

(2023) 05 OHC CK 0287
In the Orissa High Court
Case No : Writ Petition (C) No. 17120 Of 2023

BGR Mining And Infra Ltd., Bhubaneswar	APPELLANT
Vs	
Mahanadi Coalfields Ltd., Sambalpur And Another	RESPONDENT

Date of Decision : 25-05-2023

Acts Referred:

Citation : (2023) 05 OHC CK 0287

Hon'ble Judges : K.R. Mohapatra, J;M.S. Sahoo, J

Bench : Division Bench

Advocate : Sushanta Kumar Dash, Nikhil Pratap, Rakesh Sharma, Beda Prakash Panda, Ramakanta Mohanty, Kabir Kumar Jena

Final Decision : Disposed Of

Judgement

W.P.(C) NO. 17120 of 2023 & IA No.7774 of 2023

1. This matter is taken up through hybrid mode.
2. Mrs. Sumitra Mohanty, learned counsel along with her associates enters appearance on behalf of Opposite Party No.2 by filing of Vakaltnama in Court is taken on record. Memo of Appearance of Mr. Mohanty, learned Senior Counsel on behalf of Opposite Party No.2 filed in Court is also taken on record.
3. Petitioner in this writ petition assails the action of the authorities under the Mahanadi Coalfields Limited (MCL) in disqualifying its technical bid for the work 'Development and Operation of Balabhadra OCP as per Part-II' (NIT-179).
4. In course of hearing, Mr. Sharma, learned counsel for MCL submits that a single bid or single valid bid can be accepted in terms of Clause-6 of 'Contract Management Manual-2022' of Coal India Limited of which MCL is a subsidiary. Clause-6 of the said Manual reads as under:-

"6. Bid Opening & Tender Evaluation:

As per the Guidelines for e-Procurement of Works and Services.

Acceptance of offer shall be from the Tender Accepting Authority (TAA) having delegation of power to accept recommended value of award.

There are occasions where in response to call for Bid, only single Bid or single valid bid is received. The powers of accepting such single Bid shall be as per delegation of power of the accepting authority.

Rejection of Single Bid: It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly, the actual costs of retenders; secondly the delay in executing of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid.

Lack of competition shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process should be considered valid provided following conditions are satisfied:

(i) The procurement was satisfactorily advertised and sufficient time was given for submission of bids;

(ii) The qualification criteria were not unduly restrictive;

and

(iii) Prices are reasonable in comparison to market values."

5. Mr. Dash, learned counsel for the Petitioner, however, relies on a decision of this Court in M/s Debabrata Samal Vs. State of Odisha and others, reported in 2017 (I) ILR Cut-231, in which relying upon the provisions of OPWD Code, this Court has held as under:-

"5. Prior to 2015, in case of single tender, the approval of next higher authority was to be obtained before accepting the tender. After amendment of the OPWD Code in 2015, the said option of accepting the single tender after obtaining approval of the next higher authority was left open only in the case of retendering, and not in the first tender. As such, if it is held that the tender of the petitioner was to be treated as a 'single tender', then after the amendment of Clause-29 of the OPWD Code 2015, the only option left with the opposite parties is to retender, as even after obtaining approval of the next higher authority, the tender could not have been accepted, as such 'single tender' was in response to the first tender call notice and not retender.

6. The purpose of not accepting the single tender or bid is to ensure competition among the bidders. The exception to accept the single tender is now provided only in case of retendering, where in the initial tendering process also there was a single bid or tender. Thus, the object is very clear that there should be competitive bidding between the parties before the tender is accepted. Merely because five tenders were filed, it would not mean that it is a case of multiple

tenders, unless two or more tenders are found to be in order and accepted. If the submission of learned counsel for the petitioner is accepted that since there were five tenders, thus even if only one tender was found to be in order, then too it should not be treated as 'single tender', the same would not serve the purpose as there would be no competitive bid for the work proposed to be done. If there is only one tender which remains valid, and the financial bid of the single tender is to be opened, then there would be absolutely no competitive price bidding and if the same is accepted, it would actually amount to be a case of 'single tender', even though there may have been five tenderers at the threshold, out of which one remains valid."

The Bench in the said case also relied upon few other case law including the case of State of Jharkhand and others Vs. M/s CWE-SOMA Consortium, reported in AIR 2016 SC 3366, in which similar view has been taken.

6. In view of the above, this Court feels that the matter requires consideration.

7. Hence, issue notice.

8. Since learned counsel for Opposite Parties have already entered appearance, an extra copy of the writ petition along with annexures shall be served on Mr. Sharma, learned counsel for MCL. A copy of the writ petition shall also be served on Mrs. Mohanty, learned counsel for Opposite Party No.2 within three days.

9. Mr. Sharma, learned counsel for MCL prays for fifteen days time to file counter affidavit in this case.

10. Counter Affidavit(s), if any shall be filed by 9th June, 2023 serving copy thereof on learned counsel for the Petitioner and Opposite Party No.2.

11. Put up this matter on 26th June, 2023, by which time counter/rejoinder, if any shall be exchanged.

12. As an interim measure, it is directed that MCL may proceed with the evaluation process of the BIDs of NIT-179, but work order shall not be issued till the next date.

Issue urgent certified copy of the order on proper application.

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