



GAHC010173762020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5098/2020

M/S VERSHA TECHNOTRADE PVT. LTD.
HOUSE NO. 44, TARUN NAGAR, 4TH BYE LANE, PO BHANGAGARH, PS
DISPUR, GUWAHATI 781005, REPRESENTED BY SRI AAKASH SURANA, S/O
SRI BASANT SURANA, AGED ABOUT 26 YEARS, AN AUTHORISED
SIGNATORY OF THE WRIT PETITIONER

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC WORKS DEVELOPMENT DEPARTMENT, DISPUR
GUWAHATI 781006, ASSAM

2: THE CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT BUILDING
ASSAM
CHANDMARI
GUWAHATI 781003

3: M/S ELITE AGENCY
61
SEDURI ALI
JOONALI ZOO ROAD
GUWAHATI 781024

4: TECHNICAL EVALUATION COMMITTEE

OFFICE OF THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT BUILDING
ASSAM
CHANDMARI



GUWAHATI 781003 FOR NOTICE INVITING TENDER BEING NO. SMC/103/2020/3 DATED 01.10.2020 FLOATED BY THE RESPONDENT AUTHORITIES FOR CONSTRUCTION OF 6 NOS. OF GOVT. MODEL COLLEGE AT 1. SONAPUR (BORSOLA)
2. TINSUKIA (DOOMDOOMA)
3. CHIRANG 4. UDALGURI
5. BASKA AND 6. MAJULI (AT 4 UDALGURI

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : SC, PWD ROAD

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT AND ORDER (Oral)

Date : 21-01-2021

Heard Mr. S. Banik, learned counsel appearing for the writ petitioner. Also heard Mr. R. Dhar, learned Standing Counsel, PWD, Assam, appearing for the respondent Nos.1, 2 and 4 and Mr. A. Sharma, learned counsel for the respondent No.3.

2. Aggrieved by rejection of the technical bid submitted by the petitioner, as communicated vide email dated 25.11.2020 (Annexure-C), the instant writ petition has been filed.

3. The facts of the case, in a nutshell, are that the respondent No.2 had issued NIT dated 01.10.2020 inviting bids for execution of as many as four contractual works including the work of "Constructiion of 6 (six) nos. Government Model College at 1. Sonitpur (Borsola), 2. Tinsukia (Doomdooma), 3. Chirang, 4. Udalguri, 5. Baksa and 6. Majuli." In response to the NIT dated 01.10.2020, the writ petitioner herein, besides

two other bidders including the respondent No.3, had submitted their bids for the aforesaid work for Udalguri which was at Sl. No.4. The total work was valued at Rs.14,36,21,373/- and the time for completion was 24 months. As per the condition No.4.3 of the bid document, the bidders were required to furnish information inter-alia about the major items of construction equipment and also information as regards any litigation, either current or pending during the last five years, in which the bidder was involved together with information about the parties concerned and the disputed amount. In so far as the list of key plants and equipments to be deployed in contract work is concerned, Appendix-II of the Tender Document had laid down the type of equipments, maximum age as on 01.07.2019 and the total number of equipments required to be deployed by the contractor. After consideration of the petitioner's bid, the Tender Evaluation Committee had rejected the same. The decision of the Bid Evaluation Committee was, therefore, communicated to the petitioner by email dated 25.11.2020.

4. Taking note of the grievance expressed in the writ petition, this Court had issued an interim order dated 27.11.2020 restraining the respondents from issuing the work order with regard to Udalguri. That is why, no work order could be issued to the successful bidder till date.

5. The official respondents have appeared and filed affidavit through the respondent No.2 disclosing the grounds on which the petitioner's technical bid was rejected. Paragraphs 5 and 6 of the affidavit dated 07.12.2020 filed by the respondent No.2 would be relevant herein and therefore, are extracted herein below



“5. The deponent begs to state that the clause 4.3(IV) stipulates “Major items of construction equipment proposed to carry out the Contract”. The petitioner in his bidding documents has given inadequate numbers of equipment like Water Tankers, Concrete Vibrators (different sizes), Welding Machines, Plastering Machines, painting machine, Piling Rig etc. for carrying out the works for construction of the Government Model College at Udalguri.

