
(2017) 02 CHH CK 0046
In the Chhattisgarh High Court
Case No : 1053 of 2016

Amar Infrastructure Limited

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

Citation : (2017) 02 CHH CK 0046

Hon'ble Judges : Deepak Gupta, Sanjay Agrawal

Bench : Division Bench

Advocate : Raj Kamal Singh, Narendra Kumar Vyas, Y.S.Thakur, N.K.Shukla, Ayaz Naved, Ankur Agrawal

Judgement

1. The Chhattisgarh State Industrial Development Corporation Limited (hereinafter called "the CSIDC") issued a Notice Inviting Tender (hereinafter called "the NIT") on 03.11.2015 for up-gradation of infrastructure i.e. roads, drainage system and water supply in Sirgitti under Modified Industrial Infrastructure Upgradation Scheme (MIIUS) at Sirgitti, Bilaspur. This tender was invited on-line. The bid of the Petitioner was rejected and the tender was awarded in favour of Respondent No. 7-M/s. Raipur Construction Private Limited. The Petitioner has challenged the action of the Respondent-CSIDC in rejecting his bid and also questioned the award of tender in favour of Respondent No. 7. The grievance of the Petitioner is that his bid was wrongly rejected. However, at the stage of hearing, virtually no arguments were raised in this regard.

2. The contention of Shri Raj Kamal Singh, learned counsel for the Petitioner was limited to the issue that Respondent No. 7 had wrongly been awarded the tender. It is not disputed before us that as per the norms and regulations prevalent in the State of Chhattisgarh, if on the first call i.e. on floating of the first tender there, is only one qualified successful bidder, then the tender has to be cancelled and floated afresh. If in the second call also, there is only one qualified tenderer, then the single tenderer can also be considered for award of contract.

3. Briefly stated, the case of the Petitioner is that in the first call, no doubt Respondent No. 7 was qualified but according to the Petitioner, the Respondent No. 7 was the sole technically qualified bidder and as per the guidelines issued by the Government of Chhattisgarh, Public Works Department, on 28.01.2014, the financial bid was not to be opened and fresh tenders had to be floated. The case of the Petitioner is that Respondent No. 6-M/s. Arcons Infrastructure and Constructions Private Limited had submitted an incomplete and improper tender. The officials of the Respondent-CSIDC for ulterior and extraneous motive and with a view to help Respondent No. 7, treated the tender of Respondent No. 6 to be valid so that there were two qualified tenderers and fresh tender was not required to be floated and in this illegal manner gave benefit to Respondent No. 7. Very serious allegations have been levelled and the following reliefs have been prayed: "10.1 This Hon'ble Court may please be kind enough in calling the entire records of the subject Tender and a detailed report from the respondent No. 1-3 on the deviated norms in respect of the subject Tender (Annexure P-1) floated by the respondent No. 4.

10.2 This Hon'ble Court may please be kind enough in quashing the online Notice Inviting Tender No. 6, Tender reference dated 03/11/2015 (Tender reference No. CSIDC/EE/DIV-1/2015-16/06); Tender No. 596 (Annexure P/1) and further proceedings related with the said Tender and direct the CSIDC to float fresh Tenders as per prevailing PWD norms.

10.3 This Hon'ble Court may please be kind enough in directing the State Government of Chhattisgarh to conduct a detailed enquiry into the matter and to prosecute/take appropriate disciplinary action against the erring officials of the CSIDC within an appropriate time frame".

4. It may be pointed out that according to the Petitioner, the tender of Respondent No. 6 was not proper since the Respondent No. 6 had not shown in its list of plant and machinery that it owned a Hot Mix Plant and secondly, that the list of plant and machinery had not been signed by the authorized signatory i.e. the Executive Engineer. In support of its allegations, the Petitioner has relied on a document (Annexure P/4) which is stated to be "Technical Evaluation" and the relevant portion of it reads as follows: "Name of work: - Up-gradation of Infrastructure in Sirgitti Under Modified Industrial Infrastructure up-gradation Scheme (MIIUS) at Sirgitti, Bilaspur (CG)

