(2011) 03 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : CWP. No. 1068 of 2011

M/s. TRG-Ajay-Vijay (Joint Venture) APPELLANT

Vs

State of H. P. and Others RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Citation : AIR 2011 HP 96

Hon'ble Judges : Kurian Joseph, C.J;Sanjay Karol, J

Bench : Division Bench

Judgement

Kurjan Joseph, C.J.—The writ petition is filed with the following prayers:

(a) That the rejection of Technical Bid of the petitioner submitted by the Standard Bidding Document procurement of Civil Works Part I Complete Bidding Document issued by the Respondent No. 4 by the Respondent No. 2 as conveyed through Respondent No. 3 through Annexure P-17 & 18 dated 22/2/2011 and dated 7/1/2011 is illegal and is liable to be quashed and the respondent be directed to consider the petitioner for the evaluation of technical bid and for financial bid with respect to finalization of tender.

(b) That the Financial Bid of Respondent Nos. 6 and 7 be not opened till the determination of the right of the petitioners with respect to its eligibility for consideration of Technical Bid and right of participation for the consideration of Financial Bid, in the alternative the tender may not be awarded after considering the Financial Bid of respondent No. 6 and 7.

2. In the reply furnished by respondents No. 1 to 3 at paragraph 4(i). it is stated as follows: -

i) M/S TRG-Ajay-Vijay JV:- As per eligibility criteria required under clause 2.7.1a(i) of the Standard Bidding Document (procurement of civil work Part-I) was duly evaluated for each partner of the joint venture/Petitioner with reference to clause No. 2.6.3(b) wherein as per condition of Standard Bidding Document (procurement of civil work Part-I), it was required that lead partner should satisfy at least 50% of the qualifying criteria given in clause 2.6.3 and 2.6.6, and the other junior partners must satisfy the criteria of 30% each. Therefore, in this case the lead partner M/s. TRG Pvt. Ltd. New Delhi, who has completed a single work valuing 31.69 crore, and which was considered and which is more than required value of 6.25 crore, whereas junior partner Shri Ajay Kumar has completed single work of maximum value of 3.22 crore and Shri Vijay Kumar has completed single work of maximum of 3.49 crore which is less than the required value of 30% i.e. 3.75 crore, hence the petitioner have been found non responsive for not fulfilling the criteria under clause 2.7.1a(i) with reference of clause 2.6.3(b).

3. In order to appreciate the crucial dispute, it requires a deeper reading into clause 2.7.1 of the Bidding Document, which is Annexure P-7. Clause 2.7.1 reads as follows:

2.7.1 Joint ventures must comply with the following requirements:

(a) Following are the minimum qualification requirements;

(i) The lead partner shall meet not less than 50 per cent of all the qualifying criteria given in para 2.6.3 & 2.6.6 above. The joint venture must collectively satisfy the criteria of paras 2.6.3 & 2.6.6 above. The experience of the other joint venture partners'' shall be considered if it is not less than 30 per cent of the qualifying criteria given in paras 2.6.3 & 2.6.6 above. However, in case one of the joint venture partners is proposed to be included primarily to provide financial strength to the joint venture, such joint venture partner shall have to commit to provide liquidity support to the project to the extent of 10 per cent of the value of the contract.

4. It is the stand of the Department that the leading partner shall meet not less than 50% of all the qualifying criteria given in paragraph 2.6.3 and 2.6.6. As can be seen from the reply in this case, there is no dispute that the leading partner satisfies the said condition. The requirement is only of 6.25 crore whereas the leading partner has completed the work to the tune of 31.69 crores. The approximate value of the work is only less than 31 crores. The second requirement is that the joint venture must collectively satisfy the criteria of paragraph 2.6.3 and 2.6.6-There is no dispute that the joint venture has satisfied collectively that criterion also, as required under paragraphs 2.6.3 and 2.6.6.

5. The dispute is on the interpretation with regard to the third requirement; if at all it is a requirement. It is the stand of the Department that each joint venture partner shall have not less than 30% of the qualifying criteria. The qualifying criteria is 3.75 crores whereas the joint partners have only 3.22 and 3.49 crores, respectively. The question is whether it is required under the bid conditions that each joint venture partner should have not less than 30% of the qualifying criteria.

6. A closer reading of the bidding conditions would clearly shows that there are only two requirements. The third is in fact a proviso only to the second requirement. The two are : (i) the leading partner should satisfy the qualifying criteria of not less than 50%, (ii) the joint venture collectively should satisfy the criteria laid down in para 2.6.3 and 2.6.6. The third aspect becomes relevant only if the joint venture partners have not less than 30% of the qualifying criteria. That condition is in fact a proviso to the second condition that the joint venture must collectively satisfy the criteria and in the process, the qualifying criteria of the joint venture partners can be taken into consideration only if they have not less than 30% of the qualifying criteria. If the version of the Department is to be accepted, the third sentence in 2.7.1a(i) should have been simply :

each joint venture partner shall have not less than 30% of the qualifying criteria.

7. That is not what is provided or required in the bidding document. Whether the joint venture partner possesses not less than 30% of the qualifying criteria becomes relevant only if the joint venture not collectively satisfying the criteria of 2.6.3 and 2.6.6. In other words, for satisfying collectively the requirement of para 2.6.3 and 2.6.6, the joint venture partners'' contribution would be counted only if they have not less than 30% of the qualifying criteria. That is also made clear in the last sentence of the paragraph with regard to the purpose of induction of joint venture partner. The same can also be for providing financial strength. In such a situation, such partner(s) will have to commit to provide liquidity support to the project to the extent of 10% of the value of the project. It is for the respondents to do the needful in that regard in the process at the appropriate stage. Since there is no dispute that the joint venture otherwise collectively satisfies the criteria of 2.6.3 and 2.6.6, the bid of the joint venture has to be held to be responsive as fulfilling the criteria under the bidding document.

8. The learned Advocate General submits that it is a time bound work and it has been lagging for quite some time and any delay will be detrimental to the public interest. The extension presently given is upto 30th April, 2011 for awarding the work. In that view of the matter, we do not think it necessary or expedient to issue notice to the private respondents since they will also get an opportunity to participate in the process when their financial bid is opened.

9. In the above circumstances, this writ petition is disposed of as follows :

10. There will be a direction to respondents No. 1 to 5 to treat the petitioner as duly qualified and responsive to the Notice Inviting Tender and permit him to participate in the tender process. The financial bid of the petitioner - joint venture shall also be considered along with the qualified tenderers. There will be a direction to the Chief Engineer, who is the head of the Committee to open the financial bid with a notice to all the qualified tenderers, including the petitioner within a week from today, process the matter accordingly and finalize the same

before the extended date of 30th April, 2011.

11. The writ petition is disposed of, so also the pending applications, if any.

A copy of this order, duly authenticated by the Court Master, shall be given to the learned counsel for the parties.

