

(2023) 05 CHH CK 0009

In the Chhattisgarh High Court

Case No : Writ Petition (Civil) No. 2013 Of 2023

M/S Sheela Construction Company

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Citation : (2023) 05 CHH CK 0009

Hon'ble Judges : Ramesh Sinha, CJ; Rakesh Mohan Pandey, J

Bench : Division Bench

Advocate : Harsh Wardhan Agrawal, Gagan Tiwari, Kishore Bhaduri, Shreyansh Agrawal

Final Decision : Dismissed

Judgement

1. Heard Mr. Harsh Wardhan Agrawal, learned counsel for the petitioner. Also heard Mr. Gagan Tiwari, learned Deputy Government Advocate, appearing for respondent Nos. 1 to 6 and Mr. Kishore Bhaduri, learned Senior Advocate assisted by Mr. Shreyansh Agrawal, learned counsel for respondent No.7.

2. Undisputed facts of the case are that the respondent No.3 had issued tender notice (Second Call) NIT No. 334/TC/22-23 dated 09.12.2022 for the work of "Construction of Railway Over Bridge on Kachna Khamardih Road in km 5/12-13 on Raipur-Vishakhapatnam Rail Line at LC No. RV-7 under CRF Scheme" for Rs. 4255.96 Lacs for a period of 18 months. As per the tender schedule, last date of submission of online bids was 26.12.2022 and the bid was scheduled to be open on 29.12.2022 and in the meanwhile as per the tender conditions, a pre-bid meeting for clarifications was scheduled on 14.12.2022 as there was some confusion regarding 'RCC Retaining Wall'. In the pre-bid meeting held on 14.12.2022, the respondent authorities had clarified that construction is to be made as per Annexure – N which specified 'RCC Retaining Wall' and not 'RE Wall'. The bids were submitted by the petitioners and other contractors, however, on account of some confusion regarding 'RCC Retaining Wall', a corrigendum was issued by the respondent authorities on 20.03.2023 for the purpose of rate

revision along with the reply of pre-bid queries and all tenderers/contractors were granted 7 days time till 27.03.2023 for any modification in their bids. After expiry of the said period the bids were closed for consideration of the respondents. On 31.03.2023, the technical bids were opened by the respondent authorities in which the petitioner and the private respondents were found eligible by the department. On 21.04.2023, the price bids were opened and the respondent No.7 was found as lowest bidder (L-1). Hence, the petitioner had filed this writ petition with the following prayers :

"10.1 That, the Hon'ble Court may kindly be pleased to call for the entire records in respect of the grievance of the Petitioner kept in the possession of the Respondents, for its kind perusal.

10.2 That, this Hon'ble Court may kindly be pleased to adjudicate and declare that the private respondents No. 7 to 9 were disqualified and are not entitled for award of work in the present tender.

10.3 That, this Hon'ble Court may kindly be pleased to direct the respondents to award the work in the present tender to the petitioner herein and thereafter proceed in accordance with law.

10.4 That, the Hon'ble Court may kindly be pleased to grant any other relief which the Hon'ble Court deems fit and proper in the facts and circumstances of the present case.

10.5 That, the Hon'ble Court may kindly be pleased to grant cost of the petition to the Petitioner."

3. Mr. Harsh Wardhan Agrawal, learned counsel for the petitioner submitted that the petitioner had quoted its rates after considering the reply to the pre-bid queries issued by the respondent authorities, whereby it was clarified that the contractor is liable to construct 'RCC Retaining Wall' and not 'RE Wall'. The petitioner even submitted representation on 10.04.2023 before the respondent authorities regarding 'RCC Retaining Wall' and pointed out that he has quoted higher rates. He further submitted that in the bid submitted by the respondent Nos.7 to 9, they have proposed to construct 'RE Wall' which was impermissible. The respondent authorities have illegally granted opportunity to respondent No.7 to 9 to rectify their bids after opening of the technical bids. Hence, the respondent Nos.7 to 9 be declared as disqualified and award the work of the present tender to the petitioner.

4. Mr. Kishore Bhaduri, learned Senior Advocate appearing for respondent No.7 submitted that after opening of the technical bid on 31.03.2023, the respondent authorities issued a letter dated 06.04.2023 to respondent Nos. 7, 8 and 9 demanding to submit the representation for Retaining Wall, as mentioned in Annexure N of the NIT. He further submitted that the respondent No.7 replied vide letter dated 11.04.2023 to the respondent authorities, specifying that he is ready to construct 'RCC Retaining Wall', as per Annexure N of the NIT and given

its due consent. It is also submitted that no objection was raised by the petitioner at that particular point of time. The respondent authorities opened the price bid on 21.04.2023 in fair and transparent manner of all 4 contractors and the respondent No.7 was found to be the lowest bidder (L-1) and the petitioner was found to be the highest bidder among all the 4 contractors. Since the petitioner was not selected for the tender, he approached this Court with wrong and malafide intention just to delay and recall the tender.

5. We have heard learned counsel for the parties and perused the documents appended with the writ petition.

6. Considering the submissions of learned counsel for the parties and after perusal of the documents and particularly the fact that the petitioner has not raised any objection with regard to issuance of letter dated 06.04.2023 to respondent Nos. 7, 8 and 9 demanding to submit the representation for Retaining Wall, as mentioned in Annexure N of the NIT before the respondent authorities at that particular point of time and also considering the fact that the respondent No.7 was found to be the lowest bidder (L-1) and is ready to construct 'RCC Retaining Wall', as per Annexure N of the NIT and the petitioner was found to be the highest bidder among all the 4 contractors, we do not find any good ground to entertain this writ petition.

7. Accordingly, the writ petition deserves to be and is hereby dismissed.