NIT No. 06/2015-16, Tender No. 596

PAC Rs. 44.40 Lacs, EMD 45.00 Lacs cost of tender form Rs. 20,000/-

Sl.N Name of the Agency Registration in CGPWD/Central/State FDR/DD No. Registration of CT/VAT & Clearance Certificate Annual Turnover based on audited balance sheets/CA certificate of last three years Pan No. details Specific Construction Experience Required any one of these two

Construction experiences Key Plants and Equipments List of work in hand

Remarks

One similar work costing not less than INR 35.52 Cr Two similar work costing not less than INR 22.20 Cr

1 M/s. Archcon Infrastructure Pvt. Ltd. Chhindwada (MP) CGePWD Class "A" R06000417/04 /2015 P-10 1. DD No. 007248/Axis Bank Raipur 24/12/2015 Rs. 20,000/- 2. FDR No. U19064510604/ Axis Bank 28/12/2015 Rs. 45.00 Lacs

Tin Registration 2284190285 4 Date 02/07/2010 P. - 12-15 Tax Clearance? IT 2010-11 to 15-16 Yr./2012- 13 Rs. 51.70 Crore Yr./2013- 14 Rs. 61.11 Crore Yr./2014- 15 Rs. 66.34 Crore (Av. 59.71 r) P. 38 AACF A 7919L P-11 EE/NH/B GR/SBD/0 3/2010-11 48.88 Cr 63.35 Cr

Completed 28.02.14

P-50

Experience Submitted Key plants & Equipment submitted Submitted 1. Required Key Qty. submitted by agency duly signed by authorise signatory i.e. EE. P-50, 54, & 55 2. List of Plants and Machine is attached by self attested in which hot mix plant is not mentioned in the list. It is also not

5. According to the Petitioner, he had obtained the document from the office of the Respondent-CSIDC. Relying upon this document, it was alleged that even as per the record of the CSIDC, the Respondent No. 6 did not own a Hot Mix Plant and the document had not been signed by the authorised signatory. Therefore, the Respondent No. 6 could not have been held to be technically qualified and its bid was bound to be rejected.

6. We had issued notice of this petition to the Respondents and the stand of Respondent-CSIDC with regard to Annexure P/4 is as follows: "D. That the petitioner, to substantiate its averments regarding its own eligibility and non-eligibility of Respondent No. 6 has relied upon "Technical Evaluation Sheet" annexed as Annexure P-4 to the petition. It is worth mentioning that this Annexure P-4 is not a part of the records of CSIDC. And moreover the source of procuring this document has not been disclosed by the petitioner because P- 4 is neither a certified true copy nor a copy obtained under the Right to Information Act and above all the said document does not bear signature of any authority. Therefore this is a fabricated document created to support the false claim of the petitioner and to misguide the Hon"ble Court. It is respectfully submitted that the Petitioner had not approached the Hon"ble Court with clean hands and hence the petition is liable to be dismissed at the threshold with exemplary cost."

7. Here, it would be pertinent to point out that though, notice to Respondent No. 6 was issued on 05.05.2016 and notice to Respondent No. 7 was issued on 21.09.2016, these two Respondents have not filed their reply.

8. It would also be pertinent to mention that in this reply, the Respondent-CSIDC did not take a stand that there was no requirement of having a Hot Mix

Plant or that there was no requirement that the documents should be signed by the Executive Engineer. The Respondents in reply reiterated that the Petition had been filed on the basis of a false and fabricated document. Reference may be made to second part of para 22 of the reply which reads as follows: "It is respectfully submitted that in the foregoing paragraphs, the answering respondent has clearly demonstrated about the adoption of tender process. It is pertinent to mention here that the petitioner has forged and fabricated the technical evaluation sheet, submitted false documents relating to work experience and had filed number of documents, the source of which has not been disclosed as to how those documents are in the possession of the petitioner, this speaks volume about the conduct of the petitioner."

9. In the reply filed by the Respondents, they have relied upon the Technical Evaluation Report (Annexure R-4,5/3) and according to them, this was the true evaluation report.

10. Rejoinder was filed by the Petitioner and the Petitioner, reiterated that he had obtained the document (Annexure P/4) from the office of the CSIDC. The case of the Petitioner was that in fact it is the CSIDC which is guilty of manipulating and forging the document.

