
(2015) 07 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : CWP No. 1286 of 2015

Hill Construction and Engineering Company	APPELLANT
Vs	
State of Himachal Pradesh and Others	RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Citation : (2015) 07 SHI CK 0028

Hon'ble Judges : Rajiv Sharma, J;Sureshwar Thakur, J

Bench : Division Bench

Advocate : Sumeet Raj Sharma, for the Appellant; Shrawan Dogra, Advocate General, M.A. Khan, A.A.G and Anup Rattan, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.

1. The petitioner company is a duly constituted partnership firm with Mr. Ashwani Goel and Sh. Sanjeev Kapila as partners thereof. The petitioner company is enlisted as a Class-A contractor with the Himachal Pradesh Irrigation and Public Health Department. The said enlistment stands renewed from time to time. The respondent No. 3 invited bids for the construction works nomenclatured "Augmentation of NOs LWSS in Matiana under IPH Sub Division Matiana, Tehsil Theog, District Shimla with estimated cost of Rs. 8,03,93,250/-" by way of e-tendering. The notice inviting tenders and its containing the eligibility criteria and other terms and conditions stands comprised in Annexure P-2. The petitioner company purchased the tender document and submitted its bid online. The eligibility criteria necessitating fulfillment at the instance of the bidders are extracted hereinafter:--

"24) Eligibility Criteria:--

A contractor/firm would be considered pre qualified for work if:--

The bidder during the last 7 years has completed three similar works costing

each not less than 40% of the amount

Or

The bidder during the last 7 years has completed two similar costing each not less than 50% of the amount put to tender.

Or

The bidder during the last 7 years has completed one similar works costing each not less than 80% of the amount put to tender."

Even though the petitioner had submitted a work certificate, comprised in Annexure P-4, obtained from the Executive Engineer concerned regarding completion of work Aug. of WSS Shimla Town River Giri (SH: Providing, Laying and commissioning of twin Rising main 450 mm dia API 5L pipe of Grade X-60 RD-0 to 5850 (1st stage) for lifting of water from Balyong to Ukhaldhar in Tehsil Theog, District Shimla) of more than Rs. 13,39,28,077), nonetheless, the respondents as evident from the reply furnished by them to the writ petition, declined the bid of the petitioner herein on the ground that, the Technical Committee constituted by the respondents for finalization of the bids of the bidders, on scrutinizing the technical bid of the petitioner was constrained to decline the awarding of the proposed work to it, as compliance to the prescribed criteria, of the petitioner "during the last 7 years having completed three similar works costing each not less than 40% of the amount or during the last 7 years having completed two similar works costing each not less than 50% of the amount put to tender, besides during the last 7 years has completed one similar work costing not less than 80% of the amount put to tender", had remained unfulfilled.

2. The effect of the opinion rendered by the Technical Committee constituted to scrutinize the bid of the petitioner for determining whether the eligibility criteria stood fulfilled at the instance of the petitioner, inasmuch as it, having during the last 7 years completed one similar work costing not less than 80% of the amount put to tender, was anulled upon the fact that the work done certificate submitted by the petitioner before it in purported compliance thereof, pertained to execution of work of Water Supply Scheme, patently dissimilar to the one proposed to be executed, hence, was construed to be carrying no worth in its constituting or meeting compliance with the aforesaid enshrined eligibility criteria, to render the petitioner firm to be fit for its being awarded the proposed work. The opinion of the Technical Committee in construing that the previous work executed by the petitioner firm qua which the work done certificate was issued by the Executive Engineer concerned was qua work not similar to the work put to tender, hence, its while not achieving compliance with the enshrined eligibility criteria as extracted hereinabove, as such, rendered the petitioner disqualified and ineligible to claim the awarding of work to him, is to be presumed to be founded upon sound satisfaction having been drawn by it, on an incisive consideration of the material placed before it. Good and vigorous reasons

have been portrayed in the reply filed by the respondents to the writ petition that the previous work though claimed to be similar to the work proposed to be executed, was not similar to the work proposed to be executed, hence, rendering the petitioner disqualified for its being awarded the proposed work. With the pronouncement of pointed dis-similarity of works inasmuch as the previously executed work and the proposed work claimed to be awarded on the score of both not being similar, when stands sustained by sound reasons besides, when no material has been placed on record by the petitioner to discountenance the satisfaction drawn by the Technical Committee in ousting the petitioner, from its being awarded the proposed work, as a sequel then, the opinion as formed by the Technical Committee, in proclaiming that given the dissimilarity of the work proposed to be executed and the work previously executed by the petitioner, the petitioner had not satiated the eligibility criteria, is un-dislodgeable.

3. Moreover, the work done certificate as submitted by the petitioner, was contended by the respondents to be with respect to work executed 7 years prior to the execution of the proposed work, as such, its infracting the eligibility criteria prescribing that the previous purported similar work costing less than 80% amount put to tender, was to be demonstrably executed prior to completion of 7 years, hence, rendering the petitioner ineligible. The third reason which prevailed upon the Technical Committee to decline the awarding of the proposed work to the petitioner is comprised in the fact that the previous work of the petitioner was of poor workmanship quality. The last reason as prevailed upon the respondents to decline the awarding of the proposed work to the petitioner was entrenched in the fact that the performance of the petitioner firm was consistently of poor quality, besides its failing to complete many previously awarded work within time, for which it stood penalized for, on various occasions.

