(2007) 07 JH CK 0039

In the Jharkhand High Court

KEC International Ltd. APPELLANT

Vs

The Jharkhand State Electricity Board and Others RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Citation : (2007) 4 BC 464 : (2007) 3 JCR 604

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. Petitioner''s contention is that though its offer was lower but even then the work has been awarded to respondent No. 3.

3. Against the notice inviting tender (NIT) in question-Package B NIT No. 02/PR/JSEB/06-07 Singhbhum (West) dated 3.4.2006, four offers were made. On technical and commercial evaluation, petitioner and respondent No. 3 were found eligible. Price bid was opened on 8.8.2006. Respondent No. 3 was found L 1.

4. Mrs. A.R. Choudhary, appearing for the petitioner, submitted that petitioner indicated the service tax separately as per the terms of NIT whereas respondent No. 3 did not indicate it separately. Had the price bid been compared excluding service tax, petitioner''s bid of Rs. 139.51 crores was lower than the bid of respondent No. 3 of Rs. 140.64 crores.

5. The case of the respondents, inter alia, is as follows. Petitioner''s offer including service tax was Rs. 144.79 crores, whereas the offer of respondent No. 3 was Rs. 144.54 crore and therefore respondent No. 3 was declared L 1. The bids were to be compared on the basis of lump sum price for the entire scope of the proposal. Jharkhand State Electricity Board (JSEB) took into consideration the net total price that it will have to pay to the contractor. The requirement of separate indication of service tax was only for the purpose of bifurcating the

price for supply and the price for erection. The service tax on the erection is to be reimbursed by JSEB to the contractor. The rate of service tax is specified and it is to be calculated on the erection part of the bill on actuals. From the bids of the petitioner and respondent No. 3, the quantum and factor of service tax was easily and exactly calculable and derivable, which would be apparent from the writ petition itself, wherein petitioner has calculated the amount of service tax out of the amount offered by respondent No. 3. Though the petitioner''s offer against the supply part is lower than the offer of respondent No. 3 but the equipment and materials offered by respondent No. 3 are of better quality as compared to the equipments offered by the petitioner. The difference in the quality of transformers and equipments would be evident from Schedule-13 which goes to show that the load and no-load losses of power will be higher in the case of transformers to be supplied by the petitioner as compared to that of respondent No. 3. Respondent No. 3 submitted Schedule-13, in which it guaranteed to keep the losses within the prescribed limits. But no such guarantee was submitted by the petitioner. The offer of petitioner against erection part is more than the offer of respondent No. 3. Though, petitioner knew on 8.8.2006 that it was not L 1 but it raised the dispute after long time. The work of Rural Electrification awarded to respondent No. 3 is in progress.

6. In this writ petition, the only thing which can be seen by this Court is whether the decision making process is arbitrary or irrational and calls for interference or not?

7. Clause 14.1 of the bidding document and Clause 4.5 of the condition of contract inter alia provided that service tax on erection, testing and commissioning was to be indicated separately, as it is to be reimbursed to the bidder by JSEB, subject to furnishing documents in proof thereof. Clause 34.1 of the bidding document provided that the bid price will mean the total lump sum price as per Sl. No. E of Schedule-1, quoted by each bidder in his proposal for the complete scope of works. Schedule-E means-total lump sum bid price including service tax. Clause 35-1 of the bidding document provided that the bids shall be compared on the basis of lump sum prices. Clause 7.0-Basis of Evaluation and Comparison also supports the case of the respondents. The terms in the documents are to be read in their entirety. The term of indicating the service tax separately against erection part was to be read with the other clauses under which the bids were to be compared on the basis of lump sum price and the net financial liability of the Board was to be ascertained. The service tax on erection, testing and commissioning was to be paid on the actual on the basis of the proof thereof. The rate of service tax is also specified. It is a variable component. Accordingly, JSEB took into consideration the lump sum price bid of the petitioner and respondent No. 3 and the financial liability to be incurred by the Board. JSEB has also taken into consideration the quality of the materials offered by the petitioner and respondent No. 3. Taking into consideration all the relevant aspects. JSEB decided to award the work to respondent No. 3.

I perused the original records also. In my opinion, the decision making process is not arbitrary and irrational and no interference is called for. In the result, this writ petition is dismissed. However, no costs.