

(2016) 07 PAT CK 0151

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10537 of 2012

M/s. BCL Secure Premises (P) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Contract Act, 1872 — Section 74

Citation : (2016) AIR(Patna) 142

Hon'ble Judges : Vikash Jain, J.

Bench : Single Bench

Advocate : Mr. Alok Tripathi, Mr. Rajeev Ranjan, Mrs. Bela Singh, Advocates, for the Petitioner; Mr. Anil Kumar Sinha, Advocate, for the Respondents; Mr. Alok Tripathi, Mr. Rajeev Ranjan, Mrs. Bela Singh, Advocates, for the Petitioner; Mr. Anil Kumar Sinha, Advocate

Final Decision : Dismissed

Judgement

Mr. Vikash Jain, J.(Oral)—Heard learned counsel for the petitioners and learned counsel for the respondent Railway.

2. The present writ petition has been filed with a prayer for quashing and setting aside the impugned letter No. ECR/S&T/OT/ 140/Pt-III dated 04.06.2012 (Annexure-P/15) issued from the office of respondent no. 2; directing the respondents to finalise the Tender No. ECR/S&T/OT/140 (Annexure-2) and issue Letter of Acceptance (LoA) in favour of the petitioner being the technically qualified lowest bidder; directing the respondents to decide the tender No. ECR/S&T/OT/140 in terms of the judgment dated 04.06.2012 (Annexure-P/11) passed by this Court in CWJC No. 10256 of 2012; and for connected reliefs.

3. When the matter is taken up for disposal, learned counsel Mr. Alok Tripathi appearing for the petitioner confines the relief sought in the present writ petition to the extent of forfeiture of the Earnest Money Deposit (EMD) of Rs. 12,56,160/- deposited by the petitioner and does not press the remaining prayers.

4. It is submitted on behalf of the petitioner that the impugned order dated 04.06.2012 (Annexure-P/15) is arbitrary and unsustainable. Learned counsel for the petitioner submits that if according to the impugned letter itself the tender in question was discharged, the question of the EMD being liable for forfeiture did not arise and the same was bound to be refunded to the petitioner. Learned counsel for the petitioner further invites attention to para 4.1.3 of the minutes of the tender committee meeting held on 12.01.2012 and 18.01.2012 (Annexure-R/2), according to which the petitioner is said to have made changes/additions/deletions in its financial bid, as incorporated in the table therein. It is submitted that the EMD might have been made liable for forfeiture in the event of the petitioner making changes in the "tender documents" downloaded from website as provided in clause 2(b) of the Tender Notice. Reference to para 1.2 of the "Instructions to Tenderers and Conditions of Tendering" discloses the nature of documents included within the meaning of the phrase "Tender documents or Tender papers", which reads as follows :-

"1.2 The General Conditions of Contract applicable to Civil Engineering Works corrected up to date, Special Conditions of Contract, Instructions to Tenderers and conditions of tendering, Technical Supplement and Specifications, Preamble Schedule of Work & Supplies including all Annexure and forms etc. shall hereafter be collectively referred to as the "Tender documents or Tender papers" If there is any conflict between the conditions given in this tender document & GCC, the former shall prevail."

It is submitted that under the Two Packet Open Tendering System as in the present case, none of the documents contemplated in para 1.2 contemplates documents comprising the financial bid and as such the action taken by the respondents for changes/additions/deletions said to have been made with reference to the financial bid, is completely dehors the "Instructions to Tenderers and Conditions of Tendering".

5. Learned counsel for the respondents on the other hand reiterates that changes having been made in the tender document by the petitioner, the action by way of forfeiture of the EMD had rightly been taken against the petitioner. He invites attention to para 3 of the supplementary minutes of the tender committee meeting held on 26.04.2012 (Annexure-R/3) whereby the Tender Committee, differing with the view of the Tender Accepting Authority, had expressed its opinion that para 2 of the Tender Notice was applicable also in respect of financial bid.

6. Having heard the parties and on a careful consideration of the materials on record, this Court finds considerable merit in the submission of learned counsel for the petitioner. In view of the fact that the tender in question has been discharged by the respondents themselves being not in dispute, the petitioner cannot be held liable for default in order to invite action for forfeiture of its EMD. This Court also finds merit in the petitioner's submission that the definition of the term "Tender documents or Tender papers" as contained in para 1.2 of the

"Instructions to Tenderers and Conditions of Tendering" does not include documents of the financial bid under the Two Packet Open Tendering System. The opinion of the Tender Committee expressing a view contrary to that of the Tender Accepting Authority cannot be held acceptable, having not been informed by reasons.

7. In the above view of the matter, the impugned order dated 04.06.2012 is hereby set aside to the extent of forfeiture of the petitioner's EMD of Rs. 12,56,160/- deposited vide DD No. 882462 dated 03.12.2010 issued by the State Bank of India, Vasant Kunj Mall, New Delhi in favour of FA&CAO/ECR/HJP. The Chief Signal and Telecom Engineer, East Central Railway HQ, Dighi Kala, Hajipur (Respondent no. 3) is hereby directed to ensure refund of the EMD of Rs. 12,56,160/- to the petitioner without delay and in any event not later than within a period of 12 weeks from the date of receipt/production of a copy of this judgment. It is made clear that any delay in payment of the amount in question beyond the stipulated period as stated above, shall entitle the petitioner to receive the same together with simple interest at the rate of 9% per annum thereon from the date of this judgment till the date of its actual payment.

8. CWJC No. 10537 of 2012 stands allowed.

CWJC No. 18991 of 2013 & CWJC No. 10590 of 2012

9. In view of the nature of the present judgment, learned counsel for the petitioner does not press CWJC No. 18991 of 2013 filed for quashing the Tender Notice No. 05 of 2013-14 dated 02.08.2013 bearing Tender No. ECR/S&T/OT/162 (Annexure-P/8), as well as CWJC No. 10590 of 2012 for quashing and setting aside the impugned Tender Notice No. 04 of 2012-13 dated 30.05.2012 (Annexure-P/7), both such tender notices having been issued by the respondents.

10. CWJC No. 18991 of 2013 and CWJC No. 10590 of 2012 accordingly stand dismissed as not pressed.