(2015) 09 KAR CK 0334

In the Karnataka High Court

Case No : Writ Petition No. 11532/2015 (GM-TEN)

Chaithanya Bharathi Grameena Abhivrudhi Samsthe APPELLANT

Vs

The General Manager, South Western Railway and Others RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0334

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Y.K. Narayana Sharma, for the Appellant; N.S. Sanjay Gowda, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.S. Bopanna, J—The petitioner is assailing the letter of acceptance dated 28.01.2015 as at Annexure-F to the petition issued by the third respondent in favour the fourth respondent and is seeking that the third respondent be directed to accept the bid/offer of the petitioner and issue letter of acceptance/work order to the petitioner.

2. The respondents invited the bids for providing house keeping in hospitality services for Officers Rest House, Officers Holiday Home/ARC, Supervisors Rest House and Subordinates Rest House as also Holiday Home for a period of two years. The petitioner and fourth respondent among others offered their bid in response to the tender notice dated 02.09.2014. The sealed tenders were to be dropped in the special tender box in the office of the third respondent between 13.10.2014 and 15.10.2014. Since the work involved house keeping apart from providing workers for maintenance, the composite amount was to be quoted which would include the wages payable to the workers engaged in that regard. The amount to be therefore quoted cannot be less than the minimum wages that is fixed by the competent authority as per the notification that would be in vogue. Both the petitioner and the third respondent have quoted the total amount that would be incurred by them as payable per employee, per day, to the

workers who would be engaged by them as per the minimum wages payable which in effect would mean that they have not included any other cost that is to be incurred towards maintenance, house keeping and other related works. The rate of Rs. 24,570/- per month quoted by the fourth respondent is the exact amount that would be incurred towards the minimum wages of three employees on calculating the amount per day. The amount derived and quoted by the fourth respondent is as per the order No. 1/2(6)/2014-LS II dated 04.03.2014 whereunder the minimum wages was fixed.

3. The petitioner while adopting the same method of calculation has quoted the sum of Rs. 24,840/- per month. The said amount has been derived taking into consideration the minimum wages which had been revised and enhanced by the order No. 1/17(3)/2014-LS-II dated 29.09.2014 which was to be given effect from 01.10.2014. As noticed the bid/offer in the instant case was to be submitted between the periods 13.10.2014 to 15.10.2014, on which day the order dated 29.09.2014 fixing the minimum wages was in force. The contention of the petitioner therefore is that the fourth respondent not having quoted the minimum wages that was prevalent as on the date of submission of the bid, cannot claim to be the L1 tenderer though the total amount indicated is lesser than the amount quoted by the petitioner. Since the law applicable on the said date is not kept in view and the minimum amount payable is not quoted, the bid submitted by the fourth respondent should have been held as ''non-responsive'' and in such event, the amount quoted by the petitioner being the lowest among the other tenderers, the bid of the petitioner should have been accepted is the contention.

4. The respondents have however sought to justify their action. It is their contention that the minimum wages order dated 04.03.2014 was the one which was in force as on 02.09.2014 when the tender notification inviting the bids was issued. It is therefore contended that when the bid has been submitted based on the minimum wages order which was in force as on the date of the tender notification, the same was required to be considered. The respondents No. 1 to 3 further contend that though a subsequent notification ordering the enhancement of the minimum wages had been issued prior to completion of the tender process, the Tender Accepting Authority was of the opinion that if the same is taken into consideration, it would have altered the tender condition. It is further contended on behalf of respondents No. 1 to 3 that the additional special condition No. 2 of the tender document provides that the contractor shall pay the wages for care takers engaged as prescribed by the Ministry of Labour and Employment as given in the Minimum Wages Act. In that view, the requirement of law in that regard to pay the minimum wages would be satisfied and as such even if a lesser wage is indicated for submitting the bid, the same would not be contrary to law.

5. In the above backdrop, there is no dispute to the fact that even though as on the date of issue of tender notification, the minimum wages order dated

04.03.2014 was in force, the subsequent notification enhancing the minimum wages was made by the order dated 29.09.2014 which had come into force with effect from 01.10.2014. The tender document provided that the sealed tender document in response to the tender notification dated 02.09.2014 was to be dropped in the tender box which would be made available for dropping the tenders on 13.10.2014 and 14.10.2014 during office hours and on 15.10.2014 (date of opening of tender) up to 15 hours in the office of the Divisional Railway Manager, Works, South Western Railway, Mysore. If that be the position, though the minimum wages order dated 04.03.2014 was in force as on the date of issue of the tender notification, as on the date of submission of the tenders on 13.10.2014 the minimum wages order dated 29.09.2014 had come into force on 01.10.2014. In such situation, when the minimum wages as fixed itself was the price quoted by both the petitioner and the fourth respondent, but the same being under two different orders, the minimum wage that was prevailing on the date of submission of the offer/bid ought to have been reckoned and the price was required to be quoted based on the same. This aspect ought to have been taken into consideration by the Tender Committee while making the recommendation and the Tender Accepting Authority while taking the decision relating to the acceptance of the bid.

