(2010) 11 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12437 of 2010

Shri Ram Switch Gear Pvt. Ltd. APPELLANT

Vs

Ujjain Development Authority and Another RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) ILR (MP) 1152

Hon'ble Judges : S.S. Kemkar, J;S.K. Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—Petitioner, a company, engaged in the manufacturing of electrical equipments and in execution of electrical works contract, has filed this petition under Article 226 of the Constitution of India, seeking quashment of process of tender No. 13 and 14 (Annexure P-4 and P-5) issued by the first Respondent with a further direction to the Respondents to commence a fresh tendering process.

2. Brief facts necessary for disposal of this petition are stated as under:

3. The Government of M.P. has constituted an Agency namely - M.P. Agency for Promotion of Information Technology (for short, MAPIT) which deals in the realm of information technology. The Agency is undertaking initiatives towards implementing e-Governance in the State of M.P. One of the components of e-Governanee for achieving transparency and increased competition in the tendering process is e-tendering. The said Agency MAP_IT in order to implement e-tendering service for the State Government, floated tender for selection of service provider of Electronic Tendering Services to the Government of M.P, its departments and its undertakings. The consortium of Wipro and second Respondent - NEX Tenders (India) Pvt. Ltd. stood successful bidder. As a result, an agreement was entered into between MAPIT and consortium of Wipro and

NEX Tenders (India) Pvt. Ltd. for providing Electronic Tendering System and also to provide related training and support services to the users.

4. The first Respondent - Ujjain Development Authority (for short, UDA) through the said consortium of Wipro and the second Respondent NEX Tenders floated open tenders for execution of external electrification work at its Kshipra Vihar Scheme, Ujjain (tender No. 13) and for the work of External Electrification at its Triveni Vihar Scheme, Ujjain (tender No. 14). For the said two tenders, those contractors, who were registered with the Portal of the Government of Madhya Pradesh and were having valid registrations, were entitled to participate in the tenders and submit their bids. As per the said NITs issued on 14.09.2010 (Annexures P-4 and P-5), the tenders were made available for downloading from 15.09.2010 till 6.10.2010. The last date for submitting the tender on-line was fixed to be 8.10.2010.

5. According to the Petitioner company, it being eligible for submitting the tender, its representative contacted the second Respondent on 4.10.2010 for procurement of tender document which was issued to the Petitioner on 4.10.2010. Thereafter on 7.10.2010, when the Petitioner tried to submit e-tender, an error was shown on its computer screen. In the circumstances, the Petitioner''s representative contacted the second Respondent, who informed to the representative of the Petitioner that the format of its digital signatures is not in accordance with the format, which was compatible with the working of the system of the second Respondent. Thereafter on 8.10.2010 the Petitioner submitted necessary documents for issuance of appropriate Digital Signature Certificate (for short, DSC) which was promptly issued to the Petitioner on 8.10.2010 itself, however in the process before tie Petitioner could submit its tender, the time for submission of e-tender was over and the Petitioner could not submit its tender. Aggrieved, the Petitioner has filed this petition.

6. The Petitioner alleged that the Respondents, though were informed about the technical difficulties faced by the Petitioner in submitting the e-tender, wilfully avoided and delayed to assist the Petitioner thereby, deprived the Petitioner to submit the tender in time. It is a case of the Petitioner that its DSC was a token based DSC, which was also an accepted system of DSC, in the circumstances, the second Respondent should have accepted the Petitioner''s tender on the basis of DSC available with it and should not have insisted for DSC compatible to their system.

7. The Respondents have filed replies. According to Respondents, the DSC is an important means for encrypting data and authenticating electronic records and transactions as per Information Technology Act, 2000. As per the agreement entered into between MAPIT and the consortium of Wipro and NEX Tenders (India) Pvt. Ltd., any person interested in submitting an on-line bid on an e-tendering system has to obtain the DSC. Prior to that the bidder has to register himself/ itself with the Portal of the State Government which is required to be renewed on yearly basis for participating in e-tendering process.

8. It has been averred by the Respondents that the Petitioner was registered with the Portal of the State Government upto 31.07.2010. After expiry of the date of the registration on 31.07.2010, the Petitioner was required to renew its registration / enrollment for a further period w.e.f. 1.08.2010. As per the tenders invited by the first Respondent UDA, those contractors, who were registered with the Portal of the State Government and having valid registrations, were entitled to participate in the tenders. The tenders were made available from 15.09.2010 to 6.10.2010. The last date for submitting on-line tender form was 8.10.2010. The Petitioner did not renew its registration / enrollment till 4.10.2010. Thereafter, on 4.10.2010 the Petitioner''s representative visited the office of the second Respondent at Bhopal and sought information regarding e-tendering and regarding DSC. The said Representative of the Petitioner was informed by the representatives of the second Respondent to submit proper set of documents along with Demand Draft of Rs. 4,500/- for getting the DSC, which is compatible with the working of the system of the second Respondent. It was made known to the said representative of the ''petitioner on 4.10.2010 itself that as per the system deployed by the second Respondent, the Petitioner is required to have Browser Based DSC. It was made known to the Petitioner''s representative that it has Token Based DSC which was not compatible with the system deployed by the second Respondent. Thereafter, the Petitioner got renewed its registration with the Portal of the Government of M.P. and down loaded the tender forms on 5.10.2010 and 6.10.2010 in respect of tender Nos. 13 and 14 respectively after purchasing the tender documents.

