
(2020) 09 SHI CK 0035
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2543 Of 2020

Ankit Sharma

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 04-09-2020

Acts Referred:

Citation : (2020) 09 SHI CK 0035

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Chander Narayan Singh, Ashok Sharma, Ranajan Sharma, Vikas Rathore, Vinod Thakur, Desh Raj Thakur, Seema Sharma, Svaneel Jaswal

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Bid of the petitioner has been rejected by the respondents as non-responsive due to non-fulfillment of Tender Document conditions. Aggrieved, instant writ petition has been preferred by him.

2(i) For construction/improvement work of Circular Road in Shimla town, under Shimla Smart City Project, the respondents on 11.05.2020, issued an invitation for online bids in two cover system from eligible contractors. In response to this NIT, two bids were received. The Evaluation Committee declared one of the bids as non-responsive and accordingly, the bid of second bidder was rejected being single bidder.

2(ii) A fresh notice, inviting tenders, was issued by the respondents on 15.06.2020. Bids were invited between 24.06.2020 to 08.07.2020. In response to this NIT, four bids were received by the respondents. On scrutiny, the bid Evaluation Committee declared the bid of the petitioner as non-responsive due to his non fulfillment of bidding capacity as per Clause 28.2.a of Standard Bid Document. The Clause, being relevant, is being reproduced hereinafter :-

"28.2.a : Bidding Capacity :- Bidders who meet the minimum qualification criteria will be qualified only if their assessed available bid capacity for construction works is equal to or more than the total bid value. The available bid capacity will be calculated as under : -

Assessed Available Bid capacity = (A x N x M - B) where

A = Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the financial year in which bids are revised at the rate of 8 percent a year) taking into account the completed as well as works in progress.

Last Five years (excluding current year)

Amount of work done in each financial Year

Total annual volume of civil engineering construction work executed and payments received in the last five years preceding the year in which bids are invited. (Attach/upload certificate from Chartered Accountant)

(Rs. In lakhs)

Year 2014-15

Year 2015-16

Year 2016-17

Year 2017-18

Year 2018-19

N = Number of years prescribed for completion of the works for which bids are invited (period up to 6 months to be taken as half-year and more than 6 months as one year.

M = 2

B = Value, at the current price level, of existing commitments and on-going works to be completed during the period of completion of the works for which bids are invited. The details should be on the formats indicated in condition No. 19."

A reading of the above Clause makes it evident that eligible bidders will be declared qualified only if their assessed available bid capacity for the construction works is equal to or more than the total bid value. The total bid value of the tendered work as per tender document is Rs. 50,78,719/-. The formula for assessing the available bid capacity of the bidder is also outlined in the above extracted clause.

3. As per the stand taken by the respondents in the reply, in terms of Clause 28.2.a of the Standard Bid Document (extracted above), gross contract receipt of

any one year out of five years, viz. 2014-2015, 2015-2016, 2016-2017, 2017-2018 and 2018-2019 was to be taken into account for determining the bid capacity of the bidder. As per Clause 28.2.a of the Standard Bid Document, the Chartered Accountant report/certificate upto the year 2018-2019 was to be taken into consideration for determining bidding capacity of the bidder. In the petitioner's case, the Chartered Accountant's report showed his gross contract receipt as Rs. 5,33,212/- upto 2018-2019. Since this was less than the required bid capacity of Rs. 50,76,719/- under Clause 28.2.a of the Standard Bid Document, therefore, petitioner's bid was declared as non-responsive.

4. Learned counsel for the petitioner contended that petitioner's contract receipt for the year 2019-2020 cannot be excluded in determining his bidding capacity. In support of this submission, learned counsel for the petitioner made a reference to the words "financial year" occurring in Clause 28.2.a. We are afraid that the submission has been made only to be rejected. Clause 28.2.a of the Bid Document is very specific and unambiguous that assessed bidding capacity of an otherwise eligible bidder has to be equal to or more than total bid value of Rs. 50,76,719/- for him to be declared as qualified bidder. Further for assessing the bidding capacity of the bidder, a fixed formula has also been provided in the Clause. As per this formula, maximum value of Civil Engineering works executed in any one year during last five years are to be taken into account. What are those last five years, have also not been left to the bidder's speculation. Clause 28.2.a specifically denotes in column 2 of the table the last five years which are to be considered for assessing the bid capacity of the tenderer as 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19. Second column of the table in this Clause specifically excludes current year. Thus, not only the current year has been specifically excluded, but the five years which are to be included, have also been specifically mentioned in the Clause. Year 2019-2020 has not been included in the five years receipts of which are to be considered for determining the bid capacity of the tenderer.

It is not in dispute that Chartered Accountant Report/Certificate upto the year 2018-19 shows petitioner's gross receipts at Rs. 5,33,212/- i.e. less than required bid capacity of Rs. 50,76,719/-. Though, according to the respondents, even if the receipt of the petitioner for the year 2019-2020 of Rs. 28,82,650/- is considered, which as per Standard Bid Document cannot be taken into account, then also report of Chartered Accountant, dated 07.07.2020 shows his gross contract receipt as Rs. 34,15,862/- for two years i.e. 2018-2019 and 2019-2020. This again is less than the required bid capacity of Rs. 50, 76,719/-.

The petitioner has participated in the bidding process under the specific terms and conditions laid down in Standard Bid Document. The terms and conditions of bid have not even been challenged by the petitioner. Hon'ble Apex Court in Vidarbha Irrigation Development Corporation Vs. M/s Anoj Kumar Garwala, 2019 (2) Scale 134, after considering Bakshi Security & Personnel Service Pvt. Ltd. Vs. Devbishan Computed Pvt. Ltd., 2016 (8) SCC 446 and Afcons Infrastructure Ltd.

Vs. Nagpur Metro Rail Corporation Ltd., 2016 (16) SCC 818, held that essential condition of a tender has to be strictly complied with and that words used in the tender document cannot be ignored or treated as redundant or superfluous. Relevant para from the judgment is reproduced hereinafter :-

"15. It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous - they must be given meaning and their necessary significance. Given the fact that in the present case, an essential tender condition which had to be strictly complied with was not so complied with, the appellant would have no power to condone lack of such strict compliance. Any such condonation, as has been done in the present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court."

The development work of Circular Road under the tender in question for Shimla Smart City Project is otherwise of prime importance and is a time bound project. Learned Deputy Advocate General has emphasized that in case the work is not completed during this financial year, the funds allocated for the same will lapse.

In view of the foregoing observations, looking from any angle, we find no illegality in respondents' rejecting the bid of the petitioner as non-responsive for non compliance of Clause 28.2.a of Standard Bid Document. The writ petition is accordingly dismissed. Pending applications, if any, also stand disposed of.