
(2003) 12 OHC CK 0040
In the Orissa High Court
Case No : Writ Petition (C) No. 12510 of 2003

Trident Softech (P) Ltd.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 12
Contract Labour (Regulation and Abolition) Central Rules, 1971 — Rule 21

Citation : (2004) 3 BC 232 : (2004) 1 OLR 101

Hon'ble Judges : Sujit Burman Roy, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : Sanjit Mohanty, for the Appellant; Ashok Mohanty and V. Narasing, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner, a company, assails the action of opposite party No. 2, the Commissioner of Commercial Taxes, Orissa, Cuttack intimating the petitioner by letter dated 29.9.2003 that the Technical Evaluation Committee (for short "TEC") found the petitioner disqualified for the purpose of submitting its commercial bid for supply of Information Technology Manpower for the Commercial Tax Department, on the ground that the said letter was issued violating the principles of natural justice and equity and the action amounted to arbitrary exercise of power.

2. Admittedly a Tender Call Notice was issued on 20.8.2003 by the Department of Commercial Taxes, Government of Orissa inviting quotations from reputed Information Technology Organisations/Service Providers, for providing Information Technology personnel on contract basis for the works morefully described in the said Tender Call Notice. The Tender Call Notice further stipulated that the bidders having proven track record in executing such type of contract for Government, Semi-Government or Private Organisation should only apply. The

bidders were required to submit only the technical bid containing profile and experience of the bidders with documentary proof of received experience. According to the petitioner, in consonance with the said Tender Call Notice, Annexure-1, the petitioner obtained the Tender documents from the office of the Commissioner, opposite party No. 2, depositing a sum of Rs. 500.00 and after filling up the forms and complying with other paraphernalia as required, submitted its technical bid. But then, without assigning any reason or calling for any clarification from the petitioner, opposite party No. 2 by the impugned letter intimated the petitioner that the TEC found it disqualified for the purpose of submitting its commercial bid. The impugned letter being a bald one and as no opportunity was given to the petitioner to have its say, the petitioner has approached the portals of this Court.

3. On behalf of opposite party No. 2, Mr. V. Narasing, learned Addl. Standing Counsel, appeared and filed a counter-affidavit, enclosing the minutes of the TEC Meetings held on 15.9.2003 and 17.9.2003 in the office chamber of the Commissioner, opposite party No. 2, which disclose the grounds on which the petitioner company and others were found disqualified. The said documents clearly reveal that the petitioner was disqualified to submit its commercial bid on the ground that the Labour Contract Licence was not submitted by it.

4. In course of hearing, Mr. Sanjit Mohanty, learned Senior Advocate appearing for the petitioner, forcefully submitted that the Labour Contract Licence cannot be obtained before assignment of the contract in favour of a contractor. In support of such submission he relied upon Sections 12 and 13 of the Contract Labour (Regulation and Abolition) Act, 1970 as well as Rule 21 of the Contract Labour (Regulation and Abolition) Rules.

5. For the sake of brevity and better appreciation, Section 12 of the Act is quoted hereunder :

"Licensing of contractors--

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act a licence under Sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made u/s 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed."

A reading of the said section reveals that a contractor cannot apply for licence u/

s 12 for all times to come, but a licence has to be obtained at different times in respect of different works as and when required, keeping in view the nature and period of the contract undertaken and the number of persons employed.

6. In consonance with Section 35 of the Act, a set of rules have been framed by the Central Government. Rule 21 of the said rules stipulates that every application for licence by a contractor shall be in triplicate in Form IV. Sub-rule (2) to Rule 21 prescribes that an application for grant of such licence shall be accompanied by certificate of the principal employer in Form V certifying that the applicant had been employed by it as a contractor in relation to a particular work and that he undertakes to be bound by all the provisions of the Act and the rules made thereunder. A conjoint reading of Section 12 of the Act and Rule 21 of the rules reveals that unless a contractor has been awarded a contract, it would not be possible on his part to get a licence since a certificate of engagement of the contractor is a mandatory pre-requisite for applying for licence to the licensing authority. The submissions advanced are fortified by a decision of this Court in the case of *Dipak Handling Agency v. Minerals and Metals Trading Corporation Ltd.* 1997(XI) OLR 284. To sum up his arguments, Mr. Mohanty submitted that the petitioner had clearly mentioned in its application submitted to the concerned authority (a copy of which is Annexure-B to the counter-affidavit) that it would obtain the licence if the work is awarded to it, since licence would only be issued against specific work orders employing twenty or more people at a time. According to Mr. Mohanty, this being the position of law, and possession of a labour contract licence under the Act being an impossible act, holding the petitioner disqualified for non-production of its labour contract licence, as would be evident from the minutes of the meetings of the TEC, Annexure-C, is unjust, arbitrary, illegal and is vulnerable in law.

7. Mr. Ashok Mohanty, learned Counsel for opposite party No. 2 Department, submitted that the total number of persons required for the job, as the Tender Call Notice would reveal, was 79. According to him, Clause 2 of the Tender Information clearly reveals that only well-established professional Information Technology firms having sound financial capability and proven experience in the line and having an annual turnover of not less than Rs. 50 lakhs were eligible to apply. It was also required that the firm should satisfy the criteria stipulated in Clause 7 of the Tender Information for being eligible to bid. Clause 7 of the Tender Information deals with general terms and conditions. Sub-clause (2) of Clause 7 requires that the firm applying was required to possess a licence under the Contract Labour Act. Mr. Mohanty further brought to our notice Clause 9 of the Tender Information which deals with Disqualification. Under the said clause, a bid was liable to be disqualified if (1) the bid was not submitted in accordance with the said document, (2) the bidder qualified the bid with his own conditions, (3) the bid was received in incomplete form, or (4) the bid was not accompanied by all requisite documents.