11. The Petitioner made reference to the complaint made by it to the Respondent on 01.04.2016 (Annexure P/7) in which reference has been made to the fact that the Hot Mix Plant has not been mentioned in the list. The only objection that has been taken in the said complaint by the Petitioner is that list of plant and machinery is self-attested in which Hot Mix Plant is not mentioned in the list. It is also mentioned that it is not certified by the authorised signatory i.e. Executive Engineer. Therefore, Shri Singh states that this was the objection at the stage even before filing of this writ petition itself. Alongwith rejoinder, certain other documents have been filed which, according to the Petitioner, have been downloaded from the website of the Respondent CSIDC only reference was made to page No. 17 of the rejoinder, the list in which name of equipments/machines are mentioned and there is no mention of the Hot Mix Plant in the said list.

12. Keeping these facts in view, on 28.07.2016, this Court passed the following orders: "The allegations and counter allegations are very serious in nature. A Writ petition is decided basically on the averments made by the parties, supported by affidavits. We expect that the parties who come to the Court are fair to the Court, they come with clean hands, they do not withhold material evidence from the court, they do not mislead the Court and act in a totally bonafide manner. The level of fairness expected from the government departments is even higher.

If the petitioner has furnished a false and forged document it will be dealt with seriously. Not only will the petition be dismissed but exemplary costs may be imposed. We may even consider to prosecute him for perjury. However, if the stand of the CSIDC is false then even more severe action may be taken against

those Government Officers who are supposed to have no personal interest in the matter and are expected to come to the Court with clean hands. In today's age it is not difficult to find out from a computer system which document is generated originally and which document has been generated at a later stage. Any good computer expert can derive this information without any difficulties.

We are of the considered view that such enquiry must be conducted to ensure purity in the decision making process of this Court and also give signal to all, that this Court is not lenient to those who try to mislead the court or file false affidavits.

The Superintendent of Police, Raipur is directed to depute an independent and competent officer from the Cyber Crime Cell of the State police. The said officer shall inspect, examine and analyse the data available on the computers of the CSIDC and determine the following points:

1. What was the initial bid document e-filed by Respondent No.6.
2. Whether, in the tender document submitted by Respondent No.6, the list of plant and machinery contained hot mix plant or not ? Whether said list was certified by the authorised signatory or not ?
3. The concerned Officer will after examining the documents also determine whether the document Annexure-P/4 has been prepared on the computer of the CSIDC or not ?
4. The Officer shall also intimate the date of preparation of the document Annexure R-4,5/3 filed by the CSIDC and clearly intimate when the document was initially prepared, and if any changes were made to this document then on what date.

Report be submitted to this Court within a period of 6 weeks from today.

The Registrar General shall send certified copy of the Annexures P/4 and R-4,5/3 along with copy of this order to the Superintendent of Police, Raipur.

CSIDC is directed to ensure that all the relevant computers, hardwares and other materials necessary for enquiry is made available to the Officer appointed by us and if the same is not made available, we shall presume that CSIDC has tried to hide something from this Court.

List this case on 21st September 2016."

13. Report has been filed pursuant to our directions and we may mention that with a view to clarify the report, on 23.11.2016, we had asked the concerned Deputy Superintendent of Police to appear before the Court on 21.12.2016 to explain the report to the Court. The officials appeared before this Court on 21.12.2016 and had explained the report to us.

14. As per this report which runs into 115 pages, the police officials seized one hard disc bearing S/R No. 0A39264JPT3MAOCOA, 320 GB from the office of the

