

(2021) 03 J&K CK 0056

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 620 Of 2021, CM No. 2839 Of 2021

M/S Kulwant Singh Enterprise

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 31-03-2021

Acts Referred:

Citation : (2021) 03 J&K CK 0056

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Sandeep Bhat, Vishal Sharma

Final Decision : Dismissed

Judgement

1 The respondents vide Bid No. GEM/2021/B/1080400 dated 04.03.2021 invited bids for outsourcing conservancy services and garbage lifting vehicle for the financial year 2021-2022. The bids were invited in two bid format i.e., technical bid and the financial bid and the bid submitted was to remain valid for a period of 90 days after the deadline date for bid submission. The technical bid consisted of all technical details along with commercial terms and conditions, whereas the financial bid indicated item-wise price for the items mentioned in the technical bid. In clause-3 of the NIT, it was provided that bidder will not make any alteration in or addition to any of the documents connected with the tender. There was another stipulation in the bid document that the bidders' offer was liable to be rejected if they do not upload any of the certificates/documents sought in the bid document/ATC and corrigendum, if any.

2 As is claimed, the petitioner responded to the aforesaid NIT by uploading its bid on 15.03.2021 i.e before the cut off date. Along with the petitioner, others including respondent No.6 also submitted their technical bids. The respondents opened the technical bids and after evaluation, declared the petitioner as qualified, whereas respondent No.6 as also one M/S Sotra Enterprises was declared as disqualified. It is submitted that respondent No.6 was disqualified as

he had failed to upload the Tractor Trolley documents and the bid security declaration certificate at the time of submission of its bid. It is pleaded that, to the utter shock and surprise of the petitioner, the official respondents permitted respondent No.6 to upload the documents which he had failed to submit along with its technical bid and then declared him qualified to participate in the contract. The financial bid was opened in which respondent No.6 was declared as L1, whereas the petitioner was declared as L3.

3 Having faced rejection in the financial bid and after coming to know about the acceptance of technical bid of respondent No.6, the petitioner made a representation to respondent No.3 on 24.03.2021. When no consideration was accorded to the representation of the petitioner by respondent No.3, the petitioner was left with no option, but to file the instant petition.

4 In the backdrop of aforesaid facts, the petitioner has challenged the acceptance of technical bid of respondent No.6 and rendering him qualified for participating in the price/commercial bid.

5 The sole ground on which the impugned action of the official respondents has been challenged is that, once respondent No.6 had been declared disqualified on evaluation of its technical bid, there was no reason or justification to permit respondent No.6 to upload fresh documents and then declare him qualified on the basis of such documents. It is submitted that acceptance of technical bid of respondent No.6 was contrary to the terms and conditions of the NIT and, therefore, falls foul of fairness and transparency expected in the bidding process.

6 On being put on notice, respondent Nos. 1 to 5 have filed their objections. It is submitted that in response to the request for proposal (RFP), four bids were received by the official respondents including the one from the petitioner and one from respondent No.6. Technical evaluation of the bids was done on 15.03.2021, whereupon technical bids of the petitioner and one M/S Ex-Servicemen B.S.Security Agency (Udhampur) were accepted, while the technical bid of one M/S Sotra Enterprises (Jammu) and respondent No.6 was rejected. It is submitted that the technical bid of respondent No.6 was rejected on two grounds; (i) proof of hired/owned fleet of tractors with trolleys not submitted; and (ii) EMD declaration not submitted. It is further submitted that the result of technical evaluation was uploaded on 17.03.2021 and since the bid document provided a period of 48 hours for technical clarifications, therefore, respondent No.6 uploaded the proof of hired/owned fleet of tractor with trolley as well as EMD declaration. On re-evaluation, the technical bid of respondent No.6 was also found responsive and, accordingly, it was declared qualified for participating in the price bid. It is submitted that respondent No.6 being a small enterprise, registered for services activity with the Ministry of Micro, Small and Medium Enterprises, was exempted from furnishing EMD and, therefore, the Udyog Aadhar Certificate submitted by respondent No. 6 was sufficient proof of EMD exemption. It is also submitted that the documents, which were uploaded, were only clarificatory in nature and the relevant documents including the certificate of

registration to work as a Motor Transport Undertaking were already uploaded by respondent No.6 along with its bid submission.

7 The locus standi of petitioner to challenge the technical qualification of respondent No.6 is also challenged by the official respondents on the ground that respondent No.6 was declared technically qualified and was permitted to participate in the price bid, but it was only after he was found L1 in the price bid, the petitioner thought of challenging the technical qualification of respondent No.6. Further more, it is submitted that even if respondent No.6 is held to be technically disqualified, it is M/S Ex-Servicemen B.S.Security Agency (Udhampur) which is L2, would bag the contract and not the petitioner and, therefore, this court may not issue a futile writ.

8 Having heard learned counsel for the parties and perused the record, I am of the view that the writ petition filed by the petitioner is an afterthought. The petitioner waited for the price bid to be opened and it was only when he found that respondent No.6 has been found L1 in the price bid, he thought of challenging the technical qualification of respondent No.6 and, accordingly, filed the instant petition.

9 As is rightly contended by Mr. Sharma, learned ASGI that even if the writ petition is allowed and respondent No.6 is held to be technically disqualified, it is M/S Ex-Servicemen B.S.Security Agency (Udhampur) (L2) which will be entitled to the allotment of contract and not the petitioner. On these two grounds alone, the writ petition is liable to be dismissed. However, I do not find any merit in the submission of learned counsel for the petitioner that respondent No.6, once declared disqualified, could not have been re-evaluated again and held technically qualified to participate in the price bid.

10 It is true that, going by the stipulations contained in the NIT/RFP, a bidder was not permitted to alter or add to the documents already uploaded along with the bid, but, in the instant case, the petitioner has not altered or added to any document. The two documents submitted by respondent No.6, one, as per the official respondents, was not even required, may not be technically speaking clarificatory in nature, yet, they can also be not held to be the documents, that were required to be submitted along with the bid. The EMD declaration in the case of respondent No.6 was not mandatory for the reason that it was registered as small enterprise for services activity with the Ministry of Micro, Small and Medium Enterprises and, therefore, exempted from furnishing EMD.

11 As is rightly submitted by the official respondents that Udhog Aadhar Certificate which was uploaded by respondent No.6 along with its bid was sufficient proof of EMD exemption. Similarly, the petitioner had submitted certificate of registration to work as a Motor Transport Undertaking along with its bid document and, therefore, subsequent submission of proof thereof was only by way of clarification and, therefore, not prohibited by the terms and conditions of the NIT.

12 Without delving much into this aspect, suffice it to say that the petitioner being L3 in the bid process is not likely to bag the contract, even if its plea is to be accepted and respondent No.6 is declared technically disqualified to participate in the price bid. The writ petition has been filed after the price bids have been opened and L1 determined.

13 For the foregoing reasons, I am not inclined to entertain this writ petition. The same is, accordingly, dismissed.