

(2005) 05 JH CK 0024

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2530 of 2005

Wipro G.E. Medical System

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Citation : (2007) 1 BC 381 : (2005) 3 JCR 320

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Ram Balak Mahto and A.K. Sahani, for the Appellant; A.K. Sinha, AG, R. Krishna and M.S. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner-M/s. Wipro GE Medical System has prayed for quashing the order dated 24.4.2005 whereby the tender was decided in favour of respondent No. 6, M/s. Siemens India Limited for the supply of radiological equipments.

2. Pursuant to the tender notice both the petitioner and respondent No. 6 submitted their tenders consisting of technical bid and price bid. Petitioner's further case is that the technical offer made by the petitioner and respondent No. 6 was not compared by the Purchase Committee and no opportunity was given to the petitioner for demonstration of the equipment. It was only on 24.4.2005 the petitioner could come to know that the work order has been issued in favour of respondent No. 6.

3. Mr. Ram Balak Mahto, learned counsel appearing on behalf of the petitioner contended that the petitioner-company is the most diversified Engineering Manufacturing in Medical Software House for Diagnostic Imaging and Therapy Product. It has joint venture between GE Medical System of USA and Wipro Ltd. of India. The petitioner is a leading business house with a turnover of US 1 Billion dollars with strong reputation for high technology and customer service. Learned

counsel further submitted that the petitioner has set up a state-of-the-art manufacturing facility at whitefield, Bangalore for manufacturing whole body ultrasound scanners, C-Arm, patient monitoring product. Learned counsel submitted that despite lower price quoted by the petitioner work order was issued in favour of respondent No.6.

4. Mr. A.K. Sinha, learned Advocate General appearing on behalf of the State, on the other hand, submitted that the first tender notice (Annexure 1) was cancelled and, therefore, a fresh tender notice was issued on 4.1.2005. A specific condition was put that during the rate comparison the rates of AMC or CMC will also be considered by the Purchase Committee. Learned counsel submitted that after technical bid was opened a Sub-Committee was constituted consisting of eminent doctors for evaluation of technical bid of the equipment and the said committee examined the demonstration of the machines and recommended for purchase of the equipment of M/s. Siemens India Limited.

5. It is well settled law that in contractual matters particularly Government contract, power to judicial review is limited to the extent of only seeing the decision making process and not the merit of the decision as the Court does not sit as an appellate Court while exercising power of judicial review. This Court, therefore, only considers as to whether before issuing the impugned order the authority has followed the due process of law or not.

6. It appears that after completing the formalities of technical bid the price bid was opened for all the three tenderers. The rate quoted by the Wipro for MRI machine is Rs. 7,08,22,618 = 00 after adding the price of three heads i.e. the price of machines, price of commissioning/installation and the price of maintenance. Similarly, the total price of Siemens Ltd. for MRI is Rs. 6,79,25,000=00 which also includes the price or three heads i.e. the price of machine, price of installation/commissioning and the price of maintenance. Similarly, the price of CT Scan of Wipro Company is Rs. 5,65,96,636=00 (Rupees five crores, sixty five ninety six thousand, six hundred and thirty six only). The aforesaid price also consists of the price under three heads i.e. the price of machines, price of commissioning/installation and the price of maintenance similarly, the price of M/s. Siemens India Ltd. for CT Scan is Rs. 5,24,70000=00 (Rupees five crore, twenty four lakhs, seventy thousand only) and the said price also consists of three heads, the price of machines, price of commissioning/installation and the price of maintenance.

7. Similarly the price of CT Scan quoted by M/s. Sri Nath Engineering is Rs. 5,40,73,660.00 (Rupees five crores, forty lakhs, seventy three thousand, six hundred and sixty only) and the price of MRI has not been quoted by Sri Nath Engineering.

8. From perusal of the records produced by the respondents it further transpires that a Technical Evaluation Committee was constituted consisting of the Head of Department of Radiology, Head of the Department of Medicine, Professor of

Neuro Surgery and the Department of Surgery of RIMS for evaluation of the technical bid of the equipment and also for submission of records. After seeing the practical demonstration of the equipment the Committee reported that in all respects the equipment of respondent No. 6, M/s. Siemens India Ltd. is better. Thereafter, further negotiation was made with respondent No. 6 and the cost of comprehensive maintenance and cost of turn-key works were reduced.

9. In the counter affidavit filed by respondent No. 6 it is stated that after the price bid was opened respondent No. 6 was again asked to give discount in price of maintenance as well as CMC price. Respondent No. 6 submitted a new turn-key plan on common console for MRI and CT Scanner. In para 34 respondent No. 6 has stated that CT Scan installed by it in various institutions including AIMS, New Delhi, Lilawati Hospital Mumbai, Escorts Hospital, Delhi, PGI, Chandigarh, Breach Candy Hospital Mumbai and various other reputed Hospitals and Medical centers are of the said make installed in India.

10. After having gone through the entire affidavits and the documents annexed therewith and also the records produced by the State I am of the opinion that the work order has been issued after complying all the procedures and there is no illegality or irregularity having been committed by the respondents which warrants interference by this Court. This writ petition, therefore, having no merit, is dismissed.