
(2017) 12 RAJ CK 0017
In the Rajasthan High Court
Case No : 15294 of 2017

M/s Ramgopal - Bhakraram, Sanchore	APPELLANT
Vs	
State of Rajasthan	RESPONDENT

Date of Decision : 08-12-2017

Acts Referred:

[Rajasthan Transparency in Public Procurement Rules, 2013](#), Rule 72 -
Rajasthan Transparency in Public Procurement Act, 2012, Section 30, Section 30 -
Public Work (Finance and Account) Rules, 1999, Rule 331

Citation : (2017) 12 RAJ CK 0017

Hon'ble Judges : Vijay Bishnoi

Bench : SINGLE BENCH

Advocate : Mahesh Bora, Nishant Bora, Rajesh Panwar

Final Decision : Dismissed

Judgement

1. This writ petition is filed by the petitioner seeking following reliefs:

"It is therefore, most respectfully prayed that the writ petition filed by the petitioner may be allowed and by an appropriate writ, order or direction:-

(i) The order No. 4049 dated 17-11-17 (Annexure P-7) by which the petitioner was declared unsuccessful for bid no.3/17-18 and bid No.4/17-18 may be quashed and set aside.

(ii) That the order No. 4061 dated 17-11-17 (Annexure P-8) by which tender regarding bid No.3/17-18 was sanctioned in favour of the M/s Krishna & Company, may be quashed and set aside.

(iii) That the order No.2095 dated 17-11-17 (Annexure P-9) by which the tender regarding bid No. 4/17-18 was sanctioned in favour of the M/s JRC Construction may be quashed and set aside.

(iv) That the bid information No. 3/17-18 (item No. 4) regarding work of repair,

restoration and modeling works from 0 K.M. to 23 K.M. at Balera Distribution System may be awarded to the petitioner firm.

(v) That the bid information No. 4/17-18 (item No. 1) regarding work of repair, restoration and modeling works of Palri Sub Minor distribution system of Sanchoe Lift Canal, may be awarded to the petitioner firm

(vi) Any other order or direction, which may be deemed just and proper in the facts and circumstances of the case, may kindly be passed in favour of the humble petitioner."

2. The facts, which are not in dispute, are that the petitioner submitted its bids pursuant to NIT Nos. 3 and 4 of 2017-2018 issued by the Office of the Superintending Engineer, Narmada Nahar Pariyojna, Circle-II, Sanchoe for item No.4 and item No.1 respectively.

3. The petitioner was found successful in technical bids in both the above referred NITs and thereafter the financial bids were also opened and the petitioner's bids were found lowest for both the works. However, on 17.11.2017, the respondent-department declared the petitioner's bids unsuccessful in both the NITs citing the reason that the petitioner does not qualify as per clause 3.2(b) of the tender document as it does not have requisite experience of executing similar nature of works. Being aggrieved with this, the petitioner has filed this writ petition.

4. Learned counsel for the petitioner has submitted that once the financial bids of the petitioner were opened and the bids quoted by it were found lowest, the respondent-department has no authority to cancel the bids of the petitioner for the reason that the petitioner does not have requisite experience of executing similar nature of works.

5. It is also contended that the respondent-department has also illegally declared the respondent No.6 tender No.3 as the L/1 by accepting the fresh bid of it by reducing bid amount

though the same is not permissible under the law. It is further submitted that similarly the respondent-department has also illegally accepted the fresh bid of respondent No.4 for NIT No.4 by reducing its bid amount.

6. Learned counsel for the petitioner has further argued that the reason given by the respondent-department for rejecting the bids of the petitioner in respect of the concerned NITs is entirely false because from the works experience certificate submitted by the petitioner along with bid documents, it is clearly established that the petitioner is having requisite experience of completing similar kind of work for which it has submitted the bids.

7. It is further contended that once the respondent-department has considered the work experience of the petitioner as suitable, it cannot review its decision and such an action of the respondent-department is absolutely illegal and without jurisdiction.

8. Learned counsel has, therefore, prayed that the action of the respondent-department of rejecting the bids of the petitioner submitted pursuant to the NIT No.3 and 4/2017-18 be set aside and the reliefs prayed for in this writ petition be granted.

9. Reply to the writ petition is filed on behalf of the respondent-State, wherein preliminary objection regarding the availability of alternative remedy of filing an appeal as provided under section 30 of the Rajasthan Transparency in Public Procurement Act, 2012 (for short "the Act of 2012" hereinafter) has been taken.

