
(2011) 11 CHH CK 0047
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1720 of 2011

M/s. Mohammed Kasim and Others

APPELLANT

Vs

C.G. State Power Generation Company Ltd.

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Citation : (2011) 2 CGBCLJ 476

Hon'ble Judges : Sunil Kumar Sinha, J;R.S. Sharma, J

Bench : Full Bench

Advocate : Rishi Rahul Soni and Mr. Samme Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—Heard on admission. The petitioners have filed this writ petition for the following relief (S):-

10.1 The Hon''ble Court may kindly be pleased to call for entire records pertaining to the case for the petitioner for it''s kind perusal;

10.2 The Hon''ble Court may kindly be pleased to hold the pre-qualifying requirements/eligibility criteria laid down by the respondents in respect of Tender Specification No. 20-30/KEB/P&W/ET&I-II/T-211/2010, Tender Specification No. 20-30/KEB/P&W/ET&I-II/T-213/2010, Tender Specification No. 20-3/KEB/P&W/T-206/2010 and Tender Specification No. 20-03/KEB/P&W/T-208/2010 to be illegal, irrational, unfair, arbitrary and inconsistent with the Constitution of India;

10.3 The Hon''ble Court may kindly be pleased to quash all the proceedings taken in respect of Tender Specification No. 20-03/KEB/P&W/ET&I-II/T-211/2010, Tender Specification No. 20-03/KEB/P&W/T-206/2010, and Tender Specification No. 20-03/KEB/P&W/T-208/2010, and further be pleased to direct the respondents to issue fresh Notice Inviting Tenders for the work mentioned in the above said four tender specification with such pre-qualifying requirements as will be legal, rational, fair and in accordance with the Constitution of India.

The Hon''ble Court may kindly be pleased to issue a writ in the nature not mandamus commanding the respondent state authorities to open price bids of the tenders submitted by the petitioners for the above said four tender specifications, and if the petitioners'' bids were found to be lowest one then the respondents may kindly be directed to award the contract to the petitioners;

10.4 Any other relief, which this Hon''ble Court may deem fit and proper looking to the facts and circumstances of the case, may also kindly be granted in favour of the petitioner.

2. Shri Soni, learned counsel for the petitioner submits that the petitioner-firm offer bids for participating in the above four tender specification. According to the tender conditions, the petitioner-firm had deposited envelopes containing earnest money, techno-commercial bids and price bids separately in all the four tender specification. According to the respondents, the petitioner-firm was not found eligible for opening of the price bid (3rd envelop), because the firm could not fulfil the qualifying requirements which are contained in the tender documents (annexure-P/1-page 18 of the paper book). He further submits that the qualifying requirements are harsh and irrational and the qualifications relating to the execution of similar nature of AOH works of particular package during last five years in 50 MW and above capacity units in respect of PH II and 120 MW and above in respect of PH III are harsh and impracticable.

3. It is not disputed that the petitioner-firm participated in the tender process after knowing the above qualifying requirements, which were the part of the tender documents, Knowing fully well the qualifying requirements, which are specific, the petitioner-firm participated in the tender specification and when it became unsuccessful in the tender process, now it is challenging the qualifying requirements of the tender documents on the above grounds. The subject works have already been awarded to respondents 4 & 5. We are of the view that after participating in the tender process and being unsuccessful, the petitioner-firm cannot challenge the qualifying requirements, which it did not dispute at any earlier stage before it was declared unsuccessful.

4. In Meerut Development Authority Vs. Association of Management Studies and Another, , the Supreme Court held that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist

the authority inviting tender to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

5. The qualifying requirements laid down by the respondents appear to be settled for the purpose of selection of the best bidder, so as to fulfil their requirements. Unless the qualifications fixed are found to be wholly irrational or illegal or tailor-made, the same cannot be interfered in a writ petition like present one. For the foregoing reasons, we do not find any substance in the writ petition, which is liable to be dismissed and is hereby dismissed summarily.