene. On the oral prayer of the appellant, Ashwin Richhariya is impleaded as a respondent. Amended Memo of parties be filed in the registry with two days.
3. In terms of order of the same date dated 06.05.2025, in writ petition No.2948/2025 filed by Mr. Ashwin Richhariya, the Writ Court by order



dated 06.05.2025 directed issuance of a fresh notice inviting tender by excluding Clause 8 of the original tender document.

4. An Advertisement was issued on 16.12.2024 for running the wild cafe at Gate No.2 Cheeku Gate in Van Bihar National Park, Bhopal. Online tenders were invited. Appellant herein and Ashwin Richhariya were part of the tenderers who had submitted their bids. Ashwin Richhariya is an existing allottee who was allotted the tender prior to issuance of the NIT dated 16.12.2024. Since the contract period had expired, fresh NIT was issued on 16.12.2024.
5. Clause 8 of the said NIT reads as under;

***8. -दिनांक 03-01-2025 को प्राप्त निविदा में उच्चतम दर प्राप्त होने पर इससे पूर्व की निविदा के सफल अनुबंधित निविदाकार को इस निविदा में प्राप्त उच्चतम दर पर आगामी पांच वर्षों के लिये नवीन अनुबंध करने हेतु प्राथमिकता दी जावेगी तथा उनके द्वारा असहमति व्यक्त करने पर इस निविदा के उच्चतम दर प्रस्तावक को अनुबंध हेतु आमंत्रित किया जावेगा-**

6. As per clause 8 on receipt of the highest bid, the earlier contractor was to be called upon to meet or match the highest bid and in case of refusal the contract to be awarded to the highest bidder.
7. In the instant case, the bid of the appellant was the highest being 21,00,011.00/- The bid of the Ashwin Richhariya was of Rs.20,00,413/-. The tender was open on 15.01.2025. As per Ashwin Richhariya as clause 8 provided that the existing contractor was required to be called upon to match the bid. It is contended that since respondents were deciding to award the contract to a third party without giving an option under Clause 8, Ashwin



Richhariya filed a Writ Petition before this Court being WP No.2948/2025, wherein he contended that he had already on 16.01.2025, 17.01.2025 and on 20.01.2025 indicated his willingness to match the highest bid. In the petition he contended that since he had already given his willingness to match the highest bid, the contract should be awarded only to him and could not be awarded to alleged highest bidder of the said NIT. Said petition was listed before this court on 29.01.2025, when notice was issued and matter was made returnable on 18.02.2025.

8. In the meantime, by communication dated 22.01.2025, appellant was called upon to deposit the security deposit and execute the agreement which was executed on 28.01.2025.

9. Ashwin Richhariya gave a representation on 30.01.2025 to the respondents/State for considering the his offer to match the highest bid. An order was passed by the respondent on 03.02.2025, wherein it was observed that there was breach of Clause 8 of the NIT and accordingly the award letter in favour of the appellant dated 28.01.2025 was cancelled.

10. Appellant impugned the order dated 03.02.2025 cancelling his agreement dated 28.01.2025 by way of the subject writ petition being WP No.5093/2025.

11. Both these petitions came for hearing on 06.05.2025, when the respondents/State gave a statement that they shall be cancelling the subject NIT and issuing a fresh NIT, deleting Clause 8 because the contention was that Clause 8 was incorporated to favour the existing contractor. Based on the statement, the order was passed permitting the Respondents to issue a fresh tender by deleting clause 8.



12. Subsequent thereto a fresh NIT has been issued on 21.05.2025. Appellant did not participate in the said NIT, however, Ashwin Richhariya participated. Bids were received and we are informed that highest bid received in the second tender is of Shri Ashwin Richhariya of Rs.46,34,155/-.

13. There was a apprehension expressed that the communication dated 16.01.2025, 17.01.2025 and 20.01.2025 could be antedated to take benefit of Clause 8, we accordingly directed the respondents to produce the communication dated 30.01.2025 based on which the impugned order dated 03.02.2025 was passed as also the inwards register. Relevant record has been produced.

14. We have examined the records and find that Ashwin Richhariya had filed the petition WP No.2948/2025 on 23.01.2025 and the affidavit was attested on 21.01.2025. The Copy of the petition filed in the Registry shows that the petition on each page bears the stamp of the Oath Commissioner dated 21.01.2025. In para 5.10 and 5.11 there is a reference to communication dated 16.01.2025 and 17.01.2025, 20.01.2025 and copies thereto are annexed as Annexure P/6 to P/8. Said petition was attested prior to the communication dated 22.01.2025 of the respondents calling upon the appellant to execute the agreement and before the agreement was executed on 28.01.2025 . Consequently we are of the view there is no reason to doubt the dates of the said letters.

15. Clause 8 stipulated that the authorities shall give an option of first refusal to the existing contractor and only on his refusal the authorities would award the contract to the highest bidder. There is no record to show any offer was made to Ashwin Richhariya to match the highest bid prior to



calling upon the appellant to execute the contract. On the other hand, Ashwin Richhariya had immediately on the financial bids being opened approached the authorities to match the highest bid. If Clause 8 were to be applied then Ashwin Richhariya should have been awarded the contract.

16. It appears that the learned Single Judge was convinced that Clause 8 as it existed could be one sided and could favour the existing contractor and as such learned Single Judge accepted the contention of the respondent that a fresh tender would be issued after deleting Clause 8.

17. Learned counsel for the appellant has today produced a communication dated 17.02.2025 issued by the Director of one Van Vihar Park, Bhopal giving reason as to why Clause 8 was one sided, liable to be declared *void ab initio* as the same would lead to arbitrariness and *malafide* intention placing other parties as an unequal petitioner. In view of the said we find no fault in the action of the respondent in deciding to delete Clause 8 from there NIT.

18. There is possibility of Clause 8 being misused by an existing contractor. This in fact is further fortified by the bids received in the second tender. If clause 8 existed, all that the existing contractor had to do is to give a minimum bid and then await the opening of the financial bids of others and then match the highest bidder.

19. In the instant case, at the first time when the tender was open the highest bid was about Rs. 21 lakhs. When clause 8 was deleted and the tender was floated again, the highest bid has gone more than double i.e. over Rs. 46 lakhs. This second bid shows the importance of a competitive tender being floated.

20. In view of the above, we find no infirmity in the view taken by the



learned Single Judge in directing issuance of a fresh tender by deleting Clause 8 therefrom. In any event, if Clause 8 had continue to exist then also appellant could not have been awarded the contract because the right of the first refusal had to be given to the existing contractor i.e. Ashwin Richhariya. When fresh tender was issued deleting Clause 8 appellant did not participate and Ashwin Richhariya has been declared the highest bidder.

21. In view of above, and also in view of the fact that bid amount now received is more than double. We are of the view no interference is called for in the impugned order passed by the learned Single Judge. We are also fortified in our view that the order does not suffer from any infirmity or error in law. In view of the above, we find no merit in the appeal. The appeal is consequently, *dismissed*. The Interim Order is vacated.

22. The security amount deposited by the appellant shall be refunded to the appellant forthwith.

(SANJEEV SACHDEVA)
ACTING CHIEF JUSTICE

(VINAY SARAF)
JUDGE

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