(2019) 08 CAL CK 0085

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 124 Of 2019

M/s M-Tech Innovations Limited — APPELLANT

Vs

Andaman And Nicobar Administration And Others — RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0085

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : K. Vijay Kumar, Mohammed Tabraiz, Gopala Binnu Kumar

Final Decision : Dismissed

Judgement

Rajasekhar Mantha, J

The instant writ petition has been filed by an unsuccessful bidder who participated in Notice Inviting Tender for manufacturing and printing of Driving Licences as also Registration Certificates in the form of smart cards to be supplied to the Transport Department of the Andaman and Nicobar Administration.

The Notice Inviting Tender (NIT) was uploaded in the website of the Transport Department on 6th June, 2018 and released in the local print media on 7th June, 2018. The said Notice Inviting Tender was published in nationwide news papers on 15th June, 2018. The last date of submission of bids as per the original NIT was 30th July, 2018. In the meantime, on 30th August, 2018, a corrigendum was issued to require all intending bidders to submit their Income Tax Returns for the last three preceding financial years along with their technical bids.

The last date of submission of tender was accordingly extended till 29th September, 2018.

There is no dispute to the fact that all other bidders except the petitioner had duly submitted their technical bids as also their Income Tax Returns on or before expiry of 25th September, 2018. The petitioner was, however, issued a letter by the Nodal Officer of the Transport Department on 5th November, 2018 that he could still submit his Income Tax Returns for the three preceding financial years immediately. The petitioner, accordingly, did submit the aforesaid Income Tax Returns on the same day i.e. on 05.11.2018.

By a communication dated 4th December, 2018, the petitioner's technical bid was rejected by the Tender Evaluation Committee on the ground that he had not submitted his financial bid within the time period stipulated therefor.

The petitioner filed a First Appeal before the Deputy Director (Administration - Vigilance) on 12th December, 2018, in terms of the Notice Inviting Tender against the order of rejection of his technical bid.

Simultaneously, the petitioner filed W.P.No.315 of 2018 in which a Coordinate Bench of this Court by an order dated 14th December, 2018 directed disposal of the appeal and during the pendency of the same, the authorities were restrained from opening financial bids of any of the other tenderers. The appeal was heard, but, no decision was taken whereupon the said W.P.No.315 of 2018 was disposed of by another Coordinate Bench of this court by an order dated 8th January, 2019 directing the Appellate Authority to pass final order on the appeal and till such time no decision was to be taken on the financial bid of any party.

The First Appeal was rejected by an order dated 21st January 2019 confirming that the petitioner had not filed his I.T. Returns for three financial years within the time stipulated. Interestingly, it is the same Nodal Officer of the department who represented the Administration in such appeal.

On 4th February, 209, the writ petitioner preferred a second appeal to the Transport Secretary against the order of the First Appellate Authority. Such second appeal was permitted in terms of the Notice Inviting Tender.

Immediately thereafter W.P.No.047 of 2019 was filed whereupon by an order dated 14th February, 2019 a Coordinate Bench of this Court had directed the Transport Secretary to dispose of the said second appeal as expeditiously as possible and during the pendency whereof it was ordered that the tender would not be finalized. The second appeal was disposed of vide order dated 15th March, 2019.

The present writ petition was filed on 18th March, 2019. By an order dated 22nd April, 2019 while refusing to stay the impugned tender process, a Single Bench of this Court ordered that the final outcome of the Tender Evaluation Committee would abide by the result of the present writ petition.

Aggrieved and dissatisfied by the refusal of the Coordinate Bench of this Court in staying the tender process, the writ petitioner filed MAT No.670 of 2019 which appeal was disposed of by a Division Bench of this Court directing that no further steps would be taken in the tender process and no bid shall be finalized till the consideration of the matter by this Bench in the instant writ application.

The writ petitioner would argue before this Court as follows:- While it is true that the last date of submission of Income Tax Returns for the three previous years was 22nd September, 2018, by a reason of the Nodal Officer of the Department allowing the petitioner to file his I.T. Returns via email dated 5th November, 2018, when the petitioner submitted such returns on the very same day, the petitioner's technical bid could not have been rejected on such ground. It is found from the Notice Inviting Tender that the competent authority in terms of Section 5 of sub-section 11 is the Secretary (Transport), Andaman and Nicobar Administration.