A copy of the Minutes of the Meeting dated 18-11-2020 along with Technical Bid Evaluation Report are annexed herewith and marked as Annexure-1.

6. That the petitioner furthermore has disclosed that the petitioner has a Money Suit pending against the Director of Museum, Assam in his bidding documents.”

6. However, during the course of hearing of this case the learned departmental counsel submits that he is not pressing the ground taken on account of litigation history. As such, the only question that would now arise for consideration in this proceeding is as to whether, the decision taken by the authorities to reject the technical bid submitted by the petitioner on the ground of possessing inadequate plants and equipments was vitiated by arbitrariness and illegality.

7. Mr. Banik fairly submits that the particulars of plants and equipments furnished by his client in response to Appendix-II did fall short of the prescription made by the



respondent No.2. However, according to Mr. Banik, additional plants and machineries could easily have been organized by the petitioner had some time been granted to it by the departmental authorities. According to Mr. Banik, a final decision as regards acceptability of the tender is required to be taken only after the details of the technical and financial aspects are taken into account. Since the price quoted by the petitioner is lower than the other bidders by at least Rs.1,15,33,314/-., hence, the authorities ought not to have rejected the petitioner's bid on such hypertechnical ground.

8. By referring to a decision of the Supreme Court rendered in the case of **Chhattisgarh State Industrial Development Corporation Ltd. & another v. Amar Infrastructure Ltd. & others** reported in **(2017)5 SCC 387** it has been further submitted by the petitioner's counsel that the respondent No.2 ought to have reviewed the information furnished by the petitioner with regard to Appendix-II and sought clarification from him before rejecting the bid. Since the said exercise had not been undertaken by the departmental authorities, as such, the impugned order rejecting the technical bid of the petitioner is illegal and hence, liable to be interfered with by this Court.

9. Mr. R. Dhar, learned Standing Counsel, PWD, Assam, on the other hand, submits that the requirement of Cluse 4.3 read with Clause 4.3B of the Bid Document was mandatory in nature as otherwise the department would be unable to make proper assessment as to the capability of the contractor to properly execute the work. Since the petitioner has admittedly failed to meet the requirement of Appendix-



II, the Bid Evaluation Committee in its meeting held on 18.11.2020, had rightly decided to reject the petitioner's bid on technical ground. Mr. Dhar submits that the departmental authorities are duty-bound to ensure proper and timely execution of the work and therefore, the grounds on which the petitioner's technical bid was found to be defective cannot be held to be arbitrary.

10. Mr. A. Sharma, learned counsel for the respondent No.3, has argued that over and above its failure to comply with the requirement of Appendix-II, the petitioner has also failed to meet the mandatory requirement of Clause 4.5(e) which provides that the bidder should submit valid licence for executing ante-termite work. That apart, submits Mr. Sharma, the petitioner also did not meet the requirement of Appendix-III which provides the list of key personnel to be deployed on contract work which included a site Engineer (Civil) having the qualification of BE(Civil) with five years experience or a Diploma Engineer (Civil) with seven years experience. Contending that the price quoted by the petitioner would be of no significance if its technical bid is found to be defective, Mr. Sharma has prayed for dismissal of the writ petition.

11. I have considered the submissions made by learned counsel for the parties and have also gone through the materials available on record. The basic facts involved in this case are not in dispute. It is the admitted position of fact that as per Appendix-II of the Bid Document, every bidder was required to furnish a list of key plants and equipments to be deployed on contract basis by indicating the availability of the number of equipments mentioned therein. From a perusal of the comparative statement annexed to the affidavit filed by the respondent No.2, it is

apparent that the petitioner had failed to meet the requirement of such equipments with regard to as many as six items. As such, it was evident that the plants and equipments in possession of the petitioner were inadequate to execute the work as per the terms and conditions contained in the NIT. On the other hand, I find that the respondent No.3 and the other bidder viz., M/S B. K. Construction have fulfilled the requirement of Appendix-II without any deviation whatsoever. As such, it is established on the face of the record that the technical bid submitted by the petitioner fell short of requirement of Clause-4.3 read with 4.5B as well as Appendix-II. Taking note of such deficiency in the tender submitted by the petitioner, the Bid Evaluation Committee had rejected its technical bid.

