

IN THE HIGH COURT OF SIKKIM

Writ Petition (C) No.6 of 2003

Shri Sunil Kumar Gupta,
S/O Late Kedar Prasad,
R/O Jorethang Bazar,
P.O. & P.S. Jorethang,
South Sikkim.

..... *Petitioner.*

Versus

1. The State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, East Sikkim.
2. The Secretary,
Urban Development & Housing Department,
Government of Sikkim,
Gangtok, East Sikkim.
3. The Joint Secretary, (Trade Licence)
Urban Development & Housing Department,
Government of Sikkim,
Gangtok, East Sikkim.
4. Shri Ram Chandra Prasad,
S/O Late Phirangi Prasad Verma,
Haat Shed, Jorethang Bazar,
P.S. & P.O. Jorethang,
South Sikkim. *Respondents.*

Coram :

*The Hon'ble Shri Justice Ripusudan Dayal, Chief Justice.
The Hon'ble Shri Justice N. Surjamani Singh, Judge.*

*Present : Mrs. Laxmi Chakraborty, Advocate for the
petitioner, along with the petitioner Shri Sunil
Kumar Gupta.*

*Mr. S. P. Wangdi, Advocate General with Mr. J.B.
Pradhan, Govt. Advocate and Mr. Karma Thinlay,*

n. surjamani

Assistant Govt. Advocate for respondent Nos.1,2 and 3.

Mr. A. M. Lepcha, Advocate along with respondent No.4, Shri Ram Chandra Prasad.

Date of Decision : 17th April, 2003.

J U D G M E N T

Dayal, C.J.

Joint Secretary (Trade Licence), Urban Development and Housing Department, Gangtok invited tenders for the award of Contracts for the 35 Bazaars specified therein for the year 2003-2004 vide Annexure P-1. One bazaar for which the tender was invited is Jorethang mentioned at Sl.No.24. For this bazaar, the upset price was mentioned as Rs.5,31,729/-. The tenders were submitted by several persons including the petitioner and respondent No.4. The bid given by respondent No.4 was Rs.6,51,551/-. On the other hand, the bid given by the petitioner was Rs.2,50,000/-. Respondent No.4 was the highest bidder and the petitioner was the second. Tenders were opened on 21.3.2003. One of the terms of the Notice Inviting Tender was that, " agreement in regard to the contract shall be drawn within one week from the date of opening of tender. If any of the successful bidder fails to turn up for signing of agreement within the stipulated time, it will be presumed that he has no interest to undertake the contract and the tender for that particular Bazaar shall be awarded on

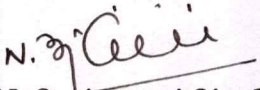
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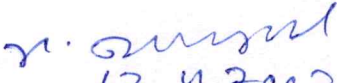
negotiation to the next highest bidder on fulfillment of the above conditions. In such a case the security deposit of the highest bidder shall be forfeited." Another term and condition as specified in the Notice Inviting Tender is that, the "successful tenderer will have to pay the full contract amount at the time of signing the Bazaar Contract Agreement. In the event of the failure to deposit full contract amount the security deposit of successful bidder would be forfeited and the Bazaar contract shall be awarded on negotiation to the next higher bidder on fulfillment of the above conditions." The agreement was to be executed as per the notice inviting tender by 28.3.2003. However, the agreement was executed by respondent No.4 on 1.4.2003, on which date he deposited the amount of the bid also. The petitioner has challenged the award of the contract to respondent No.4 on the ground that since the respondent No.4 had failed to sign the agreement and deposit the entire amount within one week from the date of the opening of the tenders, the agreement should have been executed in favour of the petitioner. This contention is repelled on behalf of respondents on two grounds: one is that the petitioner has no locus standi to file the petition as he was not even eligible to be considered inasmuch as the upset price for Jorethang Bazar had been fixed at Rs.5,31,729/- and one term and condition of the notice inviting tender stipulated that no "tender below the upset price, fixed against each Bazaar shall be accepted", but the bid offered by the petitioner was only Rs.2,50,000/-. The other ground is that respondent No.4 had

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made a request to the Joint Secretary (T.L.), Urban Development and Housing Department, Gangtok on 28.3.2003 vide Annexure R-3 for extension of the execution of the agreement on the ground that his mother had died on 24.3.2003, whereupon time was granted to him up to 1.4.2003 on which date he fulfilled all the conditions. Both these grounds have merit. The petition is frivolous.

Therefore, the petition is dismissed with cost of Rs.5,000/- to respondent Nos.1, 2 and 3 and further Rs.5,000/- to respondent No.4.

N. S. 
(N. Sufamani Singh)
Judge
17.04.2003


17. 4. 2003
(Ripusudan Dayal)
Chief Justice
17.4.2003

at/