CSIDC. On this hard disc, in response to question No. 2 posed by us, it was stated that in all the tender document submitted by Respondent No. 6, there is no mention of Hot Mix Plant and the list of machinery was not signed by the Executive Engineer. With regard to question No. 3, it was found that document (Annexure P/4) filed by the Petitioner was a document which existed in the aforesaid hard disc of the CSIDC and the last modified date was 16.03.2016 at 4:46 pm. With regard to question No. 4, it was mentioned that the document Annexure R-4,5/3, which is a "Technical Evaluation Chart" also existed on this very hard disc bearing S/R No. 0A39264JPT3MAOAOA. The last modified date was 14.01.2016 at 12:33 pm. As per the said chart, in column No. 2 of the Tender Form Price, there is a clear mention of the Demand Draft number submitted by the bidding companies but as per the Technical Evaluation Chart found in the hard disc, only the Demand Draft number is mentioned but the name of the bank is not mentioned. Thus, there is difference in both these documents. In regard to "Technical Evaluation Chart" Annexure B, the information has been received from the aforesaid hard disc in which the last modified date has been shown as 04.07.2016 at 2:08 pm. The size of this file is 24 KB and consist of two pages. There is no difference between document submitted before this Court and the document obtained from the hard disc. As far as the Technical Evaluation Chart Annexure C is concerned, the last modified date is shown as 04.07.2016 at 2:09 pm. The size of this file is 29.7 KB and it also consists of two pages and there is no difference between the document submitted before this Court and the document found in the hard disc.

15. Thereafter, vide order dated 21.12.2016, we had directed as follows: "We have talked to the Police Officials namely Shri Satyendra Pandey, DSP Crime, Raipur and Ms. Nisha Tikharia Vaishnav, SI Cyber Crime present before us today. The court places on record its appreciation for the help rendered by them.

On the next date, Shri Sunil Rajgire who signed the affidavit shall be present in person alongwith the entire record to support the allegations made in the said affidavit. We make it clear that we will not adjourn the matter any further and we will hear and decide it on the next date. List on 2.1.2017."

16. From the above it is apparent that some portion of this document existed on 14.01.2016 and the last modified date was 14.01.2016 at 12:33 pm in the Technical Evaluation Chart which is available on the hard disc. Only demand draft numbers are given but the name of the bank is not given. It is therefore obvious that the two documents are different. The hard disc contains two pages giving names of the tenderers and the draft number alone. But what has been produced before us is a much more detailed document which gives name of the banks also. With regard to the most crucial pages, though the document was found to be existing on the file, it was found that this document was last modified on 04.07.2016 at 2:08 pm i.e. much after the writ petition had been filed and in fact, after we had taken cognizance of the case.

17. The case has then been adjourned from time to time. Shri Sunil Rajgire

Executive Engineer, CSIDC, was present in the Court. Additional return was filed by the Respondent-CSIDC and now, in this additional return, it is mentioned that the technical evaluation is done on the basis of documents submitted by the bidders through on-line process. After evaluation, Evaluation Sheet is prepared and submitted before the Tender Committee alongwith recommendations of the Executive Engineer. The Evaluation Sheet prepared by the Executive Engineer is evaluated by the Tender Committee by comparing the details in the Evaluation Sheet which are submitted by the bidders. According to the Respondent-CSIDC, the true Evaluation Sheet is Annexure R-4,5/3 because that contains the signature of the concerned Executive Engineer. It is also stated that in another writ petition viz. Writ Petition (C) No. 664 of 2016 (M/s. B.B.Verma v. Chhattisgarh State Industrial Development Corporation & Others) an affidavit had been filed alongwith some report that the bid of M/s. Arcons Infrastructure and Constructions Private Limited was found to be valid. It is now admitted that Respondent No. 6 had not submitted any document that he owned any Hot Mix Plant. According to the Respondent-CSIDC, it was not necessary to submit such a document. It is secondly submitted that certification of the Executive Engineer is required only if the plant and machinery is not owned by the contractor and is taken by him on rent or hire from someone else. This stand was never taken in the initial reply but was taken only when the report of the police officials came. Initially, the stand taken by the Respondent-CSIDC was that the document relied upon by the Petitioner is totally false. When the report of the police came that in fact the document relied upon by the Petitioner existed on the computers of the CSIDC, then a new stand has been taken that there was no need for giving list of Hot Mix Plant and there was no need for certification of the list of plant and machinery by the Executive Engineer.

18. Now, the stand of the Respondent-CSIDC is that it had outsourced the work of data entry and it has tried to wash its hand out of the document (Annexure P/4) claiming that it might have been done by the Data Entry Operator. Similarly, when asked to explain why the evaluation sheet was modified in the month of July, when it was supposed to have been finalized on 5th March, the only response is that this must have been a mistake done by the Data Entry Operator. When the Respondent-CSIDC was further asked to give details of the Data Entry Operators, we were informed in the Court that the said person has been removed from service.