12. I also find from the record that as per clause 4.5(e) of the Bid Document, every bidder is required to submit valid licence for executing ante-termite work and in case the bidder is not in possession of such licence he must enter into collaboration/tie-up arrangement with such licence holder having requisite experience. Such tie up must be done in the form of affidavit indicating the name of work to be executed for carrying out ante-termites. The learned counsel for the respondent No.3 has specifically argued that the petitioner had failed to meet the requirement of Clause 4.5(e). In his reply argument, Mr. Banik, however, could not dislodge such objection raised by the learned counsel for the respondent No.3.

13. In so far as employment of Site Engineer with requisite qualification is concerned, here also I find that the information furnished by the petitioner fell short of the norms laid down in Appendix-III of the bid document. From the above, it is clear

that the petitioner had failed to meet the technical requirement laid down by the NIT. Although non-compliance of Clause 4.5(e) and Appendix-III have not been cited as grounds for rejecting the technical bid of the petitioner, yet, such allegations could not be denied by the writ petitioner during the course of hearing. As such, this Court cannot altogether ignore such glaring deficiencies in the bid submitted by the petitioner, more so when it is seeking a writ of mandamus from this Court.

14. Law is firmly settled that in exercise of jurisdiction under Article 226 of the Constitution of India the writ Court would not sit in appeal over the decision of the tendering authority but would examine the decision making process. If it is found that the authorities have acted in an arbitrary, unfair and unreasonable manner thereby acting in contravention of the philosophy of equality enshrined under Article 14 of the Constitution of India then only, interference in such matters would be justified.

15. Coming to the facts of the present case, it cannot be denied that the respondent authorities would be the best judge to decide as to the competence and ability of a contractor to execute the work and in a time bound manner. In order to ascertain the ability of the bidder, certain clauses, as mentioned above, have been inserted in the tender document by requiring the contractor/bidder to furnish specifications in the form of Appendix-II and III laying down in clear and unequivocal terms the plants, equipments and manpower resources available at the disposal of the contractor. However, it is the admitted position of fact that the writ petitioner had failed to meet such tender specifications. Taking note of the same, its technical bid was rejected. Therefore, the decisions of the Tender Evaluation Committee cannot

be termed as arbitrary or illegal. Such being the position, I do not find any justifiable ground for this Court to interfere with the impugned decision of the Bid Evaluation Committee.

16. It is also to be noted herein that although M/S B. K. Construction is one of the tenderers whose technical bid has been found to be in responsive, yet, the said bidder has not been impleaded as a party in the present proceeding. Mr. Banik submits that since the price bid submitted by his client was the lowest amongst the three bidders, hence, once the petitioner's technical bid is accepted, the work order would automatically go to his client. I am afraid, such submission of Mr. Banik cannot be accepted by this Court. Firstly, price quoted by a bidder would be relevant only when the technical bid is found to be responsive. In case of a defective technical bid, low price quoted by the bidder ordinarily would be of no significance in a tender process. Moreover, if the petitioner's technical bid is required to be reconsidered, then in such an event, the matter would call for re-consideration by the Bid Evaluation Committee. Any decision taken thereafter, might affect the interest of all or any of the bidders including M/S B. K. Construction which is not a party to the present proceeding. Under the circumstances, the relief, as prayed for by the petitioner, cannot, in the opinion of this Court, be granted to it in the facts of the present case, unless both the bidders are made parties.

17. In so far as the decision in **Chhattisgarh State Industrial Development Corporation Ltd.** (supra), as relied upon by Mr. Banik is concerned, from a careful reading of the judgment rendered by the Hon'ble Supreme Court, I find that the ratio



laid down in the aforesaid decision would have no application in the facts and circumstances of the case. In that case both the bidders were found to be technically valid. But the plea was that one of the bidders did not possess hot mix plant and therefore, its bid was liable to be rejected. Rejecting the said plea it was held that there was no violation of mandatory tender conditions.

18. There is no clause in the NIT which cast a duty upon the tendering authority to enter into any post tender communication or negotiation with the bidders after opening the technical bids. That apart, the writ petitioner cannot be permitted to furnish further information in order to fill up the lacuna, if any, in its bid.

19. For the reasons cited herein above, I do not find any good ground to entertain this writ petition. The writ petition is accordingly dismissed.

Parties to bear their own cost.

JUDGE

Comparing Assistant