
(2005) 02 OHC CK 0006
In the Orissa High Court
Case No : Writ Petition (C) No. 14503 of 2004

ERBIS Engineering Company Limited	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 99 CLT 714

Hon'ble Judges : M.M. Das, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Dharanidhar Nayak, R.K. Pradhan, M. Mohanty, U.R. Jena, G. Dash, G. Rath, N.K. Mohanty, R.R. Rout, S. Mohanty and P.K. Sahoo, for the Appellant; B.K. Mahanti, A.G. (For O.P. Nos. 1 to 3) and I. Mohanty, R. Roy, A.K. Mohanty, S. Kar, B.K. Sharma, K.A. Guru and N. Patnaik, (For O.P. No. 4), for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—The Director of Medical Education and Training, Orissa, Bhubaneswar published a tender call notice in the Times of India inviting tenders in sealed covers from reputed manufacturing firms and/or authorised distributors for supply of instrument and equipment items for eight Regional Diagnostic Centres in the State of Orissa. In response to the said tender call notice, the Petitioner and Opposite party No. 4 among others submitted their bids for C.T. scan machines. The petitioner's case in the Writ Petition is that on 15.10.2003 after 11 O'clock the covers containing the technical bids were opened and on 30.12.2003 the covers containing the price bids were opened and it was found that the price bid of the petitioner was the lowest and yet the petitioner was not called for negotiation for purchase of C.T. scan machines. Aggrieved, the petitioner has filed this Writ Petition for a direction on the Opposite Parties 1, 2 and 3 to accept the lowest bid of the petitioner for supply of the C.T. Scan machines.

2. On 10.12.2005, the Court directed the Learned Counsel for the petitioner to furnish copies of the Writ Petition on the Learned Additional Government Advocate and on the Learned Counsel appearing for the Opposite Party No. 4 and further directed that the matter be listed on 13.1.2005 and till then Opposite Party No. 4 shall not supply C.T. scan machines. The said interim order has continued to remain in force.

3. A counter affidavit has been filed on behalf of the State of Orissa and the Director of Medical Education and Training, Orissa, Bhubaneswar, Opposite Party Nos. 1 and 2 respectively, stating that as per the bid documents, the intending bidders were to submit their technical bid and price bids in separate sealed covers and the technical bids were to be opened first and thereafter the price bids of those bidders who were found to be technically qualified were to be opened. In Paragraph 7 of the counter affidavit, it is further stated that the State Government constituted a sub-committee consisting of the Professors of Radio Diagnostics of the three medical colleges, Deputy Director, Instruments & Equipment, Deputy General Manager, OCAC under the chairmanship of the Director of Medical Education and Training, Orissa and this technical sub-committee evaluated the technical bids of the eight bidders for C.T. scan machines and rejected five bidders including the petitioner as not technically qualified bidders in its meeting held on 5.12.2003 and thereafter the proceedings of the said meeting of the technical sub-committee were sent to the State-level Purchase Committee with the Commissioner-cum-Secretary to Government, Health and Family Welfare Department, Orissa as its Chairman and the said State-level Purchase Committee after considering the proceedings of the technical sub-committee decided that the ground of rejection should be intimated in the form of a statement. It is further stated in the said Para-7 of the counter affidavit that on 25.5.2004 the technical sub-committee indicated the grounds of rejection for supply of C.T. scan machines in respect of the five bidders whose technical bids were not found to have complied with the technical specifications. In Paragraph 8 of the counter affidavit, it is further stated that the statement was re-checked by the Professor of Radio Diagnostics, Berhampur and finally the technical bids of the five bidders including that of the petitioner was rejected.

4. The relevant terms and conditions relating to technical bids in Clauses 3.16, 8.1 and 9.8 of the terms and conditions for acceptance of the tender for supply of instrument and equipment items to the Government of Orissa annexed to the Writ Petition as Annexure-2 are extracted below :

"3.16 The tender has to furnish the price bid and technical bid Annexure-II & Annexure-III respectively in 2 sealed covers, which should be superscribed as cover containing price bid and cover containing technical bid respectively. The cover containing the technical bid would be opened first for evaluation. The covers containing the price bids of the tenders who are pre-qualified after evaluation of the technical bids will be opened thereafter.

8.1 The details of the Instrument & Equipment items are shown in Annexure-III.

The quantity mentioned is only the probable requirement and may be increased or decreased as per the decision of the Director of Medical Education & Training, Orissa. Besides, the tenderer is required to furnish information on the following in separate sheets.

- (a) Technical details of the equipments.
- (b) Comprehensive Maintenance Charges (CMC) for 8 years after the warranty period of 2 years.
- (c) Catalogues & Manuals.
- (d) Technical data sheet of the offered model.
- (e) Income Tax and Sales Tax Clearance Certificate.
- (f) Any other relevant papers.

9.8 The make/technology of the expensive equipments shall be such that upgradation with minimum charges will be possible in future."

It will thus be clear from Clause 3.16 of the terms and conditions for acceptance of the tender quoted above that the covers containing the technical bids were to be opened first for evaluation and the covers containing the price bids of the tenderers who are qualified after evaluation of the technical bid of the petitioner unless the petitioner was found to be technically qualified, the question of price bid of the petitioner being considered by the authorities did not arise.

5. The technical specifications of C.T. scan machines given in the bid documents which are relevant for disposal of this Writ Petition are as follows :

"Image reconstruction time should be 2 seconds or less."

"Optional accessories of medical colleges : pressure injector, C.T. guided biopsy attachment."