19. On 09.02.2017, we had heard the matter at length for about 1½ hours during the pre-lunch session. Throughout the entire period, the stand of the Respondent-CSIDC was that there was no need to have a Hot Mix Plant. We had asked Shri Raj Kamal Singh to inform us how it is urged that it was necessary to have a Hot Mix Plant. After lunch, Shri Raj Kamal Singh brought to our notice Schedule D, Section 5, "List of Tools & Plants/Approved makes" of the Technical Tender Form which reads as follows: "CSIDC F-1 Schedule-D Section-V-Technical

Tender Forms

Up-gradation of Infrastructure i.e. roads, drainage system and water supply in Sirgitti Under Modified Industrial Infrastructure Up-gradation Scheme (MIIUS) at Sirgitti Bilaspur (CG)

C. APPROVED TOOLS AND
MACHINERY LIST FOR ROAD WORKS

Sr.No Item Approved Make (As required)

1 Hot Mix Plant Computerized 60-90 TPH AS PER MOST SPECIFICATION

2 WMM Unit 100 TPH pugmill unit

3 Mechanical Paver Finisher

4 Motor Grader (Liugong CLG414 BS III)

5 Vibrator Roller

6 Tandem Roller

7 Smooth Wheel Roller

8 Front End Loader (JCB 3 DX)

9 Front End Loader (JCB 4 DX)

10 Tipper HYVA

11 Dumper

12 Tractor

13 Tractor Trolly

14 Water Tanker

15 Concrete Mixture Machine

16 Generator Set

17 Bitumen Sprayer

18 Hydraulic Road Broomer

19 Needle Vibrator

20 Plat Vibrator

21 Concrete Paver

20. At this stage, it would also be pertinent to mention that the tender of M/s. B.B.Verma was rejected only on the ground that he did not have concrete paver and other machines which formed a substantial and crucial part of the work order as it comprised of around 58.77% of the concerned work, evident from the General Abstract part of the tender document. The length of cement concrete

double lane road (7.50 m carriageway each side) was 4.50 KM and the estimated value of the work was Rs.1858.38 lacs. The length of Bituminous road 24 m wide (7.50 m carriage way) and 18 m wide road (4.88 m carriageway) was 8.902 KM (1.80 KM + 7.102 KM) and the estimated value of the work was 1464.57 Lacs (354.48 + 1110.09).

21. We may now refer to the approved tools and machinery for road works and in this list, the first machinery approved is the Hot Mix Plant computerized 60-90 TPH. Hot Mix Plant is not mentioned in the tender submitted by Respondent No. 6-M/s. Arcons Infrastructure and Constructions Private Limited. We may also point out that as per the norms laid down by the Indian Road Congress and the Schedule of Rates of Chhattisgarh, the contractors who have to be awarded work of such a large amount for construction of bituminous roads are required to own a Hot Mix Plant. It is thus obvious that it was necessary to own a Hot Mix Plant.

22. We have strong reasons to believe that there has been manipulation of data submitted by M/s. Arcons Infrastructure and Constructions Private Limited. It appears that when the technical bids were initially scrutinized an objection was raised that the tender of Respondent No. 6 M/s. Arcons Infrastructure & Constructions Pvt. Ltd. is invalid or technically unqualified because the Hot Mix Plant is not mentioned in the list of plant and machinery and their list of plant and machinery is not certified by the Executive Engineer. The Tender Evaluation Committee may choose to overrule such objection. However, it must give reasons for doing so. This was an essential component of the contract. The Respondents have given no explanation as to how Annexure P/4 which is the draft evaluation report, appears on their computer. They have given no explanation as to how this report is wrong. In fact, as stated above, the first submission was that this document (Annexure P/4) is a false and fabricated document. This submission made on the affidavit of the officer has been found to be totally false by the police on a preliminary investigation carried out on our instructions. As pointed out earlier, initially the stand of the Respondent- CSIDC was not that this machinery is not required or that the document is not required to be signed by the Executive Engineer but the stand was that the document produced by the Petitioner is false. Once this statement of the CSIDC was found to be false and incorrect, they took a U-turn and stated that there was no requirement of Hot Mix Plant or certification of the list of plant and machinery by the Executive Engineer.

