(2024) 03 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2912 Of 2022

M/S Green Valley Model Structure Pvt. Ltd. & Anr	APPELLANT
Vs	
UT Of J&K & Others	RESPONDENT

Date of Decision : 01-03-2024

Acts Referred:

Citation : (2024) 03 J&K CK 0004

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Areeb Kawoosa, Furqan Yaqub Sofi

Final Decision : Allowed

Judgement

Rajnesh Oswal, J

1) The respondents vide E-NIT No.SKIMSMC(Estt)-08 of 2022 dated 26.02.2022 invited e-tenders from the registered agencies for providing sanitation services at SKIMS Medical College-Hospital, Bemina, Srinagar, for the period of one year. The petitioner-company participated in the tendering process and emerged as successful bidder. The respondents vide order dated 22.08.2022 allotted the contract in favour of the petitioner-company for a period of one year with effect from 07.09.2022 to 06.09.2023. After the contract was allotted to the petitioner but before formal agreement could be executed, the petitioner-company requested the respondents for cancellation of the allotment order issued in favour of petitioner-company on the ground that due to certain domestic problems, the rates were quoted without examining the tender document and rates quoted by the petitioner- company included the wages payable to the workers at a less rate than the minimum wages prescribed by the Government and without including GST, PF, ESIC, EDLI and other applicable charges/taxes.

2) The respondents issued the order dated 25.10.2022 whereby the contract issued in favour of petitioner No.1 was cancelled and simultaneously, besides forfeiting the CDR of Rs. 2 lacs deposited by the petitioner, the petitioner was

barred from tendering in SKIMS, Bemina for a period of two years.

3) The petitioners have filed the present petition for quashing of the order dated 22.08.2022 whereby contract for sanitation of various areas of SKIMS Medical College-Hospital, Bemina, Srinagar, was allotted in favour of the petitioner No.1 for a period of one year and the petitioners have also sought the quashing of the order dated 25.10.2022 to the extent of forfeiture of CDR and debarring the petitioner-company from participating in the tendering process in the SKIMS, Bemina for a period of two years.

4) The case projected by the petitioners in the present petition is that in terms of Clause (8) of the e-NIT, the rates to be quoted by the bidder were required to include GST, wages or workers including all Labour Law obligations (like EPF, ESIC, EDLI etc as may be applicable as per Government norms, rules and regulations), cleaning material, uniform, other protective gears and there was a stipulation in the e-NIT that in the event of failure on the part of allottee of the contract to pay wages to his employees, the SKIMS reserved the right to deduct the amount from the monthly bills of the bidder. The petitioner-company quoted a rate of Rs.4,43,468.33/ for 75 sanitation workers but after submitting the bid, the petitioners realised that the petitioner-company was disqualified from being awarded the contract as the rates quoted by it were less than the minimum rates of wages of employees fixed in terms of SRO 460 dated 26.10.2017. Not only this, after the submission of bids and prior to allotment of contract, the Government had issued S.O.315 dated 27.06.2022, whereby the minimum rates of wages were further enhanced. The respondents also provided justification of rates to the petitioner wherein the minimum bid amount should have been Rs.6,94,755/ per month, without taking into consideration the cost of cleaning material to be supplied by the contractor as well as the profit margin of the company.

5) It is submitted in the petition that in utter disregard to the justification of rates as provided by the respondents, the respondent No.3 issued the order dated 22.08.2022, whereby the contract for sanitation of various areas of SKIMS Medical College-Hospital, Bemina, Srinagar, was allotted in favour of the petitioner No.1 at a rate less than the present minimum wages as prescribed by the Government. The petitioners immediately submitted a representation and requested the respondents that the allotment order dated 22.08.2022 issued in favour of petitioner No.1 be cancelled. Precisely, the claim of the petitioners in the present petition is that the respondents could not have accepted the bid submitted by the petitioner-company as the rates quoted by it were less than the minimum wages and without including GST, PF, ESLI, EDLI and other applicable charges/taxes. According to the petitioners, the bid submitted by the petitioner-company was not required to be considered at all by the respondents being contrary to Clause (8) of the e-NIT. Further the order dated 25.10.2022 has been passed in violation of the principles of natural justice as no show cause notice was issued to the petitioners for blacklisting of petitioner-company for a period of

two years. It is also urged by the petitioners that the penalty clause of terms and conditions of e-NIT dated 26.02.2022 does not provide for imposition of penalty of blacklisting.