8. Mr. Ashok Mohanty submitted that as would be evident from Annexure-B, the

petitioner had not submitted its bid in accordance with the Tender Information, inasmuch as neither it provided the EPF Registration number, if any, nor did it give the contract labour licence number. He also submitted that the statement made by the petitioner that it would obtain the contract labour licence if the work was awarded amounted to submitting the bid with its own conditions. Thus according to him, the TEC rightly found the petitioner disqualified.

9. Being confronted with the question whether it would be possible to obtain a labour contract licence before entrustment of the contract and execution of the work, Mr. Ashok Mohanty fairly submitted that in consonance with the Labour Contract Act and Rules, a labour contract licence can only be issued after entrustment of the contract and on the basis of the certificate issued by the employer. But then, according to Mr. Mohanty, what Sub-clause (2) of Clause 7 required was that a contractor should have possessed a labour contract licence in respect of any other work executed by it in the past. Submission of such licence would have justified that the contractor had proven experience in the line. In other words, according to Mr. Mohanty, only to ascertain that a firm had proven professional experience in the past, the Department insisted that a labour contract licence in respect of other works should be furnished. The petitioner having failed to do so, the TEC has rightly found it disqualified.

10. In answer to such submission, Mr. Sanjit Mohanty brought to our notice the technical bid submitted by the petitioner, vide Annexure-B to the counter-affidavit. Clause 13 of the said document required the applicant to furnish a list of clients to which manpower had been supplied. According to Mr. Sanjit Mohanty, the petitioner had furnished the details of the clients to which manpower had been supplied for similar works and the same was Annexure A to the counter-affidavit. It was further submitted that the turnover of the petitioner in the year 2002-2003 was Rs. 89.34 lakhs, though the required turnover was only Rs. 50 lakhs as per the Tender Call Notice. Thus it was abundantly clear that the petitioner had proven experience in the line. It was also forcefully submitted that the condition stipulated in Clause 7(2) was not explicit. Neither the Tender Call Notice nor the Tender documents at any place specifically stipulated that a firm submitting its technical bid should enclose its licence under the Contract Labour Act in respect of any other work. In the absence of such clear provision, the petitioner was misled. Referring to the minutes of the meetings of the Technical Evaluation Committee, Annexure C, Mr. Sanjit Mohanty also submitted that out of thirteen firms which submitted their technical bids, at least six had not submitted such labour contract licence, which clearly indicates that in the absence of clear stipulation for furnishing labour contract licence in respect of earlier works, the petitioner and others were misled. According to Mr. Mohanty, in view of clear provision of law as a labour contract licence cannot be obtained before execution of the contract, the sole ground on which the petitioner firm was found disqualified is unjust.

11. After hearing learned Counsel for the parties, we examined the tender

documents and other relevant documents vide Annexure 7 to the writ petition and the counter-affidavit. Law is no more *res Integra* that in absence of entrustment of a contract and execution of the work, a labour contract licence cannot be obtained as stipulated u/s 12 read with Rule 21 of the Contract Labour (Regulation and Abolition) Act and Rules respectively.

12. The only question which needs to be considered in the present case is whether making such a stipulation in the Tender document was a pre-condition for adjudging the proven experience of a firm. It is found from the documents submitted by the petitioner that it had enclosed a list with its technical bid indicating the clients to whom manpower had been supplied by it. Be that as it may, not having proven experience was not the ground on which the petitioner's technical bid was rejected or the petitioner was found disqualified, as would be evident from Annexure-C to the counter-affidavit. The only ground on which the petitioner was found disqualified by the Technical Evaluation Committee, as would be evident from Annexure-C, was its non-submission of labour contract licence.

It also appears from the order of rejection that opportunity had been given to one of the bidders being M/s. Chancellor Infotech, Bhubaneswar to prove its experience. Such opportunity could have been given to the petitioner. Thus the order of disqualification suffers from the vice of discrimination.

13. Law is well settled that whatever procedure be followed while inviting tenders, the terms which need to be complied with by an applicant must be clearly, specifically and unambiguously stated in the Tender Call Notice to avoid bona fide error by an applicant.

14. After patiently hearing the learned Counsels for the parties, meticulously examining the documents produced by either side and diligently considering the submissions made, we find that in the absence of any specific stipulation made in the Tender Call Notice or the tender documents, clearly and unambiguously stating therein that an applicant should furnish the labour contract licence in respect of its previous works, the opposite party-authorities could not have rejected the technical bid of the petitioner on that score. As has been held earlier, a labour contract licence cannot be obtained in respect of the particular work and can only be obtained after entrustment of the work as has been held in *Dipak Handling Agency's* case (*supra*). In view of the aforesaid facts, we have no hesitation to hold that the decision of the Technical Evaluation Committee disqualifying the technical bid of the petitioner only on the ground of non-submission of labour contract licence was not just or proper and the order letter dated 29.9.2003 issued to the petitioner vide Annexure-2 is to be quashed.

15. In the result we allow the writ petition. We quash the order dated 29.9.2003, Annexure-2 to the writ petition, and direct opposite party No. 2 Commissioner to accept the technical bid of the petitioner along with three Others, i.e. CMC Ltd., Kolkata, Chancellor Infotech, Bhubaneswar and Computer Ad, Cuttack, and

accord the petitioner the same opportunity as accorded to the aforesaid three firms. Before parting, we make it clear that we have not expressed any opinion with regard to suitability of the petitioner for assignment of the contract, which shall be considered by the concerned authorities in consonance with law and terms embodied in the Tender Call Notice and other tender documents.