
(2015) 10 JH CK 0011
In the Jharkhand High Court
Case No : WP(C) No. 4970 of 2015

Technoblast Mining Pvt. Ltd.	Vs	APPELLANT
Steel Authority of India Ltd. and Others		RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 4 JLJR 602

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : A.K. Mehta and Nikhil Kumar Mehta, for the Appellant; Anil Kumar Sinha and Ananda Sen, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Seeking quashing of order dated 24.9.2015 rejecting the bid submitted by the petitioner, the present writ petition has been filed. The brief facts of the case are that, tender notice bearing NIT Ref. No. DGM/CC/15-16/110 dated 20.8.2015 was issued for the work of "Stabilization of Longwall Panels of 16 Seam of Upper Seam Project, Chasnala Colliery". The last date for submission of tender was 9.9.2015 by 11:00 a.m. and the bid was to be opened on the same day at 11:15 a.m. The petitioner submitted its Techno-Commercial (Part-I) and Price Bid (Part-II). The petitioner's bid included earnest money of Rs. 5 Lacs through demand draft dated 7.9.2015 and a certificate issued by M/s. Electrosteel Castings Ltd. disclosing its work experience. However, vide letter dated 24.9.2015 the respondent-Steel Authority of India Limited returned the earnest money deposit and the price bid of the petitioner. The representative of the petitioner immediately approached the respondent No. 2 who advised to contact the Tender Committee. The members of the Tender Committee informed the petitioner that it does not fulfill eligibility criteria laid down under Clause 15.1 and therefore, it has been disqualified in Techno-Commercial bid evaluation.

2. Mr. A.K. Mehta, the learned counsel for the petitioner refers to tender notice

dated 13.6.2012, tender notice dated 26.12.2013, tender notice dated 13.1.2014 and tender notice dated 4.2.2014 and submits that, under the present NIT also a tenderer is required to submit the work experience of stabilization/stowing job or development in Coal/Jhama or supporting/packing job in underground mines in the manner similar to previous NITs. The petitioner has executed similar nature of work under M/s. Electrosteel Castings Limited and certificate dated 4.9.2015 has been issued by M/s. Electrosteel Steel Castings Limited affirming that the scope of service rendered by the petitioner to M/s. Electrosteel Castings Limited included service in connection to construction of ventilation connection, loading/transporting of coal or stone and roof supporting with installation of arches and wire netting. It also deployed skilled man power and provided various face equipments. Referring to Clause 15.1 of the tender document, the learned counsel for the petitioner submits that, the petitioner duly fulfills the requisite eligibility criteria and therefore, rejection of its Techno-Commercial bid is arbitrary.

3. Mr. A.K. Sinha, the learned Senior counsel for the respondent-SAIL submits that, experience certificate submitted by the petitioner does not disclose the requisite experience for performing the jobs under the contract.

4. Clause 15.1 of Special Conditions of Contract in tender document reads as under:--

"15.1. Tenderers will be eligible in the tender who have work experience of stabilization job in underground coal mines of value not less than Rs. 1,50,00,000/- (Rupees one crore fifty lakh) only in a single order completed since 1.1.2009. Job execution certificate of minimum Rs. 1,50,00,000/- (Rupees one crore fifty lakh) of the same order shall have to submit along with techno-commercial bid by the Tenderer."

5. Clause 1.1.19 of General Conditions of Contract provides that, "work means all work as given in the scope of work in the tender document and includes any associated work required for fulfillment of the scope of work and as set forth and required by the specifications, drawings and schedules hereto". The scope of work has been detailed in Special Conditions of Contract. The scope of work under the tender notice dated 20.8.2015 discloses as many as 48 descriptions of job. It is not in dispute that the petitioner did not produce work order dated 10.10.2012 issued by M/s. Electrosteel Castings Limited. The certificate issued by M/s. Electrosteel Castings Limited discloses the scope of service rendered by the petitioner which includes construction of ventilation connection, loading/transporting of coal or stone and roof supporting with installation of arches and wire netting. The said certificate discloses that the petitioner provided services in connection to the road header operation, deploying SDL equipment for cleaning of the Muck in the road header face and also spillage of coal during mechanical loading on the belt besides, deploying skilled man power and providing various face equipment. The said certificate issued by M/s. Electrosteel Castings Limited does not disclose execution of works, the description of which are given in the

tender document, by the petitioner. The contention that the descriptions of works in tender notice are essentially the same in working of all underground mines and it involves same and similar nature of job which has been performed by the petitioner for M/s. Electrosteel Castings Limited is a question of fact which cannot be adjudicated in the present proceeding. The Tender Committee after considering the certificate produced by the petitioner declared the petitioner ineligible. Though, it may not be possible to produce certificate disclosing execution of work of each description mentioned in NIT, as many work would be interlinked or similar in nature, in view of experience of the petitioner-company as disclosed in the certificate, the decision of Tender Committee does not appear arbitrary. In the writ petition though the petitioner has alleged that the respondent No. 2 declared the petitioner ineligible to favour the existing contractors however, it has not been asserted by the petitioner that the existing contractors namely. M/s. Coal Mining Development (JV), Chasnala, M/s. Swastik Mining Corporation, Chasnala and M/s. Indian Mining, Chasnala also do not fulfill the eligibility criteria under Clause 15 of the tender document. In "Air India Ltd. vs. Cochin International Airport Ltd.", , (2000) 2 SCC 617 , the Hon"ble Supreme Court has held as under:--

"7. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

6. In Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, , the Hon"ble Supreme Court has held as under:--

"18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the "decision-making process."

...By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time ... the courts can certainly examine whether "decision making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution."

7. The contention that detail reasons should have been given for rejection of petitioner's bid is liable to be rejected. The petitioner has failed to establish that the certificate produced by it squarely covers the nature of job described in NIT. Mere allegation of mala fide against the respondents is not sufficient. It must be pleaded specifically and proved by leading cogent evidence. In the present case, the petitioner has failed to establish arbitrariness and mala fide on the part of the

respondents. Considering the aforesaid facts, I am not inclined to interfere in the matter and accordingly, the writ petition is dismissed.