

(2003) 09 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 9022 of 2003

KL Hi-Tech Secure Print Limited

APPELLANT

Vs

The Bihar State Staff Selection Commission and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Citation : (2003) 09 PAT CK 0032

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The Petitioner which is a company incorporated under the Indian Companies it has brought this petition under Article 6 of the Constitution challenging the decision of the Bihar Staff Selection Commission to reject its technical bid and, thus, to exclude it from any further consideration for the grant of contract. It is contended on behalf of the Petitioner that the decision to reject its technical bid was based on ground that was nonest; and that the decision further to take Respondent No. 4 and another tenderer on the short-list for consideration of their financial bids was equally bad and illegal because the N.S. Cs. of Rs. 25,000/- submitted by Respondent No. 4, as required by the tender notice, were not duly pledged in favour of the Secretary of the Commission.

2. At this stage certain facts, which are not in dispute, may be noted for a proper appreciation of the matter. The Bihar Staff Selection Commission was established by the Bihar Staff Selection Commission Act, 2002 (Act No. 7 of 2002). The Commission is given the responsibility to make selection and recommendation for appointment against posts in Government services and cadres carrying pay scales below Rs. 6500-10500/-. (The appointment on posts having the pay scale of Rs. 6500-10500/- is made by the Bihar Public Service Commission).

3. After its establishment it is perhaps for the first time that the Commission has taken up the major exercise of appointment of about 40,000 teachers for primary schools in this State. Having regard to the enormous magnitude of the exercise (about 20 lakh candidates) are expected to appear in the selecton test), the Commission has taken the decision to out-source the work. It intends to take

the help and assistance of some expert, technical, outside agency on service/job contract basis for holding the examination for selection of candidates on the basis of objective type test and a computerised evaluation of the answer sheets. The Scheme as it broadly appears is that an outside agency with sufficient skill, resources and infrastructure would be given the service contract to work for the Commission (from within its premises and in co-ordination with and under its over-all supervision) and help the Commission in the selection process right from the stage of preparation of application forms to the finalisation of the result.

4. For the grant of the contract the Commission issued a notice inviting tenders that was published in the Hindustan Times of 12.7.2003. Clauses 1 and 2 of the tender notice gave a list of the job requirements and though the notice may not be said to be very happily worded, the different sub-clauses of the first two clauses undoubtedly gave a fairly complete picture of the job. Clauses (1), and (2) of the tender notice are as follows:

- (1) Supply of OMR application forms with bar code, instructions and envelope.
 - (ii) Scrutiny of applications, despatch of acknowledgements cards and rejection memo.
 - (iii) Roll number generation and centre allocation.
 - (iv) Processing of applications through OMR.
 - (v) Preparation and despatch of admit card and attendance list with photographs and signature.
 - (vi) Supply of OMR answer sheets with bar code.
 - (vii) Preparation of result.
 - (viii) Reports and statistics at various stage of examination.
2. Specification of paper-(i) OMR application form-Map Litho paper, 80 GSM, Both side printing.
- (ii) Envelope for application form-60 GSM, Cream wove white paper.
 - (iii) Instructions for filling up of the application form-65 GSM, Cream wove white printing paper.
 - (iv) Admit Card-120 GSM map Litho paper.
 - (v) Attendance list-80 GSM, Map litho paper.
 - (vi) OMR answer sheet--150 GSM one side printing.
 - (vii) Tabulation record--65 GSM Ledger Paper.

5. Clause 3 of the tender notice provided that the technical and financial bids, should be submitted in separate sealed envelopes with the stipulation that the financial bid would be opened only if the technical bid was approved.

6. Clause 4 of the notice then laid down the conditions and qualifications of the tenderer which are as follows:

4. Papers to be submitted in the envelope containing technical bid--(i) NSC for Rs. 25,000/- pledged in favour of Secretary of the Commission as earnest money.

(ii) Paper showing that the tenderer is I.S.O. certified.

(iii) List of Technical experts with their qualifications.

(iv) The list of machinery with specification in possession of the tenderer.

(v) Past experience-name of the examinations, year, number of candidates and the institution. Copy of the work order or the certificate from the concerned institutions should also be enclosed for each examination.

7. The Petitioner submitted his tender documents on 5.8.2003 and on the following day, at the appointed time, the financial bids submitted by the thirteen tenderers were opened before the members of the Purchase Committee in presence of all the tenderers, including the Petitioner.