10. It is also submitted that as per Rule 72 of Rajasthan Transparency in Public Procurement Rules, 2013 (for short "the

Rules of 2013" hereinafter), the procuring entity is having all the jurisdiction to accept or reject any bid at any point of time prior to award of contract and in view of the above, it is wrong to say that after accepting the financial bid, the respondent-department has no authority or jurisdiction to reject the said bid.

11. In reply to the writ petition it is averred that though the technical bids of the petitioner were accepted and the financial bids were also opened and the petitioner's bids were found lowest amongst the other bidders but the respondent-department has received a complaint with the allegation that the petitioner does not have the requisite experience in terms of clause 3.2(b) of the tender document and its bids have wrongly been accepted. Therefore, pursuant to the directions given by the Superintending Engineer, Narmada Nahar Pariyojna, Circle-I and II, re-examination of the petitioner's experience was conducted as per Rule 331 of Public Work (Finance and Account) Rules, 1999 by a review committee and the review committee has found that the petitioner does not possess the requisite experience as prime contractor in completing at least one contract of nature and complexity within last five financial years and, therefore, the bids of the petitioners have been rejected.

12. An additional affidavit is filed on behalf of the respondent-department in which it is clarified that as per clause 3.2(b) of the NIT No.3/17-18 and 4/17-18, the petitioner was required to have experience of same nature amounting to Rs.88 lac in one work in relation to Bid No.3 and Rs.98 lac in one work in relation to Bid No.4. It is averred that from the documents submitted by the petitioner along with its bids, it is clear that the petitioner was not having the requisite experience as per clause 3.2(b) of the tender document and, therefore, his financial bids

have rightly been rejected.

13. Heard learned counsel for the parties and perused the material available on record.

14. So far as argument of the learned counsel for the petitioner to the effect that the respondent-department has no jurisdiction to reject the financial bids of the petitioner in respect of the NITs 3/17-18 and 4/2017-18 after accepting the same is concerned, the same is not liable to be accepted in view of Rule 72 of the Rules of 2013, which provides that the procuring entity has right to accept or reject any bid at any point of time prior to the award of contract.

15. Admittedly, in the present case, the contract has not been awarded till the financial bids of the petitioner had been rejected.

16. The another contention of the learned counsel for the petitioner is to the effect that the reason for rejecting the financial bids of the petitioner cited by the respondent-department are entirely false, is also not liable to be accepted.

17. Clause 3.2(b) of the tender document specifically provides that bidder shall have successful experience as prime contractor in completing at least one contract of a nature and complexity comparable to the proposed contract within the last five financial years from the of publication of NIT of value not less than 30% of G-Schedule amount. 30% of G-Schedule amount has also been specified in clause 3.2(b) of the tender document. In the tender document, the work of similar nature of complexity comparable to the proposed contract has also been clarified.

18. From the documents produced by the petitioner along with this writ petition, it appears that though the petitioner is

having experience of completing similar nature of work for which he has submitted its bids but the petitioner has not completed at least one contract of a nature and complexity comparable to the proposed contract within the last five financial years from the of publication of NIT of value not less than 30% of G-Schedule amount in both the tenders.

19. Learned counsel though has tried to convince this Court that the work completed by the petitioner in last five years of construction of a road i.e. Gramin Gaurav Path is similar to the construction of a canal or the work for which the petitioner has submitted its bids and the costing of the said work was much more than 30% of the G-Schedule amount of the proposed contracts, but I am not impressed with it because the respondent-department has already clarified in the tender document that which works will be treated as similar in nature and complexity comparable to the proposed contract and this Court cannot add something else in the said clarifications while exercising extraordinary jurisdiction of this Court. It is the prerogative of the procuring entity to treat the various works as similar in nature and the said action of the procuring entity can not be subject to judicial review.

20. The other contention of the learned counsel for the petitioner to the effect that the respondent-department has illegally accepted the fresh bids of the respondent Nos. 4 and 5 by reducing bid amounts is also having no merit in view of the submission made by the learned counsel for the respondent-department that after rejection of the bids of the petitioner, the bids of respondent Nos. 4 and 5 were found responsive and the department after interacting with them has persuaded them to reduce their bid amounts and when they reduced it, the same

has rightly been accepted by the department.

21. In view of the above discussions, I do not find any merit in this writ petition and the same is hereby dismissed.

There shall be no order as to costs.

22. Stay petition also stands dismissed.