
(2022) 04 KL CK 0095

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6339 Of 2022

Sreedhanya Construction Company

APPELLANT

Vs

Kerala Water Authority

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2022) 04 KL CK 0095

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : Rajiv Abraham George, Satish Mohan, P.M.Joseph, P.M.Johny

Final Decision : Dismissed

Judgement

N.Nagaresh, J

1. The petitioner, a Construction Company based in Trivandrum, has filed this writ petition seeking to quash Ext.P1 tender notice issued by the respondent-Kerala Water Authority and to direct the respondent to forbear from taking any further steps to finalise the bid pursuant to Ext.P1 tender notice.

2. The petitioner states that the respondent, as per Ext.P1, invited tenders for the work "Supplying, Laying, Jointing, Testing and Commissioning of 1422mm MS pipe with 12.5mm thick clear water gravity main from 120 mld Water Treatment Plant at Neyyar Dam site to PTP Nagar GLSR and allied works". The probable amount of contract was ₹ 1,82,00,03,805/-. The work had to be completed within 18 months. The last date for submission of tenders was 14.02.2022.

3. According to the petitioner, as per the documents forming part of the tender notification, ranking of pre-qualified bidders will be done as per QCBS system and the work will be awarded to the bidder with rank No.1. Tender submitted was to be evaluated in Phases. Phase-I required pre-qualification based on financial standing, past experience and organisational capacity. Phase-II was the

evaluation of price bids of pre-qualified and the rates. In phase-III, ranking of pre-qualified bidders was to be done as per QCBS system. Weightage in terms of marks was to be in the ratio of 60:40, technical and financial scores respectively.

4. The petitioner would submit that a total of 35 marks out of 100 have been assigned to items at serial Nos.8, 9, 10A and 10B and 16 enumerated in NIT Volume 1. The aforesaid items do not find a place in the detailed scope of work and standard specifications forming part of NIT Volume 2 nor do the technicalities involved in the execution of such items come within the scope of the work put to tender.

5. The petitioner, finding the aforesaid anomaly, sent a letter dated 10.02.2022 to the Secretary, Irrigation Department. The petitioner would state that a substantial portion of the project involved road work, excavation and restoration and the laying of pipelines of various diameters while the qualification criteria demanded relate to construction of hydroelectric structures, which has no bearing to the project tendered. The respondent did not care to address the issue raised by the petitioner.

6. The learned counsel for the petitioner argued that Ext.P1 NIT is to be quashed since the tender notice contemplates evaluation of bids received from intending bidders based on marks to be assigned for items of work not contemplated or envisaged to be executed for the project in question. 35 marks out of 100 are assigned for works which are unrelated to Ext.P1 project. In spite of receipt of Exts.P7 and P8 letters sent by the petitioner, the respondent did not show any inclination whatsoever to rectify the anomaly.

7. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing the respondent.

8. The grievance projected by the petitioner is that conditions unrelated to the work tendered, have been made criteria for selection. Out of 100 marks, 35 marks are assigned to past experience of the tenderers unrelated to the work in question. According to the petitioner, the "Past Experience" in clauses 7.17.1.2.6, 7.17.1.2.7, 7.17.1.2.8, 7.17.1.2.9, 7.17.1.2.10, 7.17.1.2.11 and 7.17.1.2.12, 7.17.1. 2.16, 7.17.1.2.17, 7.17.1.2.18 and 7.17.1.2.19 at internal pages 30 to 33 of the NIT Volume-2 cannot be permitted to be taken into account for the purpose of rejection of a tender under clause 7.18.1 (4) by the final decision making authority in terms of clause 17.20 thereof, without assigning any reason.

9. Going through the pleadings in the writ petition, the provisions impugned by the petitioner are all relating to the Experience prescribed for the bidders. According to the petitioner, these experience requirements are unrelated to the work sought to be carried out. The argument of the petitioner cannot be accepted for two prime reasons. Firstly, it is a settled proposition of law that the tendering authority is the master of the bidding proceedings and it is for the tendering authority to assess the capability of bidders to execute the work. It is for the tendering authority to prescribe qualifications required for the tenderers.

It is not for the petitioner or any other intending bidder to insist that a particular qualification has to be stipulated in or excluded from tender notification.

10. Secondly, the requirements are purely of a technical nature and this Court, in exercise of the powers under Article 226 of the Constitution of India, cannot interfere in the matter and direct the tendering authority to remove or substitute any qualification/experience indicated in the tender notification.

11. The power of this Court in such contractual matters is very limited. Unless the petitioner establishes that the tender notification is illegal, irrational, biased or perverse, no interference is called for. In the facts and circumstances of the case, this Court does not find any reason to interfere in the matter and grant relief to the petitioner.

The writ petition fails and is hence dismissed.