
(2013) 12 GUJ CK 0107
In the Gujarat High Court

Case No : Special Civil Application No. 15584 of 2013

Ayush Ajay Construction Private Limited	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0107

Hon'ble Judges : Vijay Manohar Sahai, J;A.G. Uraizee, J

Bench : Division Bench

Advocate : Mihir Joshi, assisted by Mr. Ashish H. Shah, for the Appellant; Maulik Nanavati, AGP, for the Respondent

Final Decision : Allowed

Judgement

Vijay Manohar Sahai, J.—We have heard Mr. Mihir Joshi, learned Senior Counsel assisted by Mr. Ashish H. Shah appearing for the petitioner and Mr. Maulik Nanavati, learned Assistant Government Pleader appearing for the respondents. The respondents issued a tender Notice No. 2 of 2013-14 inviting bids from the Contractors for collection of toll from Toll Plaza, Near Bamanbore junction and near Bagodara on Ahmedabad - Kandla National Highway No. 8-A. As per the tender notice, the estimated value of the tender was Rs. 54,64,22,500/-. The last date for submission of online technical bid was 8.7.2013 and the date of opening of the technical bid was 9.7.2013. As per Clause No. 6.2 of the tender notice, the Contractor has to pay Earnest Money Deposit of Rs. 2,73,21,125/- in the form of Fixed Deposit Receipt in favour of Executive Engineer payable at Rajkot. The said FDR was required to be issued from any nationalized Bank, having validity upto six months period.

2. In pursuance of the above tender, the petitioner submitted its bid along with the EMD of Rs. 2,73,21,125/- in the form of FDR issued by Dena Bank in favour of Executive Engineer payable at Rajkot. Apart from the petitioner, one Ashirwad Industries and Infrastructure had also submitted its bid.

3. The Ashirwad Industries and Infrastructure had submitted its bid for a sum of Rs. 54,90,00,000/- whereas the petitioner had submitted its bid for a sum of Rs. 51,37,00,000/-. Since the bid of Ashirwad Industries and Infrastructure was higher, it was accepted and the petitioner's bid was lower than the minimum bid price mentioned in the Tender notice, it was rejected. Thereafter, the respondents called upon Ashirwad Industries and Infrastructure to complete the formalities so that the contract can be executed between the parties. However, it appears that, Ashirwad Industries and Infrastructure did not deposit security deposit and hence, the respondents forfeited the earnest money deposit paid by Ashirwad Industries and Infrastructure.

4. Thereafter, the respondents have issued second tender notice on 12.8.2013 inviting online bids from the Contractors for the same Toll Plaza. The last date for submission of technical bid was initially 29.8.2013. However, the same has been extended from time to time and lastly, it is extended till 19.12.2013.

5. On 26.8.2013, the petitioner had made a request to the respondents to refund its EMD of Rs. 2,73,21,125/- submitted in the form of FDR with the respondents. The petitioner also stated in the said letter that the petitioner is interested in participating in the bid in pursuance of the second tender notice.

However, as a matter of fact, the petitioner never made any bid in pursuance of the second tender notice. As stated in the petition, the petitioner did not make any bid with regard to second tender notice and was only interested in refund of its EMD.

6. Be that as it may, once the respondents have issued second tender notice, the first tender notice comes to an end and the petitioner was entitled for refund of its EMD as no contract was awarded to him. The petitioner has not made any bid in response to the second tender notice though the last date of submitting the bid in pursuance of second tender is yet to expire.

7. Instead of refunding the EMD of the petitioner, the respondents by the communication dated 3.10.2013 informed the petitioner that the respondents have accepted the bid of the petitioner of Rs. 51,37,000/- and directed the petitioner to submit its security deposit within 10 days so that the contract can be executed, failing which the EMD paid by the petitioner would be forfeited by the respondents. It is this decision of the respondents which is under challenge in the present writ petition.

8. In our opinion, once the second tender notice was issued by the respondents, it was not open for the respondents to issue any letter to the tenderer of the first tender notice for awarding a contract to him. Therefore, the communication dated 3.10.2013 written by the Executive Engineer, National Highway Division, Rajkot is illegal and deserves to be quashed as second tender notice is advertised and bids have been invited and time to submit the bid is yet to expire and it would be expiring on 19.12.2013. The respondents should have returned the amount of EMD of the petitioner once the second tender notice was advertised

and the petitioner made a request by letter dated 26.8.2013. It could not be retained by the respondents in any manner.

9. Learned counsel for the petitioner states that in case, the EMD paid by the petitioner is returned within a week from today, they will not claim any interest from the respondents.

10. In this view of the matter, the impugned communication dated 3.10.2013 written by the respondents accepting the bid of the petitioner being totally illegal, deserves to be quashed. In our opinion, the interest of justice would be served if we direct the respondents to return the Earnest Money Deposit of Rs. 2,73,21,125/- deposited by the petitioner in the form of Fixed Deposit Receipt within a week from today. In the result, this writ petition succeeds and is allowed. The communication dated 3.10.2013 written by the Executive Engineer, National Highway Division, Rajkot (Annexure Q to the writ petition) is quashed. The respondents are directed to return the Earnest Money Deposit of Rs. 2,73,21,125/- deposited by the petitioner in the form of Fixed Deposit Receipt within a week from today. Rule is made absolute. There shall be no order as to costs. D.S. Permitted.