
(2018) 03 OHC CK 0028
In the Orissa High Court
Case No : W.P.(C) No.10461 of 2017

Ms. L.N. Infrastructure and Construction Pvt. Ltd.	APPELLANT
Vs	
Odisha State Police Housing and Welfare Corporation	RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Citation : (2018) 03 OHC CK 0028

Hon'ble Judges : VINEET SARAN, DR. B.R. SARANGI

Bench : Division Bench

Advocate : P.C. Nayak, S.K. Rout, G.P. Dutta, S.K. Mohanty, B.K. Sahoo

Final Decision : Dismissed

Judgement

Vineet Saran, CJ.

1. The opposite party-Odisha State Police Housing & Welfare Corporation Ltd. had issued a tender call notice on 20.04.2017 inviting tenders for

various works. The last date of submission of the tenders was 06.05.2017. The petitioner had submitted his tender within the stipulated time, for

construction of certain quarters and composite electrical works. The technical bids of the bidders were opened on 09.05.2017 as per the schedule. At

the time of opening of the technical bid, it was found that the bid of the petitioner was rejected on the ground:

“due to invalid electrical license as per the condition mentioning in the uploaded documents”. Challenging the said rejection order, this writ petition has been filed.

2. We have heard Shri P.C. Nayak, learned counsel for the petitioner as well as Shri G.P. Dutta, learned counsel for the opposite party and perused

the record. Pleadings between the parties have been exchanged and with

consent of learned counsel for the parties, this writ petition is being disposed of at this stage.

3. The submission of learned counsel for the petitioner is that even though at the time of submission of the documents and evaluation of the technical

bids on 09.05.2017, the license submitted by the petitioner was technically invalid as the condition in the license was that the same would become

invalid if permit/certificate of any of the staff becomes invalid and admittedly, as per the document/licence submitted by the petitioner, the

permit/certificate of two of the staff, namely, S. Parija and S.K Hota had already expired on 11.06.2016 and 31.07.2016 respectively, but learned

counsel for the petitioner contends that on the very next day i.e. on 10.05.2017, the petitioner had submitted renewed permit/certificate of the staff

and, as such, the licence of the petitioner-firm ought not to have been treated as invalid. In support of his submission, learned counsel for the petitioner

relies on Clause-22.1 of the detailed tender call notice relating to clarification of bids, which reads as under:

â??22. Â CLARIFICATION OF BIDS

22.1 Â To assist in the examination, evaluation, and comparison of bids, the officer inviting the bid may, at his discretion, ask any bidders in

writing/online (in their registered e-mail ids) to clarify on the upload documents provided in the Technical Bid, if necessary, with respect to any doubts

or illegible documents. The officer inviting tender may ask for any other document of historical nature during Technical Evaluation of the tender,

provided in all such cases, furnishing of any document in no way alters the Bidderâ??s price bid. Non-submission of legible documents may render

the bid non-responsive. The authority inviting bid may reserve the right to accept any additional document. The bidder will respond in not more than 7

(seven) days of issue of the clarification letter, failing which the bid of the bidder will be evaluated on its own merits.â? Learned counsel for the

petitioner also relies on Clause-3.2.m of the detailed tender call notice relating to possession of valid licence, which reads as under:

â??3.2.m: The contractor or his identified sub-contractor (Permissible in case of Composite bids only) should possess and furnish required valid

license for executing the electrical installation works/mechanical works/building electrification works and should have executed similar engineering

works for a minimum amount as indicated in Contract data in any one year.â??

4. Shri Nayak, learned counsel for the petitioner contends that in the present case the opposite party ought to have exercised its discretion and sought

clarification from the petitioner with regard to validity of the licence as, according to Shri Nayak, in case of there being any doubt, such clarification

ought to have been sought. It is further submitted that in case of non-essential or ancillary/subsidiary condition, as was in the present case, the opposite

party should have permitted the petitioner to supply such information at a later stage and, in support thereof, he relies on a Division Bench decision of

this Court in the case of Jagadamba Packaging Pvt. Ltd. v. Union of India (UOI) and Ors, 110 (2010) CLT 722.

5. Per contra, Shri Dutta, learned counsel for the opposite party has vehemently submitted that possessing of a valid licence was an essential condition,

and since there was no doubt that the same was invalid on the date of opening of the technical bid i.e. on 09.05.2017, there was no necessity for

seeking clarification from the petitioner as the same would be necessary only when there was any doubt, which is not so in the present case. He has

also contended that the condition of having a valid licence was an essential condition and the same could not be treated as ancillary/subsidiary

condition.

6. Having heard learned counsel for the parties and on examining the record, we are of the opinion that there is no doubt about the fact that possession

of a valid electrical licence as on the date of opening of the technical bids i.e. on 09.05.2017 was an essential condition. As such the ratio of the

decision in the case of Jagadamba Packaging (supra) would not apply to the fact of this case.

7. A perusal of the licence, which was submitted by the petitioner along with the tender documents, as has been filed as Annexure-3 to the writ

petition, would go to show that the permits/certificates of two of the employees out of four furnished by the petitioner-firm, had become invalid

because the same had expired on 11.06.2016 and 31.07.2016 respectively. The note along with the said licences clearly provide that â??this licence

will become invalid if Permit/Certificate of any of the above staff becomes invalidâ??

8. In such view of the matter, it cannot be said that there was any doubt with

regard to validity of the licence of the petitioner firm, on which count, the opposite party ought to have exercised its discretion in favour of the petitioner to seek a clarification as provided under Clause 22.1 of the detailed tender call notice. Reading of such clause would make it clear that clarification could be sought by the opposite party only when there was any doubt or there was filing of any illegible documents. Since both the conditions were not existing in the present case, the action of the opposite party in not seeking any clarification is fully justified.

9. In *Siemens Public Communication Network Pvt. Ltd. v Union of India and Ors.*, (2008) 16 SCC 215 : AIR 2009 SC 1204, the Apex Court held that failure to submit qualifying documents in tender, explanation for, is within the domain of the authority to accept or reject the tender itself. Similar view has also been taken by the apex Court in *Ram Gajadhar Nishad v. State of U.P.* (1990) 2 SCC 486 and *Sorath Builders v. Shreejikrupa Buildcon Ltd.*, (2009) 11 SCC 9.

10. In view of the aforesaid discussions, the petition lacks merit and is dismissed as such. No order as to costs. In view of dismissal of the writ petition, the interim order passed on 01.06.2017 stands vacated.