
(2017) 05 MP CK 0102
In the Madhya Pradesh High Court
Case No : 625 of 2016

Amar Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

Citation : (2017) 05 MP CK 0102

Hon'ble Judges : Hemant Gupta, Nandita Dubey

Bench : Division Bench

Advocate : R.N. Tripathi, Amit Seth, Sankalp Kochar

Judgement

1. Both these writ petitions are disposed of by this common order, wherein the challenge is to the construction of the road from package No. 3727 to 3732. The respondent No.3 was granted contract of some of the packages of the said road. It was on 26.11.2015, bids were invited to construct roads in respect of the above said packages. The bids were to be submitted by 17.30 hours on 17th December, 2015. Though the petitioner has attached the Notice Inviting Tender as published in the newspaper, but the details of the tender documents have been attached when the additional documents were filed. The stand of the petitioner is that he submitted his bid in Envelope-A before the time prescribed, but the stamp paper was supplied on 18th December, 2015. The Clause-12 of the instructions to the bidder pertains to the submission of online Envelope-A. Clause-19 deals with opening and evaluation of the bid. The relevant clauses read as under:- "12. Documents Comprising the Bid

The bid submitted online by the bidder shall be in the following parts:

Part 1 - This shall be known as Online Envelope A and would apply for all bids. Online Envelope A shall contain the following as per details given in the Bid Data sheet:

i) Registration number or proof of application for registration and organizational details in format given in the Bid Data Sheet.

- ii) Payment of the cost of Bid Document;
- iii) Earnest Money; and
- iv) An affidavit duly notarized.

Part 2- This shall be known as Online Envelope B and required to be submitted only in works where pre-qualification conditions and/or special eligibility conditions are stipulated in the Bid Data Sheet. Online Envelope B shall contain a self-certified sheet duly supported by documents to demonstrate fulfilment of pre-qualification conditions.

Part 3- This shall be known as Online Envelope C and would apply to all bids. Envelope C shall contain financial offer in the prescribed format enclosed with the Bid Data Sheet.

19 Procedure

19.1 Envelope "A" shall be opened first online at the time and date notified and its contents shall be checked. In cases where Envelop "A" does not contain all requisite documents, such bid shall be treated as non-reponsive, and Envelop B and/or C of such bid shall not be opened.

19.2 Wherever Envelop "B" (Technical Bid) is required to be submitted, the same shall be opened online at the time and date notified. The bidder shall have freedom to witness opening of the Envelop "B". Envelop "C" (Financial Bid) of bidders who are not qualified in Technical Bid (Envelope "B") shall not be opened."

2. The petitioner has also referred to Annexure-B, a sample of an affidavit which is to be contained in Envelope-A. Such Annexure has a note that the affidavit duly notarized in original should reach at least one calendar day before opening of the bid. In the face of such conditions meant for the bidders, learned counsel for the petitioner argued that the notarized affidavit could be supplied a day before the opening of the bid, but the same having been submitted on 18.12.2015, therefore, the lack of an affidavit cannot be a ground to reject the bid of the petitioner. It is also argued that the bids were not opened on the dates mentioned in the tender document which is an illegal act.

3. It is also argued by the learned counsel for the petitioner that the opening of the technical bid was indicative of the fact that Envelope-A submitted by the petitioner was containing requisite document as only then the technical bid could be opened.

4. On the other hand, it is pointed out by the learned counsel for the respondents/State that when Envelope-A was opened, all the information given in the bid document was not found in the Envelope of the petitioner. Envelope-B was not required to be opened, but some time, certain bidders place the document in Envelope-B by mistake, therefore, the Envelope-B was opened but the affidavit duly notarized was not found. On perusal of the documents, it was

found that it only contains signature of the petitioner and it was not notarized.

5. On the other hand, Mr. Sankalp Kochar, learned counsel for the respondent No.3 has pointed out that the respondents/State has executed the contract in the month of February, 2017 and in fact the writ petitions are rendered infructuous.

6. We have heard learned counsel for the parties and find no merit in the present writ petitions.

7. As per the conditions of tender contained in Clause-12 of the instructions, an affidavit duly notarized is required to be submitted. Since, it was online envelope; a scanned copy of notarized affidavit would serve the intent of Clause 12 of the instruction. As per the stand of the petitioner, he has submitted the stamp required for the affidavit on 18.12.2015 i.e. after the expiry of last date of submission of the tender. The relevant averment from the writ petition reads as under:- "Para 5.3. That, according to schedule, online purchasing of tender was from 10.30 hours on 05.12.2015 to 17.30 hours on 11.12.2015. Bids were to be submitted latest by 17.30 hours on 17.12.2015. Envelope-A was scheduled to be opened at 10.30 hours on 22.12.2015, envelope B containing technical proposal was to be opened at 10.30 hours on 23.12.2015 and Envelope C containing Financial bid was to be opened at 30.12.2015, Annexure P/2. But respondent No.1 firstly tried to prepare ground for rejecting bid of petitioner by warning him that he has not submitted his affidavit in Rs.100/- stamp, and therefore, same was submitted on 18.12.2015. Envelope A containing documents as provided in Bid Data Sheet was belatedly opened at 10.30 hours on 22.12.2015 but at 20.00.43 hours on 28.12.2015, Annexure P/7, whereas same could not have been done without placing rescheduling it and placing this information online."

8. Since, the online Envelope-A was not the complete with the requisite documents, the action of the State in rejecting the bid of the petitioner, cannot be said to be illegal.

9. The arguments that duly notarized affidavit in original could reach at least one calendar day before opening of the bid is in the context of furnishing of scanned copy of the affidavit while submitting online Envelope-A. Once a scanned copy of the duly notarized affidavit is submitted while submitting tender before the cut off period, the original affidavit can be submitted later on. But in view of the averments of the petitioner in para 5.3, the stamp required for affidavit was not submitted before the cutoff date and time. The stand of the State is that the affidavit was not notarized. It was self-attested. An affidavit cannot be self-attested, it has to be attested by an authority competent before whom the affidavit can be executed. Since the affidavit has not been attested by any person including the notary, such an affidavit cannot be treated to be a valid affidavit so as to satisfy the condition of the tender document.

10. In respect of an argument that the Envelope-A was complete with the document including the affidavit which alone would lead to opening of the Envelope-B is again without any merit.

11. Though, the stand of the State is that sometime due to mistake, some of the documents are attached in Envelope-B, but even if there was a mistake in opening the envelope-B of the petitioner, that will not make the tender submitted by the petitioner in Envelope A as valid. It will only mean that an irregularity has been committed by the State. Such irregularity is not affecting rights of any of the parties.

12. Another argument raised is that the condition of filing of an affidavit was done away with Annexure P/6 dated 8th January, 2015 read with Annexure P/5 dated 28th November, 2014. The Annexure P/5 is the interdepartmental communication. It was not a public document. The said document pertains to substitution of Clause 2.10 of the standard terms and conditions of the tender. There is no reference of not filing an affidavit in either Annexure P/5 or P/6, but even if such document has an inference that the conditions of affidavit was done away with, the fact is that the tender issued in November, 2015 has a specific clause of furnishing of affidavit, which affidavit was not furnished by the petitioner. Consequently, we do not find any merit based upon Annexures P/5 and P/6 as well.

13. In view thereof, we do not find any merit in the writ petitions. The same are dismissed with cost of Rs.25,000/- in each petition to be deposited within two months with the Madhya Pradesh Middle Income Group Legal Aid Society.