6. In order to ascertain the manner in which the consideration has been made, this Court had secured the Tender proceedings recorded, through the learned counsel for respondents No. 1 to 3. The Minutes of the Tender Committee meeting held on 27.01.2015 will disclose that while taking note of the details of the tender received, the amount as quoted by the six tenderers has been tabulated. The fourth respondent has quoted the value of Rs. 23,58,720/- while the petitioner has quoted Rs. 23,84,640/-. Hence, they have been shown as L1 and L2 respectively.

7. The discussion of rate reasonableness is considered at para No. VIII. The discussion therein is only with regard to the rate quoted by the fourth respondent as L1 tenderer and it has been indicated that considering the minimum wages of Rs. 273/- to be given to an employee, the rate quoted by the fourth respondent as L1 tenderer has been recommended for acceptance. If in the said consideration, the rate quoted by the petitioner was also discussed, it would have been evident that as on that date the minimum wages payable to an employee was Rs. 276/- and if that was taken into consideration the total price quoted by the petitioner would be commensurate to the minimum wages order dated 29.09.2014 which was in force. If the committee had applied its mind to this aspect, it would have noticed that the offer/bid of the fourth respondent though lesser than that of the petitioner, was due to this fact. When the tender conditions itself had provided that the minimum wages was to be paid, it would not be open to the respondents No. 1 to 3 to contend that the consideration of the subsequent notification would have altered the tender condition.

8. In fact, the condition stated in the tender document requiring the tenderer to

pay the minimum wages is to bind the tenderer to pay the minimum wages, if the same is enhanced after the work is entrusted so that the tenderer should not insist on paying only the amount that had been quoted in the bid/tender. But while offering the bid/tender, the law prevalent should be complied. If the contention of the respondents is accepted, injustice would be caused to the person who has complied with law, while the one who does not adhere to the legal requirement would be benefited to secure the entry through the back door. That is because, if the same is permitted, one can quote the amount lesser than the minimum wages to qualify as L1 tenderer and thereafter whether the minimum wages would be paid after bagging the work order is a consideration for the future. But, the person who honestly quoted the prevailing minimum wages would not be considered as L1.

9. In the instant case, the amount quoted by the petitioner was marginally higher than the fourth respondent which was due to the fact that the minimum wages prevailing was taken into consideration. The fourth respondent was termed as L1 tenderer because he had quoted the amount which was not the minimum wage prevailing as on the date of submission of tender and any act contrary to law cannot be permitted by respondents No. 1 to 3.

10. Therefore, if the bid submitted is less than the minimum wage, it will have to be construed as being contrary to law and therefore not responsive, more particularly when the other tenderers have taken into consideration the prevailing minimum wage. This ought to have been noticed by the Tender Committee and a consideration should have been made in that regard. Since the same has not been done, the recommendation dated 27.01.2015 cannot be sustained. Consequently, the letter of acceptance dated 28.01.2015 based on such recommendation is also not sustainable. Accordingly, the Tender Committee is required to re-do the process keeping in view these aspects as indicated above and a fresh recommendation is to be made, based on which the letter of acceptance is to be issued taking into consideration these aspects as on the date of submission of bids/tender.

11. Though the Tender Committee and the Tender Accepting Authority were not justified in accepting the fourth respondent as the L1 tenderer, the justification sought to be put forth before this Court that the minimum wages would be paid despite quoting lesser amount while submitting the bid is a self defeating contention. If that be the position, it would be a situation that at the time of assessment of the tender, the bid of the fourth respondent will be considered as L1 because the minimum wage of Rs. 273/- per employee is taken into account, but immediately on the work order being issued, the amount of Rs. 276/- will have to be paid as the minimum wages. No doubt, it is also contended that respondents No. 1 to 3 being principal employer has ensured that the minimum wages are paid. In the instant case, it is noticed that no other amount other than the minimum wages is quoted and therefore it cannot be expected that the fourth respondent would pay more amount to the employee than the amount

received from the respondents No. 1 to 3. This would lead to exploitation of the employees who are likely to be forced to receive less than the minimum wage which not only cannot be permitted, but the respondents No. 1 to 3 being a public authority also have an obligation to ensure that the legal requirements are adhered to.

12. In the result, the following:

ORDER

"(i) The recommendation of the Tender Committee dated 27.01.2015 and the Letter of Acceptance dated 28.01.2015 issued in favour of the fourth respondent are set aside.

(ii) The process shall be redone in terms of the observations made in this order, within four weeks from the date of receipt of a copy of this order.

(iii) The petition is allowed in the above terms with no order as to costs."