

Sh. Dinesh Parsad Dangwal Vs. State of H.P. and Ors.

CWP No. 15761 of 2024

20.12.2024 Present:

Mr. V.S. Chauhan, Sr. Advocate with Mr. Pranshul Sharma, Advocate, for the petitioner.

Mr. Rakesh Dhaulta, Additional Advocate General, for respondents No. 1 to 4.

Mr. Shrawan Dogra, Sr. Advocate, with Mr. Tejasvi Dogra, Advocate, for respondent No.5.

CWP No. 15761 of 2024

Notice. Mr. Rakesh Dhaulta, learned Additional Advocate General and Mr. Tejasvi Dogra, learned counsel, appear and waive service of notice on behalf of respondents No. 1 to 4 and respondent No. 5, respectively. Reply/instructions be filed/obtained within four weeks.

List on **07.03.2025**.

CMP No. 25120 /2024

Heard.

2. Taking into consideration the nature of the dispute, we intend to grant one week's time to all the respondents to file their respective replies including respondent No. 5, who has appeared through counsel and in whose favour, the tender in question has been allotted.

3. However, the learned Senior Counsel for the petitioner insisted for deciding the instant application seeking stay of the operation of the letter dated 18.11.2024 whereby the contract has been awarded in favour of respondent No. 5.

4. We tried to impress upon the learned Senior Counsel to be reasonable so that the version of the respondents could come on record, given the fact that this is the second petition at the instance of the petitioner and the earlier petition being CWP No. 14899 of 2021 was withdrawn by him with liberty to file the same afresh. We also noticed that at the time of filing of the earlier writ petition, the petitioner had not insisted upon or pressed the application for grant of *ad interim* order and no injunction was granted in his favour and he was content with the same. But today, a desperate attempt was made by the petitioner to ensure that the application be decided either way.

5. We have heard learned counsel for the petitioner and gone through the material on record.

6. It is averred by the petitioner that the officials respondents No. 1 to 4 have illegally awarded the tender in question in favour of respondent No. 5, who was not even technically qualified as per the standard bidding document, on the following count:-

1. *Failed to submit mandatory documents as required under Standard Bidding Document (SDB) including but not limited to the affidavit of bid validity, banker's authority letter and profit and loss statements, seeking reference certificate etc.*
2. *Technical bid of respondent No. 5 was not complying with the mandatory conditions of Clause 25.1 and other provisions of SBB, as detailed in the writ petition.*
3. *The process of awarding the tender to the private respondent was arbitrary and outcome of favouritism and malafide intent on the part of the official respondents, as is evident from their failure to follow due process and meeting out any equal treatment to the bidders.*
4. *In case, the respondent No. 5 proceeds with the execution of the work, it will render the entire writ petition infructuous and result in wasteful expenditure of public funds on the non-complaint contractor.*

7. Learned Senior Counsel for the petitioner further argued that his client has satisfied all the ingredients of injunction and i.e. he has a *prima facie* case, irreparable loss and injury would be caused in case injunction is denied and balance of convenience lies in his favour. It is further argued that the action of the official respondents is violative of Article 14, in breach of mandatory conditions of the tender and defeats the doctrine of legitimate expectation and above all, violates the public trust doctrine.

8. We need to notice that the tender in question pertains to the construction and maintenance of Jhagtan-Golchu Garli- Kothu road 0/0 Km to 5/645, for which, tender was floated by respondent No. 2 on 27.08.2024. One of the reliefs as sought for in the writ petition is to quash and set aside the letter of award/appointment/letter to proceed dated 18.11.2024 (Annexure P-3), whereby private respondent No. 5 has been declared to be L-1 and in his place the petitioner be declared L-1 and be awarded the contract. Once such relief is claimed, we fail to understand and appreciate as to how, irreparable loss or injury is caused to the petitioner. If respondent No. 5 proceeds with the work and ultimately, the petitioner succeeds in this petition, the work so executed by respondent No. 5, would be to the advantage of the petitioner.

9. That apart, the normal rule even as per the Code of Civil Procedure, the principles of which do apply to the writ petition, is to issue notice to the opposite party before grant of *ex parte* ad interim injunction. In ***Halsbury's Laws 4th Edition Volume-24, para-1051, page-587***, it is stated that “*an injunction will not usually be granted without notice*”.

10. Above all, we need to notice that the award in question pertains to the construction and maintenance of a road 0/0 km to 5.645 kms and this road in the hilly region cannot be

constructed overnight, more particularly, in this extreme cold season. We do not find any urgency in the matter as was portrayed by learned Senior Counsel for the petitioner so as to grant an *ex parte ad interim* order.

11. Consequently, we do not find any merit in the present application and the same is, accordingly, dismissed.

12. However, before parting, it is made clear that the observations made in this order are solely for the purpose of deciding the instant application and shall have no bearing on the merit of the case.

(Tarlok Singh Chauhan)
Acting Chief Justice

(Satyen Vaidya)
Judge

20th December, 2024
(sushma)