
(2013) 08 CAL CK 0084
In the Calcutta High Court
Case No : W.P. No. 17123 (W) of 2013

Niladri Ghosh

APPELLANT

Vs

Superintendent,ESI Hospitals

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Citation : (2014) 2 CHN 309

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Judgement

Sanjib Banerjee, J.—The action taken by the respondent authorities appears to be completely arbitrary and without any basis. Following a tender notice issued by the ESI Hospital, Uluberia, the petitioner applied for two of the works thereunder: the repair and maintenance of civil works for the hospital and the repair and maintenance of civil works for the quarters and the OPD. The petitioner complains of the petitioner's bidj having been wrongfully disqualified and the financial bid not having been considered.

2. Pursuant to a previous direction, the records have been carried to Court and the petitioner's financial bid has been opened in Court upon the sealed envelope being produced.

3. The respondent authorities have produced a copy of the comparative table listing the documents furnished by the tenderers. It is evident that the petitioner, who applied in the business name of C.B. Ritam, did not submit any ESI or EPF registration document, any material to show previous experience of work in ESI or government hospitals or any labour license. From the decision of May 31, 2013 of the tender selection committee it is evident that since the petitioner failed to submit any material to demonstrate work experience in ESI or government hospitals, ESI and EPF registration documents and registration certificates pertaining to labour license and license relating to skilled workers, the tender selection committee "unanimously decided to cancel the said tender," It is in such circumstances that the petitioner's financial bid was not opened. One

Ramesh Maity, the added respondent No. 3, had also failed to furnish any ESI registration certificate or labour license or registration certificate of the agency. However, the tender selection committee awarded the civil work for the hospital to the added respondent No. 3 "with the condition that they will submit the required certificates... within one month of offer letter." Work for the quarters and the DPD was awarded to the added respondent No. 4, which was found to have submitted all requisite documents and had also been found to have quoted the lowest for such work.

4. It is submitted on behalf of the respondent authorities and the added respondents that since the petitioner did not supply the documents enlisted in the format of the application form appended to the tender documents, the petitioner was appropriately found to have been ineligible.

5. The justification of the impugned decision of the respondent authorities and the contention of the added respondents that the petitioner was ineligible cannot be accepted. The tender conditions required certain certificates to be produced, but did not specify the documents that the petitioner failed to furnish. To sustain a decision of disqualification, the tender terms have to be strictly construed and every benefit of doubt given to the bidder.

6. Clause 17 of the tender documents refers to various certificates, but does not require copies of any ESI registration certificate or EPF registration certificate or any labour license to be produced along with the bid. In any event, the tender selection committee did not regard the furnishing of such documents to be a part of the essential eligibility criteria, since it overlooked the added respondent No. 3 not having furnished some of the certificates and allowed the subsequent submission of the certificates.

7. Clause 18 of the tender documents, pertaining to work experience, only provides that working experience "may be kept in consideration and priority." That would imply that if two bids were similar or close to each other in their financial terms, the bidder with working experience or better working experience would be chosen ahead of the other. The clause does not make it mandatory for a bidder to have or demonstrate such experience.

8. Clause 24 of the tender documents requires the successful agency to make certain payments. Payments to ESI and EPF authorities are mentioned in such clause. To begin with, such clause would come into play after the selection of the successful bidder. Further, nothing in clause 24 mandates the production of any EPF or ESI registration certificate to be an essential eligibility criterion for a bid to progress from the preliminary stage to the financial stage.

9. The parties have not relied on any clause other than clauses 17, 18 and 24 as the relevant conditions to assess the eligibility of a bidder in the subject tender process.

10. Since it is found that the tender conditions did not specify the production of

the documents that had not been furnished by the petitioner to be mandatorily required for the purpose of assessing eligibility, notwithstanding the reference to the documents in the application form, it cannot be said that the petitioner's bids in respect of the two items of work were fairly dealt with by the respondent authorities. The financial bid of the petitioner reveals that the petitioner had quoted 8.85% below the PWD rates in respect of the first two items of work. The financial bid of the petitioner in respect of either item was appreciably better than the rival bids. It appears that the tender selection committee or the respondent authorities stopped the petitioner in his tracks at the qualification level to ensure the award of the contracts relating to the relevant items of work to the added respondents at much higher rates.

11. The affidavits filed by the respondent authorities and the added respondents cannot improve the position as evident from the records.

12. W.P. 17123 (W) of 2013 is allowed by setting aside the respondent authorities' decision to disqualify the petitioner's bid in respect of the first two items of work under the relevant tender notice. The work orders or offer letters or like documents executed in favour of the added respondents in respect of the first two items of work are set aside and cancelled. The tender selection committee will consider the petitioner's financial bids in respect of the first two items of work fitting by Office or Advocate along with the financial bids of the other eligible bidders and take a decision in the matter in accordance with law within a week from date.

13. It is made clear that this order pertains only to the first two items of the work under the relevant tender notice; relating to the civil works at the hospital and at the quarters and the OPD.

14. There will be no order as to costs. Certified website copies of this order, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.