

(2024) 12 UK CK 0076

In the Uttarakhand High Court

Case No : Writ Petition (M/B) No. 573 Of 2024

M/s Kalim Ahmad And Another

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 16-12-2024

Acts Referred:

Citation : (2024) 12 UK CK 0076

Hon'ble Judges : Manoj Kumar Tiwari, J; Pankaj Purohit, J

Bench : Division Bench

Advocate : Karmanya Pandey, P.C. Bisht, Naveen Tewari

Final Decision : Dismissed

Judgement

Manoj Kumar Tiwari, J

1. Petitioners' bid has been declared to be non - responsive on the ground that affidavit submitted by petitioner was not in the prescribed proforma. Para 5 of the proforma of affidavit, as given in Standard Bidding Document, is as follows: -

"5. The decision of The Technical Bid Evaluation Committee will be final and will be binding upon us/ me. Our / my any claim in this regard shall not be entertained at any level, if our / my bid is found to be Non responsive."

2. In the affidavit submitted by petitioner, the last sentence in para 5 is missing. Para 5 of the affidavit, submitted by petitioner is as follows: -

"5. The decision of the Technical Bid Evaluation Committee will be final and will be binding upon us/ me. our / my bid is found to be Non responsive."

3. Learned counsel for petitioner contends that due to inadvertent over sight, the last sentence could not be typed in the affidavit. Thus, he submits that his bid cannot be rejected for such small mistake.

4. Learned State Counsel submits that every bidder was required to give an under taking t hat his claim shall not be entertained at any level, if his bid is

found to be non responsive, however this statement was altogether missing in the affidavit submitted by the petitioner with his technical bid. Learned State Counsel thus submits that the employer was justified in declaring the bid submitted by petitioner to be non responsive for not giving under taking in his affidavit.

5. Learned counsel for petitioner relied upon Clause 30 of the Standard Bidding Document for contending that small deviation/ non conformities are liable to be ignored and petitioners' bid should be declared responsive. Clause 30 of the Standard Bidding Document is extracted below: -

"30. Nonconformities, Errors, And Omissions

30.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the Bid that do not constitute a material deviation, reservation or omission.

30.2 Provided that a Technical Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Technical Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Price Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

30.3 Provided that a Technical Bid is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non - conforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria)."

6. Clauses 30 of Standard Bidding Document do not help the case of petitioner as it is an enabling provision which authorises the Employer to waive non material non conformities, if the bid is found substantially responsive. Clause 30, thus gives discretion to the employer to accept or not to accept the bid in such cases. Since employer has taken a decision declaring petitioners' technical bid to be non responsive, therefore, we do not find any reason to interfere with the said decision while exercising power of judicial review.

7. Learned counsel for petitioners then submits that defect pointed out by employer is inconsequential as petitioner has given undertaking in para 5 of the affidavit, furnished by him. The said submission cannot be accepted because the undertaking as given by petitioner is that in case his bid is found to be non responsive, then the decision of Technical Bid Evaluation Committee will be binding upon him. The later part of para 5 of affidavit is an undertaking which he was required to give, as per the proforma, is on a different subject altogether and absolves the employer from any liability.

8. Thus, Writ Petition fails, and is dismissed.