(2015) 02 P&H CK 0187

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 25540 of 2014 (O and M)

Anand Kumar APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 02 P&H CK 0187

Hon'ble Judges : S.J. Vazifdar, Acting C.J.;Augustine George Masih, J.

Bench : Division Bench

Advocate : Yogesh Putney, for the Appellant; Amar Vivek, Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.J. Vazifdar, Actg. C.J.—The petitioner has challenged the rejection of his tender on the ground that he had submitted incomplete documents. By an e-mail dated 03.12.2014, the petitioner was informed that he had been disqualified at the stage of the technical/eligibility criteria evaluation.

2. The State of Haryana is impleaded through the Principal Secretary, Public Health Engineering Department. Respondents No. 2 and 3 are the Executive Engineers in that department. Respondent No. 3, who is the Executive Engineer of the Public Health Department, is impleaded in his name. Respondent No. 4- The Jagrambass Coop L and C Society Ltd. has been awarded the tender.

3. By a press notice, respondent No. 1 invited online bids for construction of RCC S and S Tank at the water works, construction of an underground tank, erection of pumping machinery and other related works. Clause-5 of the press notice reads as under:-

"5. The tender shall be submitted by the bidder in the following two separate envelops online:

1. Earnest Money and all the documents in support of eligibility criteria -

Envelope ''ED''

2. Price Bid - Envelope ''CI''

Note: Online Bidders shall submit the EMD through RTGS/NEFT.EMD will not be accepted in parts i.e. whole amount of EMD should be deposited in one instance. Documents in support of eligibility criteria shall also be submitted in Envelope ''ED''. Price Bids are to be submitted mandatory online and shall not be accepted in any physical form.

Reference of the EMD is to be mentioned online.

In the first instance, the Envelop-''ED'' of all the Bidders containing the statement of Earnest Money and documents supporting eligibility criteria shall be opened online as well as physically. If the Earnest Money and eligibility of bidder is found proper, the Envelop ''CI'' containing financial bids shall be opened online in the presence of such bidders who either themselves or through their representatives choose to be present. The financial bid shall be opened only if the bidders meet the eligibility criteria as per the Bid document.

The bidder will submit the necessary documents as under.

Envelope ''ED''-Earnest Money Deposit and eligibility criteria Envelope

Physical EMD Envelope-Photocopies in support of eligibility criteria and photocopy of document of transaction made in support of deposit of Earnest Money. Online EMD Envelope-Reference details of the Earnest Money Deposit instrument and scanned copy of documents supporting deposition of EMD and eligibility criteria.

Envelope ''CI''-Price Bid Envelope

To be submitted mandatory online-"Information related to Price Bid of the Tender".

The bidder can submit their tender documents as per the dates mentioned in the schedule above.

CONDITIONS:-

1. Enlisted with the Public Health Engg. Deptt. Upto approved DNIT above.

2. NIT, if required, can be seen on any working day during office hours in office of the undersigned.

3. Conditional tenders will not be entertained and are liable to be rejected.

4. The undersigned reserves the right to reject any tender or all the tenders without assigning any reason.

5. The societies shall upload and produce a copy of the resolution of the Co-Operative department authority letter for participation for e-tendering.

6. The tender without earnest money payment will not be opened.

7. The jurisdiction of court will be at Bhiwani.

8. The tender of the bidder who does not satisfy the eligibility criteria in the bid documents will be rejected summarily without assigning any reason and no claim whatsoever on this account will be considered.

9. Bids would require to be valid for 3 months from the date of expiry of online "Online bid preparation and submission of Ist stage". The bid for the work shall remain open for acceptance during the bid validity period to be reckoned from the expiry date of "Online Bid preparation and submission of Bid Ist stage" stage. If any bidder withdraws his bid during bid validity period any modifications in the terms and conditions of the bid, the said earnest money shall stand forfeited."

(emphasis supplied)

4. At the previous hearing, it was contended on behalf of the respondents that the petitioner had not even submitted the copy of enlistment which was a document to establish the petitioner having complied with the eligibility criteria. The petitioner contended that he had uploaded the same. By an order dated 14.01.2015 we, with the consent of the parties, directed the Registrar (Computer) of this Court to depute a Computer Operator from NIC to ascertain the documents uploaded by the petitioner in his technical bid pertaining to the said tender. The Commissioner submitted a report dated 12.02.2015. The report states that the petitioner had uploaded the documents relating to enlistment certificate under the Template (option for upload document) "Enlistment Certificate" assigned with price envelope. The report further states that the option for uploading the related documents "Enlistment Certificate" supposed to be provided under the Technical Envelope in the online bid was wrongly assigned to the price/commercial bid envelope.

