
(2016) 10 JH CK 0065
In the Jharkhand High Court
Case No : L.P.A. No. 422 of 2014

Chandra Shekhar Prasad Singh

APPELLANT

Vs

Central Coalfields Ltd.

RESPONDENT

Date of Decision : 19-10-2016

Acts Referred:

Citation : (2017) AIR(Jharkhand) 79 : (2017) 2 AIRJharR 523 : (2017) 2 JCR 427

Hon'ble Judges : Mr. D.N. Patel and Mr. Rajesh Shankar, JJ.

Bench : Division Bench

Advocate : M/s Rajiv Ranjan and Shreshth Gautam, Advocates, for the Appellant; Mr. Amit Kr. Das, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel, J.—This Letters Patent Appeal is directed against the judgment and order dated 1st September, 2014 delivered by the learned Single Judge in W.P.(C) No. 2830 of 2014, whereby the petition preferred by the original petitioner (present appellant) was dismissed and hence, the original petitioner has preferred this Letters Patent Appeal.

Arguments canvassed by the counsel for the appellant

2. Counsel for the appellant submitted that this appellant made application in pursuance of the E-tender No. GM (CMC)/ Piparwar/2014/110 dated 31st January, 2014 for loading of washed coal/raw coal from sliding no.01 and 02 of Bacra Spur Siding for 36 months. It is submitted by the counsel appearing for this appellant that only error committed by this appellant is that while supplying facts along with the bid documents this appellant has entered "0" (Zero) in the column of work experience, certificate number and date in the bid document. In fact, this appellant has no certificate of the work experience and intention was to furnish information to that effect but instead of writing the word "Nil", "0" (Zero) has been written inadvertently. It was also a condition as per the Notice Inviting

Tender that the lowest bidder was required to produce the documents supporting his work experience and therefore, when it was found out that this appellant has no experience certificate, the Earnest Money worth Rs.4,86,300/- was forfeited and this appellant has been blacklisted for a period of one year running from 28th May, 2014 to 27th May, 2015. This period is already over and hence this matter is mainly for the earnest money which have been forfeited by the respondents. It is further submitted by the counsel for the appellant that in fact, in the column of work experience, certificate number and date of the bid document "0" has been written instead of "Nil" inadvertently and only intention was to furnish information that the appellant has no experience certificate. This aspect of the matter has not been properly appreciated by the learned Single Judge while dismissing W.P.(C) No. 2830 of 2014. In fact, due to this small error on the part of the appellant, the respondents have not incurred any loss and hence, the Earnest Money should have been refunded.

3. Counsel appearing for the appellant has placed reliance upon the judgment delivered by the Hon"ble Supreme Court in *Kailash Nath Associates v. Delhi Development Authority and Another* reported in (2015) 4 SCC 136, Para 42, 43 and 43.1 and in view of this decision, if no loss has been caused to the respondents, the earnest money cannot be forfeited and hence, the aforesaid Earnest Money forfeited by the respondents may kindly be ordered to be refunded.

Arguments canvassed by counsel for the Respondents

4. Counsel appearing for the respondents submitted that in the Notice Inviting Tender, Clause No. 7 is related to eligibility criteria and sub clause A in Clause No. 7 is with respect to work experience. Said document is at Annexure 1 to the Memo of this Letters Patent Appeal and it has been mentioned at Clause No. 7 (A) (iv) that the bidder will have to furnish information with respect to work experience certificate number and date.

5. It is further submitted by counsel appearing for the respondent that the relevant paragraph of the bid document is annexed to the memo of this Letters Patent Appeal and in Column (iv) of Clause 7 A, which is pertaining to work experience certificate Number and date this appellant has written "0" (Zero). As a Number viz. "0" is entered the bid was accepted because of the Pre-programmed Computerization System, but, when this appellant was found the Lowest Number One and he was called by the respondents, the appellant could not produce the required certificate. Thus, this appellant has misguided the respondents by supplying an incorrect information of vital importance. In fact, the appellant-bidder was not entitled at all to bid. Clause 7 of the Notice Inviting Tender is clear, but, deliberately this appellant has written a "0" (Zero) in the Column (iv) pertaining to work experience certificate Number and date since "0" is also a number. Unnecessarily the entire process has to be started afresh by the respondents incurring some loss as a Tender process involves some expenditure also and because of this fact the appellant was blacklisted for one year for the

period from 28th May, 2014 to 27th May, 2015 and as the error committed by this appellant is deliberate, the Earnest Money has also been forfeited. The respondents not only had to incur expenditure for floating a fresh Tender, but, the delay in execution of the contract for which the earlier NIT was issued will also result into further loss to the respondents. The aforesaid total loss is certainly much higher than the Earnest Money deposited by the appellant. This aspect of the matter was properly appreciated by the learned Single Judge, while dismissing the writ petition preferred by the appellant.

Reasons:

6. Having heard counsel appearing for both sides and looking to the facts and circumstances of the case, we find no reason to entertain this Letters Patent Appeal mainly on the following grounds:

(I) Notice Inviting Tender was dated 31st January, 2014 for Loading of washed coal/Raw coal from siding no. 01 & 02 of Bachra Spur siding by contractor pay loader including levelling of wagons, sprinkling of lime and track cleaning etc. under CHP-CPP, PPR for a period of three years.