4. The learned counsel for the petitioner has concerted to upset and destabilize the findings recorded by the Technical Committee which for the reasons aforesaid declined to accept the bid of the petitioner firm, on the score of a portrayal in his application bearing CMP No. 4934 of 2015, of the respondents having during the same period awarded works similar to the one qua which tenders were invited from the competing firms and that too, on the basis of a similar work done certificate furnished by the petitioner firm to the respondents herein. Consequently, it is argued that the subsequent awarding of works similar to the one proposed to be executed by the petitioner firm, on the strength of a *pari materia* /similar "work done" certificate as previously furnished by the petitioner firm to the respondents, constitutes acceptance qua the petitioner firm having fulfilled the eligible criteria besides, renders the findings and conclusions arrived at, by the Technical Committee in construing the work done certificate to be not qua similar work as proposed to be executed, hence, concomitantly rendering the petitioner firm to be disqualified, to stand waned and enfeebled.

5. The aforesaid submission as addressed before this Court by the learned counsel for the petitioner to overcome the rejection by the Technical Committee

of his bid for the proposed work, for the reasons as attributed hereinabove, cannot gain succor or potency, only on the strength of the respondents having subsequently awarded works similar to the one as proposed to be executed and that too on the basis of a work done certificate similar to the one as furnished by the petitioner firm to the respondents, for the simple reason that the subjective satisfaction as drawn by the Technical Committee constituted by the respondents herein was drawn on an incisive discernment of the material on record displaying the evident facts as enunciated in the reply of the respondents, of the petitioner, hence, having not either fulfilled or accomplished the eligibility criteria, for rendering it eligible for its being awarded the execution of the proposed work. The technical committee as seized of the matter while making or arriving at a decision qua the disqualification of the petitioner firm for the awarding of the proposed work cannot suffer displacement, unless abundant material exists on record connoting the palpable fact of its having overlooked the germane considerations or it while making a decision in ousting the petitioner, from the awarding of the proposed work having taken extraneous material into consideration. It was an expert committee and its assessment qua the fitness of the petitioner firm, to execute the proposed work, as also, its decision qua the petitioner firm having not fulfilled the eligibility criteria, cannot be gone into or disturbed by this Court in the exercise of writ jurisdiction. Even if, the respondents subsequently awarded works similar to the one as proposed to be executed, on the strength of a similar work done certificate furnished by the petitioner firm to the respondents, yet cannot give strength to the petitioner firm to obtain the awarding of works proposed to be executed by the respondents. The subsequent awarding of works to the petitioner on the findings and recommendation of the subsequently constituted Technical Committee, concerned construing a pari materia work done certificate to be portraying similarity vis-?-vis the works subsequently awarded to the petitioner, cannot render reversible nor can disturb the findings and opinion rendered by the Technical Committee concerned constituted by the respondents herein whereby the aforesaid pari materia work done certificate was previously construed to be not portraying execution of works by the petitioner, similar to the one proposed to be executed. Even if, conflicting decisions stand arrived at by the previous and the subsequently constituted Technical Committees, the conflicting decisions, hence, cannot facilitate the petitioner to claim the awarding of the proposed work, unless there was portrayal at the instance of the petitioner by placing on record adequate material that the technical committee constituted by the respondents herein while arriving at a decision qua non fulfillment of the criteria was goaded and motivated by extraneous considerations. In short, the mere awarding of subsequent purportedly similar works to the one as proposed to be executed by the respondents arising from the factum of a pari materia work done certificate and that too on the recommendations of the Technical Committee, hence purportedly communicating the fact of the petitioner having fulfilled the eligibility criteria, would not per se constitute waiving off or acquiescence by the respondents of the recommendations of the Technical Committee constituted by

the respondents herein, to assess the eligibility of the petitioner for the awarding of the proposed work, to it. Given the aforesaid discussion, even if one of the reasons which weighed and prevailed upon the respondents to decline the awarding of work to the petitioner is embedded in the factum of the respondents herein having imposed penalties upon it, for not previously having completed the awarded work within the prescribed time limit besides, the work previously executed being of poor workmanship and quality, yet especially, when the penalties as hence imposed upon the petitioner firm stood rescinded by the Arbitrator, to whom the dispute was referred and whose decision is subjudice before this Court, hence, rendering the penalties imposed upon the petitioner firm by the respondents, to be not carrying any legal leverage nor constituting a good and valid reason for debarring or ousting the petitioner from its being awarded the proposed work. Nonetheless, even if, the said argument as projected by the respondents for debarring and ousting the petitioner from awarding of the proposed work may be legally invigorous, yet the prime and preeminent factum probandum of the petitioner firm having neither achieved nor fulfilled the eligibility criteria, inasmuch as its, not having completed during the last 7 years one work similar to the one costing not less than 80% of the amount put to tender, is rather to be not slighted. On the contrary, the aforesaid preeminent reason has to assume force in prodding this Court to conclude that as such the respondents had tenably and legitimately refused the awarding of the proposed work to the petitioner company, naturally when the legally invigorous reason for the refusal of the awarding of work to the petitioner stands submerged or subsumed in the preeminent fact aforesaid, of the petitioner having not fulfilled for the reasons aforesaid the eligibility criteria as extracted hereinabove, it cannot sustain the contention of the learned counsel appearing for the petitioner, that as such the petition be allowed.

6. For the foregoing reasons, there is no merit in this petition which is accordingly dismissed. All pending application also stands disposed of.