

(2010) 07 CHH CK 0027
In the Chhattisgarh High Court
Case No : W.P.C. No. 303 of 2009

Singh Transporters

APPELLANT

Vs

Bhilai Steel Plant and Another

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Citation : (2010) 07 CHH CK 0027

Hon'ble Judges : Nawal Kishore Agarwal, J; I.M. Quddusi, J

Bench : Full Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.

Heard.

1. The petitioner, which is a partnership firm, submitted his tender for the work "Augmentation of SCRAP" for melting in SMS-I & SMS-II from different departments of their plant at Bhilai along with Rs. 1,50,000/- as earnest money. In the tender documents, eligibility criteria was given as under:

3.0 Eligibility Criteria: Parties shall submit the notarized copy of the following documents/certificates/proofs along with the Techno-commercial bid:

I. Proof of CPF registration by RPFC.

II. Undertaking to deploy minimum of 19 Trucks/Trailers (minimum two trailers/torres), 5 Dumpers/Tippers, 1 mobile magnetic crane and 2 fowlers for scrap augmentation work, out of which at least 50% of vehicles i.e. minimum 9 trucks/trailers, 3 dumpers/tippers will be registered on parties name & should not be more than 10 years old. We understand that the carrying capacity of vehicles will be 10-16 Tones for Trucks, 12- 18 Tones for Dumpers/Tippers & 24-30 Tones for Trailers/Torres. Even if the party deploys higher capacity vehicles, he is bound to deploy minimum required vehicles. Party shall submit notarized copies of relevant document for the same.

III. Average annual financial turnover during the last 3 years, ending 31st March, 2006, should be at least Rs. 80 Lakhs. In support of this, Notarized Audited Balance Sheet and profit & loss account of last three years should be enclosed.

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V. The party must submit an undertaking as per enclosed Annexure-"X".

The parties, registered with BSP for job contracts must have valid registration in discipline "Loading/transportation (09)" OR "scrap processing, cutting and handling (10)" having "Class-A". Registered parties shall be exempted from submission of documentary proof detailed at (I), (III) & (IV) above. However, registered parties shall have to make compliance to point-(II) & (V).

2. But the petitioner did not submit the required document with its tender papers. Consequently, a letter was sent to the petitioner on 20.10.2006 inter alia requesting him to submit Annexure-X along with the offer and also to submit Audited Balance Sheet and profit & loss account for last three years. Annexure-X was the undertaking that they shall deploy 64 nos. of HSL trust CPF labour for the stipulated period of contract. When the petitioner did not supply the above required documents, his financial bid was not opened. However, the respondent has forfeited his EMD amount of Rs. 1,50,000/- vide impugned order dated 09.01.2007 (Annexure P/2) under Clause 1.16 of the Special Conditions.

3. Before proceeding further with the matter, it is necessary to re-produce Clause 1.16 of Special Conditions, which reads as under:

1.16. Failure to produce the Original Certificate in support of the attested copies of relevant documents submitted earlier before the award of contract, would result in disqualification and forfeiture of EMD and also liable for debarring from participation in BSP tenders.

4. In the instant case, the petitioner did not submit the required documents, and when he did not submit the same even on sending a letter on 20.10.2006, his financial bid was not open and therefore, to our opinion, he was not eligible in the absence of non submission of the required material with the tender papers.

5. Clause 1.16 of Special Conditions as re-produced above shows that forfeiture of EMD was only applicable if the tenderer fails to produce the original certificates of which attested copies of the relevant documents were submitted earlier along with tender papers, meaning thereby, that if the participant submits the attested copies of the original certificates along with tender papers and later on he does not submit the original certificates to verify the same, the same would result in disqualification and forfeiture of EMD and also liable for debarring from participation in BSP tenders. But in the instant case, the petitioner did not submit the required documents with the tender papers and hence Clause 1.16 of Special Conditions would not be applicable in the present case.

6. Learned counsel appearing for the respondent raised an objection regarding

maintainability of the writ petition and in this regard reliance has been placed upon the judgment of Supreme Court in case of National Highway Authority of India v. Ganga Enterprises and Anr.¹ in which the Supreme Court held with the facts that, in terms of the tender document the respondent gave his bid or offer which was in two parts. The first part being an offer that the bid would not be withdrawn during the bid validity period and/or that on acceptance the performance security would be furnished and the agreement signed. The second part of the offer dealt with the terms and conditions pertaining to the performance of the contract of collection of tolls, if the offer was accepted.

7. The facts as mentioned in that case, the admitted position was that 120 days of the validity period of the tender would have come to an end on 28th November, 1997. In August the technical bids were opened. In September the financial bids were opened, wherein it was found that the respondent was the highest bidder. On 20th November, 1997 the respondent withdrew his bid.

8. Therefore, the facts of that case are that both the technical and financial bids of the respondent were opened and he was found to be the highest bidder and it was the condition that he would not withdraw the bid during the bid validity period, but he withdrew his bid on 20th November, 1997 i.e. before the expiry of 120 days.

9. But, in the facts and circumstances of the present case, which is quite different to the above case, the petitioner did not submit the required documents as mentioned in Clause II, III & V of Special Conditions No. 3 with his tender papers and despite opportunity afforded to him, he did not submit the same and hence he was not eligible to participate in the tender as his tender itself was defective and not supported with relevant documents, his financial bid was not open, therefore, Clause 1.16 of the Special Conditions was not at all applicable under which the EMD amount could be forfeited.

10. For the reasons mentioned hereinabove, we are of the opinion that the forfeiture of the EMD amount is without any basis and also not inconsonance with the tender conditions.

11. In view of above discussions, we allow this writ petition. Accordingly, the impugned order dated 09.01.2007, forfeiting the EMD amount is hereby quashed. The respondents are directed to refund the EMD amount i.e. Rs. 1,50,000/- to the petitioner within a period of three months from the date of receipt of a copy of this order. No order as to costs.