The procurement of entity/authority in terms of clause 1 and clauses 5.33.2 of the NIT is the said Transport Secretary of the Andaman and Nicobar Administration.

The Nodal officer, therefore, clearly did not have any authority whatsoever to unilaterally communicate with the writ petitioner and extend the date only in so far as the writ petitioner is concerned for submitting the I.T. Returns for three previous financial years. The rejection of the first and second appeal on this score therefore, cannot be faulted and upheld by this Court.

The writ petitioner would next argue by reference to clause 4.1.11 under Section IV that "no bid shall be rejected at the time of Bid opening except those Bids not accompanied with the proof of payment or instrument of the EMD".

According to the petitioner, the rejection of his bid for not furnishing of I.T.Returns was, therefore, contrary to the Notice Inviting Tender.

This Court finds the argument of the petitioner preposterous and the interpretation of clause 4.1.11 equally baffling. The principal object and purport of 4.1.111 as appears from a plain reading of the Notice Inviting Tender, as a whole, is to ensure the bonafides of the bidders and payment of EMD. The evaluation process of bid is indeed a long and arduous process. But the same cannot mean that despite non-compliance of the bid conditions under clause 3.7 would have to be accepted by the Bid Evaluation Committee merely by payment of the EMD.

Clause 3.7 stipulates as many as 19 conditions and documents showing fulfillment of such conditions required to be put in by a bidder, in the technical part of the bid.

Taking the argument to the extreme, the writ petitioner wants to accept this Court that the bidder who does not supply or fill in any part of the technical requirement and merely puts in the earnest money, can never have his bid rejected. Such an interpretation would be absurd. The second argument of the petitioner also therefore stands rejected.

The petitioner would next argue as has been recorded in the order of the Division Bench dated 1st July, 2019 (supra) that he was, in fact, a lowest bidder and was entitled to be considered despite non-furnishing of the three years financial tax returns. This Court is unable to accept the same.

It is now well settled law as laid down by the Hon'ble Supreme Court in the context of state distribution of largess and public tendering process, that merely because of a person is the lowest tenderer the same would not entitle him to have any superior right over any other higher bidder. Such a tenderer is to be otherwise treated equally with other tenderers as there are various other factors that the government department procuring goods and services is required to take into consideration.

In any event the stage of determining as to whether the petitioner is a lowest bidder or not had not arisen at the time when his technical bid was rejected, as the financial bid was not opened then. The said argument is, therefore, wholly irrelevant for the purpose of determining whether the petitioner has fulfilled the technical criteria for the evaluation and acceptance of his technical bid and to enable the Department to open his financial bid.

The petitioner would lastly argue that the absence of an authority of the Nodal Officer as has been canvassed in the affidavit-in-opposition for the first time in the writ application had not been urged by the authorities in the first and second appeal preferred in terms of the NIT by the writ petitioner.

Counsel for the Administration would argue that the same has been dealt with by the Secretary (Transport), Andaman and Nicobar Administration in course of finalization of the second appeal.

Be that as it may, this Court is of the view that a plain reading of the terms NIT itself would clearly indicate that the person to decide or waive or accept any part or portion of any omission by any bidder, would only be the Secretary of Transport.

The Nodal Officer's communication is wholly illegal without jurisdiction or any authority of law. It is now a well settled proposition that there cannot be any estoppel against the law. The Nodal Officer has acted admittedly without authority and the writ petitioner being an educated person who is deemed to have gone through the terms and conditions of the NIT, acts upon a communication by a person without authority the same can have no binding effect on the authority itself.

For the reasons stated herein above, this Court is of the clear view that the rejection of the writ petitioner's bid by the authorities cannot be faulted in terms of NIT and the settled principles of law with regard to State distribution of largess.

The writ petition must therefore fail and is hereby dismissed.

There shall, however, be no order as to costs.

Urgent Xerox certified server copy of this order, if applied for, be supplied to the Learned Counsel for the parties upon compliance of usual formalities.