
(2015) 02 RAJ CK 0128

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5773/2014, Stay Application No. 5213/2014 and
Second Stay Application No. 9951/2014

National Meditek

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2015) 02 RAJ CK 0128

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Virendra Dangi, Senior Counsel and Nidhi Khandelwal, for the
Appellant; Rajat Ranjan, Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—Petitioner, in pursuance of tender notice dated 10.04.2013, submitted tender for supply of Diagnostic Kits and Technical Bidcover, on 15.05.2013. He offered lowest rate for items No. 1 to 5, mentioning the produce description, packing and price of per kit. Respondents vide email dated 23.09.2013 required the petitioner to clarify the brand name of diagnostic kits and also the source of procurement. In response thereto, petitioner submitted required information vide letter dated 24.09.2013. Respondents thereafter called petitioner firm for negotiation vide email dated 11.10.2013 and in response thereto, petitioner firm sent a letter dated 21.10.2013 clarifying that it shall allow a discount maximum of 2.5% on offered prices (excluding taxes). The C.E.O. of respondent Rajasthan Livestock Development Board, Jaipur, vide letter dated 28.10.2013 in regard to confirmation of negotiation rates, informed that representative of petitioner, namely, Shri Bhasin agreed to reduce the rate by 1% on the basic rates given by National Dairy Development Board in addition to 2.5% discount already offered by petitioner firm. Petitioner firm, vide email dated 29.10.2013, shown its inability to accept the prices as proposed by respondents as the petitioner firm had not offered kits in packing of 960 tests.

Petitioner firm also shown its inability to accept the prices offered by his principal, who directly offered these prices to NDDB. The respondent No. 2 issued a notice to petitioner on 07.11.2013 mentioning therein that respondents did not propose any prices and it was the proposal of the representative of petitioner firm, who offered the prices in the meeting held on 23.10.2013 and the Committee in good-faith accepted the offer and thus the petitioner is legally bound to abide by the same, and non-acceptance thereof would amount to withdrawal of the offer after acceptance and respondents therefore decided to forfeit the earnest money deposited by petitioner firm and also debarred it from participating in future bids. Petitioner submitted its reply on 08.11.2013 to the notice dated 07.11.2013 clarifying its position. The respondent No. 2, vide order dated 04.03.2014, without considering the reply of the petitioner, forfeited the amount of Rs. 25,000/- of earnest money deposit and debarred the petitioner for two years from participating in any bid issued by Rajasthan Livestock Development Board. The petitioner firm submitted representation to the Chairman, Rajasthan Livestock Development Board, on 06.03.2014 for revocation of the decision of forfeiture of the earnest money deposit and debarring it from participating in any bid for two years keeping in view the fact that petitioner firm has already agreed and conveyed its acceptance to the Chief Executive Officer, Rajasthan Livestock Development Board, to supply the goods as per confirmation sent in letter dated 08.11.2013 but nothing has been done.

2. Shri Virendra Dangi, learned Senior Counsel for petitioner firm, assisted by Ms. Nidhi Khandelwal, argued that despite fulfilling all requisites of the notice-inviting-tender and having found its rates as lowest one, the respondents have not accepted the bid of the petitioner firm and the petitioner has not been issued letter of intent and order for supply of goods in the packages of the same kits of 480 tests as offered by the petitioner firm fulfilling the demand of the tender. Impugned action of the respondents stopping the petitioner firm from participating in the future tenders of the Board for two years tantamount to ban on the business activities of petitioner firm. Forfeiture of earnest money deposit has caused financial loss to petitioner firm as it has not been issued letter of intent and order for supply of the goods despite lowest rates. The petitioner firm fulfilled all the requisites and offered lowest rates for required packages of kits for 480 tests for item No. 1 to 5. The respondent No. 3 invited the petitioner firm for negotiation on prices for required goods in the packages mentioned in the NIT. The petitioner firm further reduced the prices by 2.5%. On second negotiation, representative of petitioner firm further reduced 1% prices as alleged by the respondent No. 3, but no such proceedings/minutes were ever supplied to petitioner firm containing acceptance of authorized representative of petitioner firm that he has accepted not only to reduce 1% prices further but also agreed to supply the goods i.e. Item Nos. 1 to 5 in double of packing i.e. Kits of 960 Tests at the rate quoted by the Principal (Manufacturer) to the NDDB. It was neither financially viable nor acceptable to petitioner firm. However, the petitioner firm agreed to supply the goods as desired by the respondent after

receiving the communication dated 07.11.2012 and it was duly confirmed and conveyed to the respondent No. 3 vide letter dated 08.11.2013 only to avoid heavy financial losses likely to be caused due to already placed orders with advance payment to the manufacturer company and in compliance of which the goods were already received by the petitioner firm to be supplied to the RLDB so also for saving from the debarment and consequences thereof. Despite that, respondent No. 3 has issued impugned order forfeiting the earnest money deposit and debarring it from participating in any bid process for two years in future. The notice dated 07.11.2013 was nothing but an eye wash. Therein the respondent No. 3 asked the petitioner firm to submit explanation/reply within seven days, whereas the petitioner firm on the very next day submitted reply and accepted all the terms and conditions of supply of the goods to the RLDB in pursuance of the tender as proposed/prescribed by the respondent No. 3.

