(2016) 02 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : CWP No. 4859 of 2015

M/S Rama Construction Co. APPELLANT

Vs

State of Himachal Pradesh & Ors. RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Citation : (2016) 2 HimLR 1145

Hon'ble Judges : Rajiv Sharma;Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : Suneet Goel, Advocate, for the Appellant; Shrawan Dogra, AG with M.A. Khan, Addl. Advocate General, Sumeet Raj Sharma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J. - The petitioner is a ''Class-A'' Contractor registered with Central Public Works Department, Delhi. He was allocated Tax Payers Identification Number (hereinafter referred to as the "TIN number" for brevity sake) on 1.4.2005. Tenders were invited for the construction of Dr. Y.S.Parmar Government Degree College at Nahan District Sirmaur, H.P. for a sum of Rs. 10,77,98,846/-. The tenders were uploaded by respondent No. 4. According to this notice, two types of bids i.e. technical bid and financial bid were to be uploaded through e-tendering between the period 7.11.2015 to 1.12.2015. The date of opening of technical bid by the Technical Scrutiny Committee headed by respondent No. 4 was 1.12.2015. The petitioner participated in the tendering process and submitted the tender as per the requirement. The Tender Opening Committee scrutinised the technical bid(s) of six bidders. The petitioner''s tender was rejected during technical evaluation, as per Annexure P-5 dated 10.12.2015.

2. The petitioner has quoted bid in the sum of Rs. 12, 68,00,000/- and respondent No. 5 has submitted its bid in the sum of Rs. 13,04,60,219.01/-. According to the bid evaluation report for civil works i.e. Annexure P-6, the Sales Tax/VAT registration number of the petitioner was not available at the time of

tender.

3. Mr. Suneet Goel, Advocate, appearing for the petitioner has vehemently argued that the rejection of the technical bid is arbitrary. He further submits that his client has uploaded Sales Tax/VAT Registration number available at page No. 122 of the paper book w.e.f. 1.4.2005. Mr. Shrawan Dogra, learned Advocate General for the State and Mr. Sumeet Raj Sharma, Advocate, appearing for respondent No. 5 have vehemently argued that since the petitioner was registered with CPWD, he was not authorised to apply to bid for HP PWD and no Sales Tax/VAT Registration with the State of Himachal Pradesh was uploaded.

4. We have heard the learned Advocates for the respective parties at length.

5. Condition No. 21 at page 30 of the paper book reads as under:

"21. The sales tax shall be deducted @ 2% on the work done by contractor. The contractors are required to obtain the sales tax registration and produce at the time of tender. The department will deduct cess of 1% from each running bill from the gross amount of work done by the contractor. The contractor will submit delivery report of material brought to site including M-Form. Royalty will be deduced, where required."

6. It is evident from the plain language of Clause 21 that the Contractors were required to obtain the sales tax registration and produce the same at the time of tender. There is no requirement that the Contractors should have obtained Sales Tax/VAT Registration from the State of Himachal Pradesh. The petitioner has uploaded his Sales Tax/VAT Registration as per page 122 of the paper book. The petitioner has quoted bid in the sum of Rs. 12,68,00,000/- and respondent No. 5 has submitted its bid in the sum of Rs. 13,04,60,219.01/-. Respondents No. 1 to 4 have misconstrued and misinterpreted Clause 21 of the tender document while rejecting the technical bid of the petitioner. Thus, the Technical Scrutiny Committee has wrongly rejected the technical bid of the petitioner by stating that Sales Tax/VAT Registration was not available at the time of tender.

7. The ground assigned for rejecting the technical bid of the petitioner as per the reply is that the petitioner has not worked in hilly region. There was no stipulation in the General Rules and Directions that the Contractor should have worked in the hilly region. This ground has also not been stated while rejecting the technical bid of the petitioner, as per the Bid Evaluation Report. The other ground, as per the reply filed by the respondents, to reject the petitioner''s technical bid is that its registration is with the CPWD and not with the HP PWD. The petitioner in rejoinder has specifically quoted the rules notified on 8.6.2015, whereby the contractors enlisted with the CPWD and Public Works Departments of neighbouring State of Punjab, Haryana and U.T. Chandigarh are eligible for participation in the tendering process of HP PWD. The respondents have not filed any rebuttal to this.

8. The only reason assigned, as discussed herein above, while rejecting the

petitioner''s technical bid as per the bid evaluation report was that the Sales Tax/ VAT Registration was not available at the time of tender, however, in the reply two additional grounds have been assigned for the first time i.e. non-experience of working in the hilly region and non-registration of the petitioner with Public Works Department. The respondents No. 1 to 4 cannot be permitted to assign new grounds/explanations, while rejecting the technical bid of the petitioner to supplement the decision already arrived in bid evaluation report.

9. It is settled law that the Courts can judicially review the decision making process and we have also found arbitrariness in the decision making process by respondents No. 1 to 4 while rejecting the technical bid of the petitioner on the grounds which are contrary to the terms and conditions of the tender document.

10. Their lordships of the Hon''ble Supreme Court in the case of State of Punjab v. Bandeep Singh and ors., reported in (2016) 1 SCC 724, have held that every decision of an administrative or executive nature must be a composite and self sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. Their lordships have further held that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. It has been held as follows:

"4. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi, [1978] 2 SCR 272, of which the following paragraph deserves extraction:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji, [1952] 1 SCR 135:

''9. Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'' Orders are not like old wine becoming better as they grow older".

11. Accordingly, the Writ Petition is allowed. Annexure P-5 dated 10.12.2015 is quashed and set aside. The technical bid of the petitioner is declared valid and respondents No. 1 to 4 are directed to consider its financial bid within a period of two weeks from today. Pending application(s), if any, shall stand disposed of.