(2009) 01 MP CK 0041

In the Madhya Pradesh High Court

Gaurav Technica India Pvt. Ltd. APPELLANT

Vs

Municipal Corporation RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) ILR (MP) 1647 : (2009) 2 MPHT 262 : (2009) 3 MPLJ 554

Hon'ble Judges : A.K. Patnaik, C.J;P.K. Jaiswal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.

In response to a Notice Inviting Tender (NIT) dated 23-7-08 issued by the Municipal Corporation, Katni, the petitioner submitted a tender for item No. 5, of the NIT alongwith Fixed Deposit Receipt (FDR) of State Bank of India, Amlai Branch in favour of the Municipal Corporation, Katni, dated 31-7-08. The tender was opened on 2-8-08 while the tender of the petitioner and another contractor were not opened, the tenders of other tenderers were opened. The reasons for not opening the tender of the petitioner was on the ground that petitioner had not deposited the earnest money with the Municipal Corporation, Katni one day prior to the date of opening of the tender. Aggrieved the petitioner has filed this petition under Article 226 of the Constitution of India for direction to respondent to open the lender of the petitioner and consider the same.

A return filed by the respondent stating that the condition in the notice dated 27-2-08 was that the tenderer was to deposit the earnest money one day prior to the date of opening of the tender and this condition was mandatory and since the petitioner and another contractor had not deposited the earnest money with the Municipal Corporation, Katni one day prior to the date of opening of the tender, the tender of the petitioner and another contractor were not considered and only the tenders of those tenderers who had deposited the earnest money with the Municipal Corporation, Katni one day prior to opening of the tender were considered by the respondent.

Mr. M.K. Agrawal, learned Counsel for the petitioner submits that in the tender Notice Inviting Tender all that was mentioned was that earnest money in cash or FDR or NSC should be deposited one day prior to the date of opening of the tender and it was not mentioned in the Notice Inviting Tender that the Fixed Deposit Receipts (FDR) should be filed with the Municipal Corporation, Katni one day prior to the opening of the tender and for this reason the petitioner made FDR for earnest money in favour of the Municipal Corporation, Katni in the State Bank of India, Amlai Branch, one day prior to the date of opening of the tender but submitted the FDR alongwith his tender on the date of opening of the tender before the Competent Authority of the Municipal Corporation, Katni. He cited the decision of the Supreme Court in M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, , in which the Supreme Court found that as per terms of the tender notice the earnest money was to be drawn on Stale Bank of India but the tenderer had sent a cheque of Union Bank of India instead of the State Bank of India and the Supreme Court held that the authority who invited the lender could deviate from the terms of the tender notice, which were not essential conditions of eligibility and cheque of Union Bank of India could be treated as sufficient for the purpose of achieving the object of the conditions.

Mr. Agrawal, further submitted that the petitioner had quoted a rate 19% above the Approved Schedule of Rate whereas the tenderers whose tender were opened and considered by the respondent had quoted 39.8% and 38% above the Approved Schedule of Rate. He submitted that if the tender of the petitioner was considered, the Municipal Corporation, Katni would save about Rs. 12 lacs and, hence opening of the tender of the petitioner was in the public interest. He cited the decision of the Supreme Court in Raunaq International Ltd. v. I.V.R. Constructions Ltd. and Ors. (1990) 1 SCC 492, wherein it was held that Court should find out the competent public interest in the matter of judicial review of award of contract.

Mr. Arpan, J. Pawar with Hitendra Singh, learned Counsel for the respondent submitted that other tenderers, besides the petitioner and one of the tender, had deposited the earnest money with the Municipal Corporation, Katni one day prior to the date of opening of the tender and, therefore, there was no difficulty in understanding the stipulation in the NIT that the earnest money in the form of cash, FDR or NSC was to be deposited prior to the date of opening of the tender with the Municipal Corporation, Katni. He submitted that the petitioner and another tenderer did not submit the earnest money in the form of cash or FDR or NSC with the Municipal Corporation, Katni, one day prior the date of opening of the tender and the respondent, therefore, rightly did not consider the tender of the petitioner and another tenderer. He cited the decision of the Supreme Court in M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, , in which the Supreme Court found that instead of depositing the earnest money of a sum of Rs. 1.70 crores in the form of demand draft/pay order or cash as stipulated in the Notice Inviting Tender, the tenderer had deposited a cheque for Rs. 1.70 crores and the Supreme Court held that the Municipal Corporation was justified in rejecting the tender made by the tenderer as not fulfilling the conditions of the tender.

We have carefully perused the Notice Inviting Tender (NIT) and we find it states that earnest money deposit has to be made one day prior to the date of opening of the tender in the form of FDR or NSC or cash but it does not say that the receipt of FDR has to be deposited with the Municipal Corporation, Katni one day prior to the date of opening of the tender. So far cash is concerned, obviously the same will have to be deposited with the Municipal Corporation, Katni one day prior to the date of opening of the tender and so far as NSC is concerned, the same has to be placed in favour of the Municipal Corporation, Katni one day prior to the date of opening of the tender but so far as the Fixed Deposits is concerned, the same has to be deposited with the bank, in this case in favour of the Municipal Corporation, Katni one day prior to the date of opening of the tender. If at the time of opening of the tender, the tenderer apprised the authorities opening the tender that he had made a fixed deposit in favour of the Municipal Corporation, Katni one day prior to the date of opening of the tender, in our considered opinion, the condition of the tender notice that the earnest money has to be made one day prior to the date of opening of the tender is said to have been complied.

If the intention of the respondent was that whether Fixed Deposit was made in favour of the Municipal Corporation, Katni the Fixed Deposit Receipt was to be filed with the Municipal Corporation, Katni, one day prior to the date of opening of the tender then the same should have been stipulated clearly or expressly in the Notice Inviting Tender. As has been held by the Supreme Court in the Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others, :

We reiterate that whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the lender notice. The consideration of the tenders received and the procedure to be followed in the matter of acceptance of the tender should be transparent, fair and open.

In the present case, we have seen the Notice Inviting Tender dated 23-7-08 did not clearly or expressly state that the FDR receipt towards the earnest money deposit should be furnished to the Municipal Corporation, Katni one day prior to the date of opening of the tender. That Fixed Deposit was in fact made in favour of the Municipal Corporation, Katni one day prior to the date of opening of the tender, but Fixed Deposit Receipt was not furnished to the Municipal Corporation one day prior to the date of opening of the tender, but was submitted alongwith the tender of the petitioner to the Municipal Corporation on the date of opening of tender. Fairness demands that the tender of the petitioner be considered by the Municipal Corporation.

That apart, the petitioner claimed to have quoted a rate 19% above the Approved Schedule of Rate, whereas the two tenderers whose tenders have been considered have quoted much higher rates 31.9% and 38% above the Approved Schedule of Rate for the same work. Public Interest demands that Corporation should consider the tender of the petitioner alongwith tender of other valid tenderers.

Therefore, we allow the writ petition and direct the respondent to consider the tender of the petitioner alongwith valid tenders of other tenderers.