8. It may be noted here that the Purchase Committee consisted of eleven persons out of whom only four were the " officers of the Commission; other four members of the Committee were senior" officers of the State Government in different departments, including Finance. Industries and Vigilance. Among the remaining three who were invited as expert consultants one was the Director, Bureau of Indian Standard, Government of India, Patna, the second was the representative of N.I.C., Government of India, Patna and the third was the Deputy Director (Computer) from the Science & Technology Department, Government of Bihar. It is, thus, evident that the Purchase Committee was a broad based body having senior officers from the State Government and experts from the Government of India/semi autonomous bodies and in this body the officers of the Commission were in a minority.

9. The Purchase Committee approved only two technical bids submitted by Respondent No. 4 and another tenderer, namely, M/s N.I.C.T Computing System, Boring Road, Patna (not a party to this case); eleven other technical bids were rejected on one ground or the other. The technical bid of the Petitioner was rejected on the ground that though it had submitted the I.S.O. certificate (abbreviation for International Organisation of Standardisation), the certificate did not relate to the field of work (job contents) under the tender notice.

10. It may be recalled here that Clause 4(ii) of the tender notice required the tenderer to submit, along with the technical bid documents a paper (certificate) Showing that the tenderer was certified by I.S.O. The Petitioner had indeed submitted an I.S.O. certificate, a photostat copy of which is part of Annexure 2 series. The certificate reads as follows:

This Certificate is valid for the following product or service ranges:

Printing of Security Instruments

11. In my view not much argument is required to see that the certificate was for the Petitioner's expertise in printing of security instruments and not for conducting a high security examination of about 20 lakh candidates based on objective type test and computerised evaluation of the answer sheets.

12. Here there is no need to comment upon the capabilities of the Petitioner. It may have, as strongly submitted by Mr. Kanth, Senior Advocate appearing on its behalf, state of the art equipments, a set of highly skilled personnel, very efficient working ethics and fool proof measures for preserving the confidentiality of the entire process. But one thing it certainly does not have and that is the I.S.O. certificate in this particular area of work and if the Purchase Committee rejected its tender on that ground, the decision of the Purchase Committee can hardly be faulted.

13. As the Commission proceeded to consider the other two tenders short listed on the basis of their technical bids, the Petitioner filed this writ petition on 28.8.2003 challenging the Commission's decision to reject its technical bid. The decision to reject its technical bid and to accept the one submitted by Respondent No. 4 was challenged primarily on two grounds; first, that the Purchase Committee wrongly held that the I.S.O. certificate of the Petitioner did not relate to the particular area of work under the tender notice and secondly the acceptance of the bid of Respondent No. 4 was equally bad because the national saving certificates submitted by him along with the tender documents were not duly pledged in favour of the Secretary of the Commission. Before the case was filed in court on 28.8.2003, the counsel for the Petitioner served a copy of the writ petition in the office of the Commission.

14. It seems that at that stage itself steps were taken by the Commission to reexamine and verify its stand on the two issues on which its decisions were sought to be challenged. On the first issue regarding the I.S.O. certificate of the Petitioner, the Director, Bureau of Indian Standard who was a member of the Purchase Committee and was a party to the Committee's unanimous decision to reject the technical bid of the Petitioner was asked to give a second opinion. Similarly a letter was written to the Sub Post Master, Srinivaspuri, New Delhi from where Respondent No. 4 had obtained the National Saving Certificates to verify whether or not the certificates were duly pledged in favour of the Secretary of the Commission. The Commission also did not wait for any notice to be issued by the court and filed a counter affidavit on 8.9.2003 on the basis of which the case was finally heard on 10.9.2003.

15. In the counter affidavit, the I.S.O. certificate of Respondent No. 4 is also brought on record as Annexure "A" in which it is certified that the Quality Management System of Respondent No. 4 was applicable to:

(1) sales, marketing and servicing of optical scanners, (2) design & development, production and supply of response sheets, (3) scanning and processing of

response sheets.

16. It is not in dispute that the expression "response sheets" used in the certificate means what are commonly called as examination answer books/ answer sheets.

17. On a comparison of the two certificates, there is hardly any room for doubt that the I.S.O. certificate of Respondent No. 4 fully satisfies the job requirements under the tender notice whereas the I.S.O. certificate of the Petitioner is in regard to an area of work quite different from the job requirements under the tender notice.

18. This view is confirmed by the opinion of the Director, Bureau of Indian Standards given in reply to the letter from the Commission and the relevant extract from his letter is quoted in the second supplementary affidavit filed by the Petitioner.

