(2003) 07 JH CK 0065

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2162 of 2003

United Machines Ltd. APPELLANT

Vs

Jharkhand State Electricity Board and Others RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 1 BC 295 : (2003) 4 JCR 80

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Dilip Jerath, S.N. Prasad and M. Tandon, for the Appellant; V.P. Singh and Rajesh Shankar, M.M. Banerjee and A. Sen for the respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by petitioner for direction on the respondent Nos. 1 to 3 to cancel the candidature of 4th respondent, M/s. Vijay Industries and Pojects Limited on the ground that the 4th respondent is not fulfilling the requisite condition being not a profit earning company at least from last three years.

2. The case of petitioner is that the respondent-Jharkhand State Electricity Board (for short J.S.E.B.) issued notice inviting tender (for short NIT) No. 360/JSEB/PR/2002 calling for tenders from reputed, experience and financially sound parties for Design Engineering, Manufacture & Supply for site basis, Unloading, Handling, Storage, Erection, Testing, Commission and Handling Fire Protection System as per Specification at Patratu Thermal Power Station. The petitioner and others including 4th respondent submitted the price bid whereinafter the respondents-J.S.E.B. have declared the 4th respondent qualified and ordered to issue work order in its favour.

3. According to petitioner, the 4th respondent does not comply stringent

condition of Clause 1(vi) required to be met solely by the prime bitter. The relevant Clause 1(vi) and Clause 2 are quoted hereunder for proper appreciation :

"1. Qualification requirement

(vi) The company shall be a profit earning Company at least from last three years.

2. The qualification requirements stipualted in Sl. No. 1 (except item ii) shall be met solelyby the prime bidder."

In respect to the aforesaid plea, the following stand has been taken by the J.S.E.B. :

The present tenders were invited vide NITs No. 360/JSEB/PR/2002 for fire protection package of FTPS. Three parties submitted their bids which are as follows :

(i) M/s. Vijay Industries & Projects Ltd., Mumbai (respondent No. 4).

(ii) M/s. Unitech Machines Ltd., New Delhi (Petitioner).

(iii) M/s. L & T. Ltd., Kolkata.

The techno commercial bids were evaluated by M/s. MECON Ltd., Ranchi (a reputed Engineering and Consultancy Organisation of Govt. of India). As per the recommendation of M/s. MECON, the petitioner and M/s. L. & T Ltd. Kolkata are the qualified tenderers. The offers of the respondent No. 4 is also complete and technically acceptable, except that it is not qualifying in one of the qualifying criteria i.e. being profit making organization during last 3 years. It appears from the records that the respondent No. 4 earned profit of Rs. 133.32 lacs in the year 1999-2000 and Rs. 126.97 lacs in the year 2000-2001. However, it incurred a loss of Rs. 117.03 lacs in the year 2001- 02.

It also transpires from the record that the net worth of the company is positive''in the year 2001-2002, which is approximately Rs. 13.45 crores and the same is deemed to be sufficient. The loss in the year 2001-2002 is due to decrease in turnover and increase in cost of depreciation and administrative expenses.

As such mere profit is not the indicator of financial soundness of any firm, whereas the next worth of the company has been considered as more prudent, criteria."

4. Counsel for the petitioner submitted that 4th respondent having incurred a loss of Rs. 117.03 lacs in the year 2001-02, cannot claim that it fulfils the criteria of a profit earning Company at least from last 3 years, but such submission cannot be accepted as from the last 3 years record, it is evident that the company has total profit of about Rs. 13.45 crores, as stated by J.S.E.B. and such in the tender evaluation and recommendation made by MECON Ltd., Ranchi, circulated vide letter dated 28th Mardh, 2003. It has been made clear that the

4th respondent earned profit of Rs. 133.32 lakhs in 1999-2000 and Rs. 126.97 lakhs in 2000-2001 and incurred a loss of Rs. 117.03 lakhs in 2001-2002 but net worth of Company is positive in 2001--2002, which is approximately 13.45 crores and deemed to be sufficient.

5. In view of aforesaid evaluation made by Expert Body, this Court is not inclined to interfere with the work order allotted in favour of 4th respondent, who is stated to be the lowest bidder.

6. There being no merit, this writ petition is dismissed.