3. Shri Rajat Ranjan, learned counsel for the respondents, opposed the writ petition and submitted that in tender document itself it has been mentioned that respondent Corporation reserves the right to increase/decrease number of items or may not purchase any item. M/s. Artec Diagnostics Systems was a bidder in the tender process. Petitioner was to purchase goods from said firm and then supply the same to respondent Corporation. The respondent Corporation was required to ensure that goods are purchased/procured at the most competitive rates in a fair and transparent manner and therefore respondent Corporation called the petitioner for negotiation. The petitioner was in collusion with M/s. Artec Diagnostics Systems. It is argued that the respondent Corporation only accepted the rates offered by petitioner firm and the contract stood confirmed when respondent Corporation sent acceptance to petitioner. The proposal to reduce prices was given by the petitioner firm through representative during the meeting of the bid evaluation committee. The Committee accepted the proposal of the petitioner. It was only thereafter that the petitioner firm sent another email dated 29.10.2013 and resiled from the contract. It is argued that as per the provisions of Rajasthan Transparency in Public Procurement Act, 2012, the tender proceedings once dropped cannot be started again.

4. On hearing learned counsel for the parties and perusing the material on record, I find that the petitioner firm had authorized representative to attend the meeting for negotiation and also forwarded the authority letter to the Chief Executive Officer of the Rajasthan Livestock Development Board, vide letter dated 21.10.2013. In that letter, petitioner firm also offered to give a discount of maximum of 2.5% on offered prices (excluding taxes). The representative of the petitioner firm attended the meeting on its behalf, at 4.00 pm on 23.10.2013 in their office. Shri Ashok Bhasin, representative of the petitioner firm, agreed to reduce the rate by further 1% on the basic rates given by NDDB in addition to the 2.5% already offered by the petitioner firm vide email. Thus the total reduction offered by the petitioner firm was 3.5%. Representative of the petitioner firm also made a commitment to supply Item No. 1and2 (960 packing) at the rate approved by NDDB vide their order dated 18.09.2013. Eventually on

the next date, petitioner sent email to respondent i.e. 29.10.2013 at 4.50 pm expressing its inability to accept the price as proposed by the respondent firm. Petitioner firm denied that it offered kits with 960 tests, and not only this the petitioner firm stated that it agreed to reduce its offer by 2.5% only on all kits as per the original offer (excluding taxes). It was when notice was served on petitioner firm by respondent Corporation for backing out from their offer and not honouring the commitment, the petitioner firm sent another letter to the respondent Corporation on 08.11.2013 admitting in point No. 4 that its representative Shri Ashok Bhasin has agreed to reduce the price further by 1% in addition to 2.5%, already offered, thus making total discount of 3.5% on offered prices. After this admission, petitioner firm in point No. 5 of the letter submitted that due to some miscommunication or misunderstanding, its representative agreed and confirmed the prices of ANIGEN BRUCELLA and ID Vet IBR Test as per rate contract with NDDB for 960 Tests kits but immediately thereafter in point No. 7, it has maintained that on 29.10.2013 it had expressed its inability to accept the NDDB prices as it did not offer for 960 kits against NIT reference. In point No. 8 of the letter dated 08.11.2013, the petitioner firm again has submitted that it fully agreed that it was not only legally bound but as a reputed company, expected to abide any commitment made by the petitioner firm or its authorized representative, as it amounts to negotiation in specifications post tender opening, but in point 10 of the letter it has been stated that if the respondent department still insist at their own risks about such decision, the petitioner firm agreed to abide by the commitments made by the representative of the petitioner during negotiation meeting held on 23.10.2013.

5. It is thus evident that the petitioner firm has been taking shifting stands. The combined reading of the aforesaid documents shows that not only the representative of the petitioner firm attended the negotiation meeting but also agreed for further reduction of 1% on over and above 2.5% reduction in the quoted prices by the respondent and also agreed to offer the kits in the packing of 960 tests. Having agreed if the petitioner has backed out from its offer, the respondent Board had every justification in forfeiting its earnest deposit of Rs. 25,000/- and debarring it from further participating in tenders for a period of two years. Besides, the respondents have also submitted that the petitioner firm had participated in the tendering process by ingeniously concealing the name of its principal organization M/s. Artec Diagnostic Systems, which is evident from Annexure-R/3 annexed with the reply to the writ petition, where the petitioner has disclosed the source of income to be supplied by M/s. Artec Diagnostic Systems. Apart from petitioner, M/s. Artec Diagnostic Systems has also submitted its bid. Petitioner firm, despite having offered discount of 2.5% and having further given additional discount of 1% on the basic rates given by National Dairy Development Board, could be allowed to go back on its promise and if the petitioner firm did so, the consequences shall have to follow.

6. I therefore do not find any illegality in the impugned order so as to justify interference by this court.

7. Writ petition, being devoid of merit, is hereby dismissed. Both the stay applications are also dismissed.