19. Here I shall not go into the question how the Petitioner was able to lay his hands on this Communication between the Commission and a member of its purchase Committee. But what the Director Technical, Bureau of Indian Standard. Patna has to state seems to demolish the case of the Petitioner completely. This is what the Director Technical observed in his letter:

M/s KL Hi-Tech Secure Print Ltd. is certified by M/s DNV for their Quality Management System based on ISQ 9001-2000 for "Printing of Security Instruments" according to the certificate dated 10 December, 2002. A MICR Cheque, a security instrument, if required to be printed, the content can be composed with the help of the compute and such activity is data processing. The Commission's requirements as per tender is preparation of OMR applications, processing of the same at various stages, preparation of results, dispatch of admit card, summarization of result etc. Therefore, the scope of such activity is much complex as compared to printing of security instruments for which the firm is ISO 9001: 2000 certified. As per the certificate of the DNV such extensive scope of the activity of the firm had not been certified.

20. It may be noted here that submissions were advanced, employing much jargonised expressions to persuade the court-that the I.S.O. certificate of the Petitioner was equally valid for the area of work under the tender notice and the printing of security instruments was a job of greater security, technical expertise, professional skill and required far more sophisticated equipments. But at the end I remain quite; unconvinced about the I.S.O. certificate of the Petitioner being in regard to the area of work under the tender notice and I see no reason to doubt the opinion of the Purchase Committee that comprised independent technical experts who had no axe to grind against the Petitioner.

21. Coming now to the admissibility of the technical bid of Respondent No. 4 and the Petitioner's challenge on the ground that the N.S.Cs. submitted on its behalf were not duly pledged in favour of the Commission's Secretary, that issue also

stands concluded by the letter of the Sub Post Master, Srinivasपुरi, New Delhi addressed to the Chairman of the Commission in reply to the Commission's letter, dated 28.8.2003. By his letter, the Sub Post Master confirmed that the five national saving certificates each of the value of Rs. 5,000/- that were purchased on 4.8.2003 were duly pledged in favour of the Secretary, Staff Selection Commission, Bihar. Patna on 4.8.2003.

22. Mr. Kanth invited my attention to the procedure of pledging a certificate as laid down under Rule 19 of the Post Office Saving Certificate Rules, 1960 and submitted that national saving certificates purchased in Delhi on 4.8.2003 could not be pledged in favour of the Secretary, Staff Selection Commission at Patna on the same day and it was impossible for Respondent No. 4 to submit those certificates along with his bid documents at Patna on 5.8.2003.

23. In other words, what is alleged is that apart from the Secretary and the staff of the Commission, the post master in Delhi was also in league and in conspiracy with Respondent No. 4. This allegation, this Court is not prepared to accept for a moment. There is absolutely no evidence to support such a serious charge. Moreover, one can think of more than one ways in which the national saving certificate purchased at Delhi could be pledged on the same day in favour of the Commission's Secretary at Patna and could be submitted on the following day along with the bid papers at Patna.

24. I, therefore, find no merit in the submission that the decision of the Commission to approve the technical bid of Respondent No. 4 was wrong because the national saving certificates submitted by it were not duly pledged.

25. Mr. Kanth next submitted that the requirement to submit ISO certificate was not an essential condition and on that score it was not open to the Purchase Committee to reject the Petitioner's technical bid. I am unable to accept the submission and it is to be noted only-to be rejected.

26. Mr. Kanth further submitted that the Purchase Committee/Commission was under an obligation to consider the technical bids and the respective experiences of the tenderers in regard to each of the different kinds of work enumerated in Clauses 1 and 2 of the tender notice and it committed an error in rejecting the Petitioner's technical bid solely on the ground that its ISO certificate was not in regard to the area of work specified therein.

27. In my view the submission is misconceived and it is based on the notion that job requirements enumerated in the different sub clauses are separate and different. In reality the different parts constitute an integrated whole and one is inseparable from the other for holding a selection examination based on objective test.

28. Mr. Kanth submitted that before rejecting the Petitioner's technical bid, the Commission was required to give it an opportunity of hearing because the award of contract had a public element in it. In support of his submissions. Mr. Kanth

relied upon several decisions some of which are as follows:

(i) Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, (Para 10).

(ii) LIC of India and Another Vs. Consumer Education and Research center and Others, . (para 23).

(iii) Tata Cellular Vs. Union of India,

(iv) West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and Others,

(v) M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others,

29. In my view, none of the decisions relied upon by Mr. Kanth has any application to the facts of this case.

30. On hearing Mr. Kanth in some detail and Mr. Ganesh Prasad Singh, Senior Advocate appearing for the Commission and on going through the writ petition, the supplementary affidavits, the counter affidavit and the Petitioner's reply to the counter affidavit, I find no merit in this case and in my view no case is made out for any interference in this matter by this Court. This writ petition is accordingly dismissed but with no order as to costs.