

(2012) 08 SHI CK 0052
In the High Court Of Himachal Pradesh
Case No : CWP No. 10435 of 2011-D

Sh. Vinod Kapil

APPELLANT

Vs

Bharat Sanchar Nigam Limited and Deputy General Manager
Telecom Projects, Madhav Kunj, Good Wood Estate Bharari
Road, Shimla, H.P. 171001

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Citation : (2012) 08 SHI CK 0052

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : K.S. Banyal, for the Appellant; Ashok Sharma, for the Respondent

Judgement

Dev Darshan Sud, J.—The petitioner has challenged the rejection of his technical bid by respondent No. 2 on the ground that the experience certificate, Annexure P-2, which was submitted by the petitioner pursuant to notice inviting tender (for short NIT), Annexure P-1, was not in accordance with the mandatory conditions of the NIT. Respondent No. 2 had invited tenders vide Annexure P-1, in which one of the mandatory conditions was:

Properly sealed tenders (Sealing Wax/packing PVC tape) are invited for and on behalf of BSNL by the DGM telecom projects, Shimla from the experienced contractors having experience Certificate issued by the competent authority not below the Rank of DE or equivalent for OF cable construction work.

2. The time, date and place of submission of bid was 13.00 hrs. on 29.11.2011 in the office of DGM (T)), Madhav Kunj, Good Wood Estate, Bharari Road, Shimla 171001. The time, date and place of opening of the technical bid was on 14.00 Hrs on the same date and at the same place. Thereafter the time, date and place of opening of Financial bid have been fixed at 14.00 hrs. on 5.12.2011. The petitioner pleads that he had submitted his bid along with Annexure P-2, which is the certificate issued to him by Divisional Engineer, Telecom, Project B.S.N.L., Dharamshala certifying that he had looked after and executed satisfactorily the

OF cable trenching/laying works. The certificate reads:

No:-DETP/DMA/OFC-Gnl./Dtd.01-08-2011.

TO WHOMSOEVER IT MAY CONCERN

It is certified that Sh. Vinod Kapil, Cointractor, village Gharyani, P.O. Lafran, Tehsil Barsar, District Hamirpur, an authorized Partner of Sh. Sudershan Sharma, Contractor, Village Khangalta, P. O. Salauni, Tehsil Barsar, Distt. Hamirpur, looked after and executed satisfactorily the OF cable trenching/laying works of Jasur-Dehra OFC route section-8 (6-5 km) and Hamirpur-Una OFC route section-4(7-5 km.) during the year 2010-11.

Sd/- Divisional Engineer, Telecom, Project, B.S.N.L, Dharamshala

Dated: 1st August, 2011

The technical bid was opened but his participation was cancelled on the ground that the experience certificate, Annexure P-2, submitted by the petitioner is not acceptable for which no reasons have been assigned nor anything in writing was communicated to the petitioner.

3. Reply has been filed by the respondents. Their basic stand is that he is not a qualified person as the certificate of experience on which reliance has been placed by the petitioner relates to work of Jassure-Dehra OFC Route which has been awarded to one Sh. Sudershan Sharma. It is also pleaded that on 2nd January, 2011 an agreement was entered into between BSNL and Sudershan Sharma where the petitioner was nowhere in reckoning. The work order (Annexure R/C) was also awarded to Shri Sudershan Sharma, payments etc., were also made to him only. In these circumstances, the petitioner cannot take the benefit of Annexure P-2 as he has not executed the work in question. It is also pleaded that experience certificate, Annexure P-2, issued to the petitioner is not in accordance with the record or as per the procedure of the respondents. Every experience certificate is required to be issued by the office awarding the tender and the same cannot be issued by a person below the rank of Divisional Engineer.

4. In the rejoinder filed by the petitioner, he pleads that the certificate has been issued by the Divisional Engineer Telecom Projects, B.S.N.L., Dharamshala and the same is in accordance with mandatory requirements of Annexure P-1. Learned counsel appearing for the petitioner also placed reliance upon, Annexure P-3, which is the partnership deed entered into between Sh. Sudershan Sharma and the petitioner on 12.1.2011. Learned counsel submits that the conditions of the partnership deed are absolutely clear and one of the works to be executed inter alia include (i) Telephone Exchange Khairian, to Dehra Telephone Exchange, (ii) Km 37 to Chauntra Telephone Exchange, (iii) Bangana Telephone Exchange to UHF Tower Piplu and other works also as detailed therein. He submits that Certificate was issued by the Divisional Engineer, Telecom Project BSNL, Dharamshala, who actually satisfied with the work which is apparent and evident

from the plain reading of the certificate itself. Learned counsel also submits that this certificate has been issued by the Divisional Engineer, Telecom Project BSNL, Dharamshala stating that the petitioner was authorized Partner of Sh. Sudershan Sharma which fact also corroborated by the partnership deed.

5. I have heard learned counsel appearing for the parties and have gone through their respective pleadings. I cannot accept the submission made on behalf of the respondents that the certificate, Annexure P-2, does not fulfill and meet with the required conditions of Annexure P-1. The respondents have taken a hyper technical view and do not consider the fact that the petitioner was the authorized partner of the Sudershan Sharma which fact also corroborated by the certificate issued by the Divisional Engineer, Dharamshala. Partnership deed has been entered into between the petitioner and Sh. Sudershan Sharma which is also evident from partnership deed, Annexure P-3. In these circumstances, the respondents cannot urge that the petitioner is not a qualified person which fact is not supported/established by the facts on record.

6. On 2.12.2011, this Court was pleased to direct:

In case the tender process is proceeded further, in view of Annexure P-2 already issued by the Divisional Engineer, the petitioner shall also be permitted to participate, subject to the result of the writ petition. CMP No.12689 of 2011 stands disposed of accordingly.

7. In the facts and circumstances of the case, this writ petition is allowed. The respondents to comply with the order dated 2.12.2011. No order as to the costs. All the pending applications also stand disposed of.