

(2010) 12 GUJ CK 0257
In the Gujarat High Court

Case No : Special Civil Application No. 14191 of 2010

I.G. Electricals Electrical Contractor and Dealer	APPELLANT
Vs	
Bharat Snachar Nigam Ltd. Executive Engineer (E) and Others	RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Citation : (2010) 12 GUJ CK 0257

Hon'ble Judges : S.R. Brahmbhatt, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : Mahesh Bhavsar, for the Appellant; Roopal R. Patel, for Respondents 1 - 4, for the Respondent

Judgement

Jayant Patel, J.—Draft amendment is allowed.

2. Rule. Ms. Patel, learned Advocate waives notice of Rule for Respondents when matter is called out.

3. The Petitioner by this petition challenges the action on the part of Respondents not to consider the application of the Petitioner for technical bid and it is prayed to direct the Respondents to open the financial bid of the Petitioner. The Petitioner has also prayed for appropriate relief to quash and set aside impugned inaction on the part of Respondent No. 1 of rejecting the application of the Petitioner and not opening bid of the Petitioner for work in question.

4. We have heard Mr. Bhavsar, learned advocate appearing for the Petitioner and Ms. Patel, learned advocate appearing for Respondents.

5. It is undisputed position that the question of satisfying the eligibility criteria, which arise for consideration in the present matter is same as was considered by this Court in Special Civil Application Nos. 7408 of 2010 and 7651 of 2010 decided by this Court on 07.07.2010, copy whereof is produced at Page-25 onwards. In the said matters on the aspect of eligibility criteria, this Court

observed thus in paras 5 and 6 :

5. The controversy between the parties is apparently centered around the certificates, which were pressed into service by the Petitioner for fulfilling the eligibility criteria. The certificates attached with the application by the Petitioner included four certificates, out of which two certificates were issued by the Respondent themselves clearly mentioning that the work had been completed satisfactorily or work in progress is being done satisfactorily. As far as two other certificates were concerned, it was established on the basis of documentary evidence of the Respondents themselves that the work related to those certificates was already completed but the same contract was extended for a further period, due to which certificate could not be issued in respect of "completed work". It was argued that if the work were not satisfactorily completed by the stipulated date of completion, the Respondents would not have extended the period of contract; and discarding those certificates as certificates for work which was not "carried out" was unrealistic and biased. It also cannot be assumed or inferred, particularly in context of the allegations made by the Petitioner, that if the completed work or work in progress is not certified by the Respondent to have been satisfactorily completed, the performance has to be unsatisfactory. Admittedly, it is after filing of the petition that the summaries of recoveries and penalties are made up and produced before this Court and there is no evidence either of such penalties and recoveries being enforced or of being accepted by the Petitioner without any objection. On the contrary, the Petitioner has made specific allegations against particular named officers in his correspondence to allege that the officers were harassing them and blocking their payments, with a plan to terminate their contracts and blacklisting the firm. In the summary of recoveries and penalties, relied upon by the Respondent, most items are "proposed" recoveries and penalties.

6. In the above facts and circumstances, we find that rejection of the Petitioner's application for tender forms is not bona fide and the certificates about works of maintenance carried out by the Petitioner were required to be accepted as fulfilling the eligibility criteria. Accordingly, the petitions are allowed and disposed with following directions, in the peculiar facts and circumstances of each case.

(I) In Special Civil Application No. 7408 of 2010, since the notice inviting tenders No. 13/BSNL/2010-11/ED-I/AHD and No. 12/BSNL/2010-11/ED-I/AHD both dated 11.6.2010 were in respect of two separate maintenance works for which tenders are, by now, already invited and opened on 30th June 2010, fresh notice inviting tenders shall be issued by the Respondents and the applications of the Petitioner for those tender documents shall not be rejected on the ground of the Petitioner not fulfilling the eligibility criteria.

(II) In Special Civil Application No. 7651 of 2010,

(A) Notices inviting tenders were in respect of seven works [enumerated in paragraph 7(ff) of the petition] and opening of the tenders in respect of three

works is stated to have already been postponed to 24th July 2010. The notices inviting tenders in respect of these three works are: NIT-24, 25 & 26/EEEEII/BSNL/2010-11. The Petitioner shall be permitted to apply for those tender documents and if he submits tenders in respect of those three works they shall be accepted and considered along with other tenders already received by the Respondent, subject to all other conditions and stipulations of the tender;

(B) As for the notice inviting tenders for remaining four works, it is stated at the bar that the date of opening all those tenders could be postponed under order of this Court so as to facilitate joining of the tendering process by the Petitioner. Therefore, it is directed that the Petitioner shall be permitted to apply for those four tender documents, supplied the tender documents immediately, and if he submits tenders within stipulated time, not later than 20th July 2010, his tenders shall be considered along with other tenders, which may have already been received by the Respondent, on such date thereafter as may be fixed by the Respondent. It is clarified, as aforesaid, that applications of the Petitioner for tender documents shall not be rejected on the ground of the Petitioner not fulfilling the eligibility criteria and all other conditions and stipulations of the Notice and tender shall apply equally to the Petitioner.

7. Same situation prevails in the present case in as much as the condition to be satisfied for the eligibility criteria is the same in the present tender which came to be considered by this Court in the aforesaid matters.

8. Learned Counsel for the Respondent is not in a position to show any distinguishing circumstances which may require this Court to examine the matter on the other aspect.

9. The attempt made by learned Counsel for the Respondent to contend that against the aforesaid decision of this Court, matter was carried before the Apex Court by the Respondent and the Apex Court while passing order dated 27.09.2010 in SLP (Civil) No. 26462 of 2010, that question of law, if any, are kept open, would mean that the present petition is to be decided independently, is ill-founded in as much as it is not a matter of question of law to be decided in the present case but is a matter for consideration of questions of fact for the purpose of satisfying the eligibility criteria. If the condition for tender was same and the fulfillment of the eligibility criteria was also the same, as ruled by this Court in above referred order, it was not open for BSNL to take a different view on the ground as sought to be canvassed on the basis of the aforesaid observations of the Apex Court. On the contrary, the Apex Court has not interfered with the above referred judgment of this Court.

10. Hence, we find that same direction as was given in the above matters deserves to be issued. However, in the present case, as the financial bid of other tenderer is already opened but on the ground of eligibility criteria, the financial bid of the Petitioner has been returned, fresh notice will be required to be issued of tender and at that stage, the Petitioner shall be at liberty to submit his offer

and at that stage the offer of the Petitioner shall not be rejected on the ground of non satisfying the condition No. 23 of the present tender, copy whereof is produced at Page-24 of the compilation, unless the Respondent BSNL in its wisdom alter the condition in the other tender in future and decides to flow a fresh tender on different eligibility criteria. The impugned action in any case for rejection of the technical bid of the Petitioner on the ground of non-satisfying the eligibility criteria shall stand quashed and set aside. The petition is allowed to the aforesaid extent. Rule made absolute. No costs. Direct service for Respondent Nos. 2, 3 and 4.