"Training : Training of two technicians in India in system operation, training of two doctors in India or abroad in system operation, placement of service engineer in Orissa for better & quick service."

The grounds of rejection of the technical bid of the petitioner as given by the technical sub-committee in their proceedings dated 5.12.2003 and in their signed statement are given hereunder:

"Not specified on optional items like Pressure injector, C.T. guided biopsy. Reconstruction kit is required to make reconstruction time 2 seconds."

As indicated above, one of the technical specifications for C.T. scan machines mentioned in the bid documents was that image reconstruction time of the C.T. scan machines should be 2 seconds or less and it appears that the technical sub-committee has found that the image reconstruction time of the Toshiba C.T. scan machine proposed to be supplied by the petitioner is more than 2 seconds and

this deficiency is sought to be made good by a reconstruction kit. In the counter affidavit filed on behalf of the Opposite Parties 1 and 2, the technical inadequacy of a reconstruction kit is explained thus :

"B. Reconstruction kit:

It may be a combination of Hardware and Software, which is additionally incorporated to the system, so there is always possibility of a time mismatch and failure compared to the models in which it is inbuilt. TOSHIBA technical bid offers 1.5 sec., provided a reconstruction kit is added to the existing model ASTION VF, which has inbuilt capacity of 3 Sec. Reconstruction time, hence such addition carries a risk of mismatch and failure. Further 3 Sec. Reconstruction time is an obsolete technology available 15 years back. This can be explained by giving a simple example.

Brain Scan : 20 Slices :

Model in real time Model not in real time Acquisition - 1 Sec. Acquisition - 1 Sec. - 20 Sec. Reconstruction - 1 Sec. Reconstruction -1.5 Sec. - 20 Sec. Total Time - 20 Sec. Total Time - 20 Sec. for 20 Slices for 20 Slices This model requires 30 Secs. more and this differences will be much more in case of Body Scan, where more number of Slices has to be taken."

It will thus appear that the technical sub-committee has taken a view that the existing model of Toshiba C.T. scan machine proposed to be supplied by the petitioner has an image reconstruction time of 3 seconds and the machine is thus technologically obsolete and even if a reconstruction kit is used in such existing model of Toshiba C.T. scan machine as per the tender of the petitioner, there is always a possibility of time mismatch and failure compared to the models in which the image reconstruction time of 2 seconds or less is inbuilt.

6. Mr. Nayak, Learned Counsel for the petitioner, submitted that under Paragraph 9.8 of the terms and conditions of tender quoted above, the make/technology of the expensive equipments shall be such that upgradation with minimum charges will be possible in future and therefore even if the technology of the Toshiba C.T. scan machine proposed to be supplied by the petitioner was technologically obsolete, the petitioner could provide a reconstruction kit to upgrade the technology of the Toshiba C.T. scan machine proposed to be supplied by the petitioner so as to advance the image reconstruction time from 3 seconds to 2 seconds or less. We are unable to accept the contention of Mr. Nayak. The instrument and equipment items sought to be supplied must first conform to the technological specifications in the bid documents as indicated in Clauses 3.16 and 8.1 of the said terms quoted above the additionally, the make/technology of the expensive equipments should be such that further upgradation with minimum charges would be possible in future as provided in Clauses 9.8 of the terms and conditions of tender quoted above. If we interpret Clause 9.8 of the terms and conditions of tender in the manner suggested by Mr. Nayak then an equipment or instrument may not conform to the technical specifications in the bid documents

and yet will have to be accepted as technically qualified because its technology may be upgraded with minimum charges in future so as to conform to the technological specifications prescribed in the bid documents. The High Court while exercising powers under Article 226 of the Constitution cannot possibly interfere with the aforesaid view taken by the Tender Sub-Committee with the reconstruction kit the Toshiba C.T. scan machine proposed to be supplied by the petitioner will not be technically suitable.

7. Mr. Nayak vehemently submitted that if the petitioner has been technically disqualified, the Opposite Party No. 4 should also have been technically disqualified because the Opposite Party No. 4 in its tender had not complied with the technical requirements relating to training quoted above. Mr. I. Mohanty, Learned Counsel for the Opposite Party No. 4, on the other hand, referred to the copy of the document in Annexure-C/4 annexed to the counter-affidavit of the Opposite Party No. 4 which is said to be enclosed along with the bid of the Opposite Party No. 4 to show that the Opposite Party No. 4 had offered to train two doctors and two technicians for a period of two to three weeks in any reputed center in India. We find from the copy of the proceedings of the meeting of the technical sub-committee held on 15.12.2003 and the copy of the statement signed by the members of the technical sub-committee on 25.5.2004 and 31.5.2004 annexed to the counter affidavit filed on behalf to the Opposite Parties 1 and 2 that the technical sub-committee has taken a view that the Opposite Party No. 4 has complied with the tender specifications. The petitioner has not made any specific pleadings in the Writ Petition and has not placed adequate materials before the Court to show that the Opposite Party No. 4 did not satisfy the training specifications and in absence of such pleadings and materials, we cannot possibly hold that the decision of the technical sub-committee to treat the bid of the Opposite Party No. 4 as conforming to the technical specifications prescribed in the bid documents was arbitrary or illegal.

8. For the aforesaid reasons, we find no merit in this Writ Petition and we accordingly dismiss the same and vacate the interim order passed in this case on 10.1.2005 and continued thereafter. Considering, however, the facts and circumstances, the parties shall bear their own costs.

M.M. Das, J.

9. I agree.