23. We may point out that now, the CSIDC has also filed an application for amendment in the return whereby it wants to withdraw its allegation that Annexure P/4 is a false and fabricated document and wants to state that Annexure P/4 is not a part of the official record of the CSIDC. That application is dismissed

24. We are very sorry to observe that the manner in which the CSIDC has contested the case itself raises doubts about the honesty and truthfulness of the officers of the CSIDC. We, at this stage are restraining ourselves from saying

anything more but we have no doubt in our mind that an attempt was being made to get the writ petition dismissed by means, fair or foul.

25. Writ petitions are decided on the basis of affidavits filed by the parties. Every party who approaches the Court claiming a relief is expected to be fair to the Court and should place all facts within its knowledge to the Court. In this case, the conduct of the Respondent-CSIDC has been reprehensible. The Respondents are guilty of "suppressio veri" and suggestio falsii". They first wanted this Court to believe that the document Annexure P/4 filed by the Petitioner was a false and fabricated document. Normally, this Court does not doubt the correctness of affidavits filed by the Government officials. However, in this case, since the Petitioner and its counsel were insistent, we referred the matter to the police for verification which has found that Annexure P/4 is a document which matches with the records of the computers of Respondent-CSIDC. We also find that the document relied upon by the Respondent was modified in July that is much after the petition was filed and this casts a grave doubt on the truthfulness of the reply filed. We have no hesitation in holding that an attempt has been made to hoodwink the Court and such an attempt must be put down firmly and strongly.

26. In view of the above discussion, we have no hesitation in coming to the conclusion that the stand of the Respondent is absolutely false. In fact, an objection was first raised that M/s. Arcons Infrastructure and Constructions Private Limited did not have Hot Mix Plant in its list of plant and machinery and its tender could not be considered valid. Later, documents were fabricated. Furthermore, we find that before us, even till the stage of arguments, the document "Schedule-D, Section-V, List of Tools and Plants/Approved Makes" was never brought to our notice purposely with a view to avoid getting an adverse order from the Court. The Hot Mix Plant is necessary for construction of bituminous roads and since the Respondent No. 6 did not own a Hot Mix Plant, its tender had to be declared to be technically unfit. Since this was the first tender, fresh tenders should have been floated. The tender of M/s. Arcons Infrastructure and Constructions Private Limited was treated as valid not to give them benefit but to ensure that the tender of Respondent No. 7- M/s. Raipur Construction Private Limited is not rejected as being the single successful qualified tenderer. This action of the Respondent-CSIDC is totally illegal, arbitrary and liable to be set aside.

27. Accordingly, we dispose of this writ petition with the following directions: (i) The award of contract of up-gradation of infrastructure i.e. roads, drainage system and water supply in Sirgitti under Modified Industrial Infrastructure Up-gradation Scheme (MIUS) at Sirgitti, Bilaspur, by the Respondent-CSIDC in favour of Respondent No. 7-M/s. Raipur Construction Private Limited is found to be illegal and is accordingly set aside.

(ii) The Respondent No. 7 shall be paid for the work which it may have done but fresh tender shall be floated for the remaining part of the work and this tender be floated within 15 days from today and the tender may be finalized within a

further period of four weeks thereafter.

(iii) The Respondent No. 7 shall cease to do any work forthwith.

(iv) We direct that a copy of this judgment be sent to the Director General of Police, State of Chhattisgarh, who shall ensure that an FIR is lodged in the matter and he shall constitute a Special Investigation Team (SIT) headed by an officer not below the rank of Superintendent of Police having expertise in cyber investigation and shall carry out the investigation and find out who were the persons who created these false documents and action against them shall be taken in accordance with law.

(v) The Respondent No. 4-CSIDC is held liable to pay exemplary costs of Rs. 2,00,000/- because it has taken a totally false stand and this false stand was repeated before us till the last minute of argument till the Schedule in question could be traced out. The aforesaid cost shall be deposited with the Chhattisgarh State Legal Services Authority.

28. The writ petition is allowed, accordingly.