9. Thereafter, on 8.10.2010 at 11.25 am. the second Respondent was informed by the Petitioner through e-mail that the Petitioner is facing problem in submission of the tender documents. At 11.54 am. the Petitioner informed the second Respondent that it has DSC from n-Code Solutions from Baroda (Gujarat) and the second Respondent''s system is not accepting the DSC. The Petitioner at 3.21 p.m. sent the necessary documents required for getting DSC which is compatible with the system of the second Respondent. After receipt of all the necessary documents from Petitioner for getting DSC compatible with the system of the second Respondent, though for issuance of DSC the period mentioned and needed is 7 days, but acting in the matter with great speed issued the requisite DSC to the Petitioner on that day itself at 5.23p.m.

10. After receipt of the appropriate DSC. the Petitioner attempted to submit the bids, but by that time, it was more than 5.30 p.m. and as such, the system did not accept the bids, as the time for submitting of the bid was up to 5.30 p.m., which was the time feeded in the system.

11. The Petitioner has filed rejoinder and has re-iterated its stand taken in the petition.

12. Having considered the contentions raised by the Learned Counsel for the parties and. after perusal of the pleadings and the documents, we find no merit in this writ petition.

13. It is revealed from the submissions made by the parties that the second Respondent has been authorised through government agency MAP__IT for undertaking the service of electronic tendering to government departments and agencies. The consortium of Wipro and second Respondent - NEX Tenders (India) Pvt. Ltd. is working with the State Government since 2006 as would be clear from Annexure R-2/2. It is also revealed from the pleadings that the second Respondent for proper functioning and understanding of the process of on-line tendering has conducted more than 1268 training sessions for the contractors and 1115 training sessions for department users. It is also revealed that the training sessions are being held by the Respondent No. 2 in their office at Bhopal every Saturday. It is also revealed from the pleadings that the Call Centres / Help Line number is available on the Portal for contractors to contact if any clarification is required of e-tendering process.

14. There is no denial to the contention raised by the Respondents that prior to the present tender process, the Petitioner did not participate in any e-tender process conducted by the second Respondent. In the circumstances, on issuance of the NIT on 14.09.2010 the Petitioner was supposed to have got itself acquainted with the process and procedure for e-tendering system adopted by the second Respondent. The tenders were made available on-line from 15.09.2010. The Petitioner had enough time from 15.09.2010 to 6.10.2010 to seek the aid and advice of the second Respondent for the said purpose as was made known to all concerned. However, the Petitioner was not vigilant; and it woke-up at the fag end of the time for submission of tender. It is also revealed that the representative of the second Respondent helped the Petitioner so as to enable it to get the DSC compatible with the system of the second Respondent, but as there was already delay on the part of the Petitioner the time feeded in the system was over and as a result, the Petitioner could not submit the bids.

15. Thus, we find that the Petitioner though was having enough time to get itself acquainted with the system of e-tendering adopted by the second Respondent, but due to its \\ own negligence, in not making proper and timely efforts firstly in getting its registration renewed and secondly in getting the DSC compatible with the system adopted by the second Respondent, failed to submit the bids within time fixed for the same.

16. In the case of West Bangal State Electricity Board v. Patel Engineering Company Limited and Ors. (2001) 2 SCC 451 the Supreme Court has carved out except ons to the general principle of seeking relief in equity on the ground of mistake by pointing out that (i) where the mistake might have been avoided by the exercise of ordinary care and diligence on the part of the bidder, but where the offeree of the bid has or is deemed to have knowledge of the mistake, he cannot be permitted to take advantage of such a mistake, (ii) Where the bidder on discovery of the mistake fails to act promptly in informing to the authority concerned and request for rectification, withdrawal or cancellation of bid on the ground of clerical mistake is not made before opening of all the bids. Keeping in

view this principle, laid down by the Supreme Court, we find that the Petitioner itself being negligent in not getting itself informed at the earliest, no case is made out to interfere into the matter. The Petitioner should have acted with due diligence in getting the DSC compatible with the system of the second Respondent.

17. Having regard to the aforesaid, in our considered view, no case is made out to interfere into the matter.

18. Accordingly, the petition fails and is hereby dismissed.