5. Clause-5 of the press note expressly requires the documents in respect of the eligibility criteria to be submitted in the ED i.e. earnest money and not in the price bid envelope. The importance of this lapse is that the petitioner''s bid could not even have been considered. The note in Clause-5 expressly stated: "The financial bid shall be opened only if the bidders meet the eligibility criteria as per the Bid document." In the absence of the eligibility criteria, the financial bid could not have been opened. Further, Condition-8 in the conditions mentioned in Clause-5 itself states that the tender of the bidder who does not satisfy the eligibility criteria in the bid documents will be rejected summarily without assigning any reason and no claim whatsoever on this account will be considered. In view of these provisions, respondents No. 1, 2 and 3 were justified in not opening the financial bid.

6. We, however, do not express any opinion as to whether it is open to respondent No. 1 to give up the tender process and to invite fresh bids. Mr. Putney stated that the petitioner''s bid was more competitive than the bid of respondent No. 4, who may be awarded the contract, by about Rs. 1 crore. It is for the second respondent to decide if it wants to face such a loss.

7. Mr. Amar Vivek, learned Additional Advocate General of the State of Haryana, appearing on behalf of respondents No. 1, 2 and 3, submitted that the eligibility criteria had not even been supplied in the physical form. Clause-5 of the press note requires the documents in respect of the eligibility criteria to also be submitted in the envelope "ED" i.e. earnest money. Clause-5 further provides that "Physical EMD Envelope-Photocopies in support of eligibility criteria and photocopy of document of transaction made in support of deposit of Earnest Money." Thus, the eligibility criteria was to be supplied not only online but also in the physical form. The petitioner had failed to do so. In the result, therefore, the petitioner had failed to provide the eligibility in the physical form as well as in the relevant envelope. The respondents No. 1, 2 and 3, therefore, cannot be faulted for having refused to open the price bid.

8. The petitioner relied upon an e-mail dated 29.11.2014 from respondent No. 1 informing him that his bid at technical/eligibility criteria opening for the tender had been qualified. This communication, however, prima facie at least does not confirm that the technical bid was approved. The communication was on the bid being placed online. The issue as to whether the bid met the technical/eligibility criteria could be decided only subsequently upon the entire documents being scrutinized. This is evident from Clause-3 of the press note which lists the "Key Dates". Different dates/times have been mentioned for the release of the tender, the last date for submitting the bids, the date for the technical/eligibility criteria being opened and the dates for the technical/eligibility criteria evaluation. The bids were to be placed between 26.11.2014 at 5:01 PM and 27.11.2014 at 5:00 PM. The technical/eligibility criteria was to be opened only on the next date i.e. 28.11.2014 at 5:01 PM and was to be concluded at 4.00 PM on 01.12.2014. Further, the evaluation of the technical/eligibility criteria was to commence only on 01.12.2014 at 4:01 PM. The question, therefore, of the petitioner''s bid having been found to be technically eligible in view of e-mail dated 29.11.2014 does not even arise.

9. In view thereof, it is not necessary for us to consider whether the petitioner''s financial bid was more competitive than the fourth respondent''s financial bid. We, however, do not express any opinion whether respondent No. 1 is entitled to invite fresh tenders for any reason including on the ground that the acceptance of the fourth respondent''s tender would cause a financial loss allegedly of about Rs. 1 crore.

10. Respondents No. 1, 2 and 3 had initially also contended that the bids were submitted late. That contention, however, is not sustainable. The Implementation Consultant of respondent No. 1 by an e-mail dated 1.12.2014 apologised for the inconvenience experienced in respect to the non-working of the Haryana portals. It was further stated that respondent No. 1 had focussed on fixing the problem as quickly as possible and identifying the cause of the problem and requested time to resolve the issue permanently. The petitioner could not be held responsible for the same.

11. In the circumstances, the writ petition is dismissed. There shall be no orders as to costs.

