

(2014) 05 AHC CK 0083

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28917 of 2014

Kirti Scanning Centre (P) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 6 ADJ 376 : (2014) 105 ALR 518 : (2014) 4 BC 457

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Rohit Agarwal, Advocate for the Appellant; Fuzail Ahmad Ansari, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner seeks to challenge a communication dated 8 May 2014 issued by the Director General, CGHS, Ministry of Health and Family Welfare, intimating to it that its bid has been rejected during technical evaluation by a duly constituted Committee on the ground that Annexure 1D had not been uploaded online. The Union Government in the Ministry of Health and Family Welfare issued an e-tender document for the following purpose: "Determination of rates and empanelment of private hospitals, exclusive Eye Hospitals/Centres, exclusive Dental Clinics, Cancer Hospitals/Units, Diagnostic Laboratories & Imaging Centres under CGHS (except Mumbai)."

The tender document made it clear that e-bids were being invited through the e-procurement portal (<https://eprocure.gov.in/eprocure/app>). The tender document had to be accessed online and had to be submitted online. Amongst the tender documents which were required to be uploaded was Annexure 1D. Annexure 1D was the basic document which contains, inter alia, a disclosure of all the relevant information in regard to the Laboratory Diagnostic Centre such as Space, Equipment, Quality Control and General requirements for Pathological Diagnostic Centres. It is an admitted position that the petitioner while uploading

the bid on the e-portal failed to submit Annexure 1D. The bid of the petitioner was held to be technically non-compliant by the impugned communication dated 8 May 2014 of the Director, CGHS.

2. The submission which is urged is two fold. Firstly, it has been submitted that the petitioner was informed at 11.50 am by email on 8 May 2014 that its bid had been admitted by the Committee, yet the petitioner was informed at 1.27 pm on the same date that the bid had been rejected during technical evaluation by the duly constituted Committee on the ground that the Annexure 1D was not uploaded. Secondly, it has been submitted that the petitioner by a communication dated 24 April 2014 had informed the e-tender cell that while uploading the bid, Annexure 1D could not be uploaded due to inadvertence of the clerical staff and together with a letter a hard copy of the Annexure 1D and bid submission confirmation and bank draft was submitted to the Additional Director, CGHS, Allahabad with a request for consideration of its bid.

3. At the outset, it must be noted that the Ministry of Health and Family Welfare had issued the e-tender document. Under the tendering process, all the bidders were required to enroll on the e-procurement module of the Central Public Procurement Portal. Detailed instructions were issued to bidders for registration, accessing tender documents, filling tender documents and submission of bids. Sufficient provisions were also made for providing assistance to the bidders. The general instructions to bidders made it clear that tenders will be received online through the web portal. In the technical bids, bidders were placed on notice that they were required to upload all the documents in the PDF format. Hence, there was one mode alone for the submission of bids, namely, through the web portal. The bidding schedule indicated that the last date and time for downloading of tender documents and submission of online bids was 17.00 hrs. on 24 February 2014. The last date and time for submission of the fee for the tender form and the earnest money deposit in physical form, as specified in the e-tender document, was 25 February 2014. The tender document contemplated that only the fee and earnest money deposit would be submitted in the physical form. The relevant provision in Clause 4 of the e-tender document specified as follows:

"4) Bidder should prepare the EMD as per the instructions specified in the tender document. The original should be posted/couriered/given in person to the Tender Processing Section, latest by the last date of bid submission. The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time. Otherwise the uploaded bid will be rejected."

4. Clause 4 makes it abundantly clear that it was the EMD which was to be posted or couriered or furnished in person by the last date of bid submission. Moreover, the details of the demand draft or any other accepted instrument, physically sent were required to tally with the details available in the scanned copy and the data entered during bid submission otherwise the uploaded bid was to be rejected. Consequently, it is clear that bidders were not given an alternate

option of submitting a bid in the physical form and it was only the earnest money deposit which could be submitted in the form of a demand draft or other accepted instrument in the physical form.

5. Hence, the reliance which is placed by the petitioner on its communication dated 24 April 2014 would be of no avail for the simple reason that submission of a bid in the physical form was not contemplated. In present times, several public bodies including the Union Government have provided for e-tendering. The whole object and purpose of e-tendering is to ensure transparency and accountability in the tendering process. Many faults which occurred when bids were submitted in the physical form are sought to be obviated by providing for an e-tendering process. The petitioner has only itself to blame for not submitting Annexure 1D in the bid which was uploaded online. Annexure 1D cannot be regarded as a document which was not essential to the tender. Annexure 1D, as a matter of fact, is an essential part of the tender because it contains all the required information which the bidder has to submit. As a matter of fact, if the Authorities had accepted the submission of a bid in the physical form, they would have been guilty of a serious breach of the tender process.

6. The communication which was issued to the petitioner on 8 May 2014 at 11.50 am to the effect that its bid had been admitted, was only a formal acknowledgment of the bid and not an acknowledgment of the technical eligibility of the bidder which still had to be considered. It was only after the tender Committee had evaluated the bid that the petitioner was duly informed at 1.27 pm on 8 May 2014 that the bid had been rejected for non-compliance with the tender requirement. In the circumstances, the interference of this Court under Article 226 of the Constitution is not warranted as the Union Ministry of Health and Family Welfare has duly followed the tender requirements. For these reasons, we find no reason to entertain the petition. The petition is, accordingly, dismissed.