(II) This appellant applied in pursuance of the Notice Inviting Tender, Clause 7 A of which reads as under:

"7. Eligibility Criteria

A Work Experience : The intending tenderer must have in its name of having successfully executed works of similar nature (such as transportation/removal of coal/Overburden/shale/extraneous materials/sand etc.) valuing 65% of the "Annualized Value" of the work or estimated value of work, whichever is less put to tender in any year (a "year" in this context is a continuous period of 365 days starting at any date of the year) during last 7(seven) years ending last day of month previous to the one in which bid applications are invited.

"Annualized value" of the work shall be calculated as the "(Estimated Cost/Period of completion in days) x 365" The cost of executed works shall be given weightage to bring them at current price level by adding 5% for each completed year (total number of days/365) after the end date of experience till the last day of month previous to one in which e-tender website.

i. Agreement Number/Work Order Number of each work/experience of similar nature, to be considered for eligibility

ii. Name of work/s of similar nature, to be considered for eligibility

iii. Name of Employer/Work Order issuing authority of each work/ experience

iv. Work experience certificate number & date

v. Period of work/experience of bidder to be considered for eligibility

vi. Executed Value of work against each experience

vii. Percentage (%) share of each experience (100% in case of an individual/proprietary firm or a partner in a partnership firm and the actual % of share in case of a Joint Venture).

Note: In case of bidder is a Joint Venture, the work experience of any or all of the individual partners of JV may be furnished as the work experience of the bidder."

(Emphasis supplied)

There is also a clause of forfeiture, viz. Clause No. 19 and the relevant part of the Clause No. 19 which is pertaining to the forfeiture of earnest money is quoted hereunder:

"19.

In case the L-1 bidder fails to produce the original documents as stated above within the specified period of seven days after the date of Reverse Bidding or if any of the information furnished by L-1 bidder on-line/off line is found to be false by the Tender Committee during verification of original document, which changes the eligibility status of the bidder, then the tender will be cancelled and re-tendering will be done with forfeiture of EMD and banning of L-1 bidder for one year from participating in future tenders."

(Emphasis supplied)

(III) From the facts of the case it appears that the bid documents supplied by the appellant to the respondents reveal that in Column No.7 viz. the column relating to Work experience certificate number & date this appellant has entered a "0" (Zero) due to which initially his bid was considered and when this appellant was found the Lowest Number One and was called to produce original of work experience certificate this appellant failed to do the same and therefore, this appellant was blacklisted for the period running from 28th May, 2014 to 27th May, 2015 and the Earnest Money was forfeited.

The forfeiture of Earnest money amounting to Rs.4,86, 300/- by the respondents is due to the reason that floating of fresh Tender delaying the whole process has a financial implication also.

(IV) It is vehemently contended by the counsel for the appellant that error committed by this appellant is insignificant in nature viz. instead of writing the word "Nil" this appellant has written a "0" and hence neither this appellant can be blacklisted nor the Earnest Money deposited by this appellant should have been forfeited.

We are not accepting this contention mainly for the reason that looking to Clause 7 A iv of the Notice Inviting Tender, it appears that even if the mistake of entering "0" instead of the word "Nil" is an insignificant one, but, the fact remains that the appellant cannot be allowed to participate in the bidding process at all because this appellant has no work experience. This appellant

might have been in possession of some work order and work process might have been going on, but, the fact remains that this appellant could not produce the required work experience certificate at the relevant time and hence, looking to Clause 7A iv, this appellant was not even eligible for bidding.

(V) Experts are supposed to know how a bidding process is conducted. They also know as to what difference it will make if the word "0" is written instead of the word "Nil". If word "Nil" had been used, perhaps, the bid of the appellant may not have been accepted by the respondent at all. Those, who are aware of such nuances relating to pre-programmed computerization system they can always bypass such computerized screening by committing a deliberate error.

We do not consider this error committed by the appellant as a simple inadvertence. In fact, appellant was well aware that since it was not in possession of any work experience certificate it could not participate at all in the bidding process. Hence, no error has been committed by the respondents in blacklisting this appellant and forfeiting the Earnest Money. This aspect of the matter has been appreciated by the learned Single Judge while dismissing W.P. (C) No. 2830 of 2014 preferred by the appellant.

(VI) Counsel appearing for the appellant has relied upon the decision rendered by Hon''ble the Supreme Court in Kailash Nath Associates v. Delhi Development Authority and Another reported in (2015) 4 SCC 136, para 42, 43 and 43.1.

The facts of the present case are quite different from the facts of the aforesaid reported decision as in the present case NIT has been cancelled because of deliberate wrong mentioning of the facts by this appellant. Now, new NIT is to be issued incurring further expenditure which is a loss to the respondent. Moreover, project for which the NIT was issued has got delayed resulting in further loss to the respondents. Thirdly, a fresh bidder may quote higher price and therefore, respondent may have to pay higher price to the new Lowest Number One.

We are not concerned with mathematical calculation of several type of losses incurred by the respondents, but, fact remains that whenever NIT is cancelled and a new process is initiated to get another Lowest Number One, the process of giving contract can always be delayed and a delayed project always results into loss and hence the Earnest Money can be forfeited by the respondents in the present case.

7. As a cumulative effect of the aforesaid facts and reasons, it appears that no error has been committed by the learned Single Judge while dismissing W.P. (C) No.2830 of 2014 vide order dated 1st September, 2014.

8. Therefore, as there is no substance in this Letters Patent Appeal, the same is, hereby, dismissed.