6) The respondents have filed their response to the writ petition stating therein that the petitioner-company had quoted rates and after having done so could not have resiled from the same. It has been urged that the e-NIT clearly provides that the rates quoted should include wages of workers in accordance with all labour law obligations and the petitioner-company by quoting rates failed to fulfil the said requirement. The respondents were justified in disqualifying the petitioner No.1 and awarding the contract to another eligible party who complied with the labour laws and tender conditions. It is further stated that the petitioners were afforded an opportunity to submit a representation which they submitted on 07.09.2022 and the representation so filed did not contain any justification or valid reason to overturn the decision made by the respondents. It is also stated that no show cause notice was required to be issued to the petitioner company as it had violated the terms and conditions of the e-NIT. The respondents have also given details of 14 bidders and as the petitioner No.1 was L1, so the contract in question was allotted to it but the petitioner-company did not start the work within the stipulated time and a notice was issued to the petitioner-company on 07.09.2022 asking it to start the work immediately but the petitioner-company failed to start the work. In response to the said notice, the petitioner company intimated the respondents through application dated 07.09.2022 that it was not in a position to start the work due to certain problems and, accordingly, requested for cancellation of the allotment of work. The representation of the petitioners was discussed with the Principal (Chairman, CSC) who desired that one more notice be served upon the petitioner/contractor and, accordingly, one more notice dated 22.09.022 was served upon the petitioner-company to start the work immediately. The petitioner-company again vide application dated 22.09.2022 represented before the respondents that the allotment of work may be cancelled. Finally, the matter was placed before 5th Contract Sub Committee meeting wherein it was unanimously decided that the sanitation contract for the year 2022-23 allotted in favour of the petitioner-company be cancelled and a fresh tender on short term basis be floated and further it was resolved that the petitioner-company be debarred from participating in the tendering process in the Institution for a period of two years and the CDR be forfeited.

7) Learned counsel for the petitioners has submitted that the there was no stipulation in the e-NIT for blacklisting the bidder but the petitioner-company has been blacklisted without affording due opportunity of hearing to it. He further submitted that the earnest money deposited could not have been forfeited as the petitioner company was, in fact, required to be disqualified for not complying with the stipulations contained in Clause (8) of the e-NIT and it was obligatory on the part of the respondents to examine the bid submitted by the petitioner company in accordance with the terms and conditions of e-NIT and had they

done so, the respondents would have declared the petitioner-company an unsuccessful bidder and the earnest money deposited by the petitioner-company would have been released in its favour.

8) On the contrary, Mr. Furqan Yaqub, learned counsel appearing for the respondents, submitted that the blacklisting has been done in accordance with the terms and conditions of the e-NIT after the petitioner-company failed to execute the work allotted in its favour. He further submitted he is under instruction from the respondents that the amount of CDR can be released in favour of the petitioners.

9) Heard and perused the record.

10) So far as the grievance of the petitioners in respect of forfeiture of CDR is concerned, that prayer of the petitioner-company has been agreed to by the respondents in view of the submission made by learned counsel appearing for the respondents, notwithstanding the fact that in their reply, the respondents have denied the entitlement of the petitioners to the said relief.

11) Now the only contention which remains to be adjudicated upon by this Court is as to whether the petitioner-company could have been blacklisted for two years or not. The petitioner-company requested for cancellation of the contract on account of its inability to perform the same for having quoted less rates. The petitioner is a company and not an individual but it appears that it was the Managing Director of the petitioner-company who made representations before the respondents. The petitioners should have been vigilant while submitting the bid as the submission of bids in such a manner not only results into delayed execution of works but also leads to issuance of fresh tenders, as has happened in the instant case, thereby putting extra fiscal burden on the Tender Inviting Authority. The stand of the respondents is that prior notice was issued to the petitioner-company before taking any action against it. The respondents have placed reliance upon communications dated 07.09.2022 and 19.09.2022 to demonstrate that opportunity of hearing was afforded to the petitioner company. The perusal of notice dated 07.09.2022 reveals that in the said notice, the petitioner-company was directed to start the work immediately failing which necessary action was to be taken and vide communication dated 19.09.2022, the petitioner-company was again directed to start the work within three days positively failing which disciplinary action in terms of Clause (7) of the allotment order was to be taken.

12) The perusal of Clause (7) provides for forfeiture of the earnest money in the event the successful tenderer fails to abide by the terms and conditions of the contract. The respondents have not been able to demonstrate before this Court that the petitioner-company was put to notice that in the event of non-compliance of the terms and conditions of the allotment of contract, it would be blacklisted for two years. In fact, the petitioner-company has been condemned unheard as no show cause notice for blacklisting the petitioner-company was

issued to the petitioner-company.

13) The Hon'ble Supreme Court of India in UMC Technologies Private Limited vs. Food Corporation of India and another, (2021) 2 SCC 551, has held as under:

"14. Specifically, in the context of blacklisting of a person or an entity by the state or a state corporation, the requirement of a valid, particularized and unambiguous show cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization that accrues to the person/ entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting takes away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person."

(emphasis added)

14) In view of above, the present petition is allowed and the impugned order dated 25.10.2022, to the extent of forfeiture of CDR deposited by the petitioner-company and debarring the petitioner company from participating in the tendering process for a period of two years, is quashed and the respondents are directed to release the amount of CDR in favour of the petitioner-company but without interest.

15) No order as to costs.

