

Serial No. 20
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 134 of 2023

Date of Decision: 11.10.2023

Lephing Pyrtuh and Jasper I. Slong
(Joint Venture)

Vs. Meghalaya Power Generation
Corporation Ltd. & 2 Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. P. Agarwal, Adv.

For the Respondent(s) : Mr. S. Sahay, Adv. with
Mr. A. Kharwanlang, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Oral:

1. The petitioner who is stated to be a Joint Venture had participated in the tender process initiated vide RFB (Request for Bids) on August, 2022, for Rehabilitation and Improvement of Basic facilities

of Myntdu Leshka Stage I in West Jaintia Hills District, under a package on loans to be availed from the World Bank. The petitioner case is that, he is the sole successful bidder on the opening of the technical bids, which was conducted on 13.01.2023, but before the tender process could be completed, the same was cancelled vide the impugned letter dated 01.05.2023, which was communicated to the petitioner.

2. Being aggrieved thereby, the instant writ petition has been filed. It has been contended that, the conditions as prescribed in the “Procurement Regulations for IPF Borrowers” under the World Bank has been violated in cancelling the tender process, which has resulted in the deprivation of the writ petitioner from being the successful bidder in the said contract. The attention of this Court has been drawn by Ms. P. Agarwal, learned counsel for the petitioner, to Clause – 5.58 and 5.59, under the caption Rejection of all Bids/Proposals. Great stress has been laid upon Clause – 5.59 to advance the case of the petitioner, inasmuch as, it is submitted, it has been given therein that the lack of competition, shall not be determined solely on the basis of the number of Bidders/Proposers, and that even when only one bid or proposal has been submitted, the process may be considered valid, if certain other conditions are met. It is therefore submitted that, the stipulations as contained in the Procurement Regulations having been met, the

respondent Corporation by cancelling the tender process, has acted arbitrarily and illegally. It is therefore prayed that the respondent Corporation be directed to complete the tender process to its logical conclusion.

3. On behalf of the respondent Corporation, a question has been raised as to the possession of any legally enforceable right on the part of the petitioner, on amongst other grounds that, the matter concerned is a commercial transaction, and that the respondent Corporation being the proponent of the project or the owner thereof, is the most competent authority to decide on its own requirements as to its satisfactory execution. Mr. S. Sahay, learned counsel for the respondent Corporation on the pointed grounds raised by the petitioner, has also referred to Clause – 5.59, and submits that this in fact, is not mandatory, but is an escape clause in the event that a single bid is received and the same is found to meet the other requirements as given in a, b and c of Clause – 5.59. He further submits that this aspect being solely within the discretion of the respondent Corporation, the suspension or cancelation of the tender process is its sole prerogative, depending on the facts and circumstances of the matter.

4. Reference has also been made to recent judgments of the Hon'ble Supreme Court, wherein in tender jurisdiction, interference by

Courts in exercise of powers under writ jurisdiction has been significantly whittled down. In this context reliance has been placed on the decision of *Uflex Ltd. vs. State of Tamil Nadu* reported in (2022) 1 SCC 165, apart from other judgments which have been detailed in the affidavit, which includes *N.G. Projects Ltd. vs. Vinod Kumar Jain & Ors.* reported in (2022) 6 SCC 127. He therefore submits that the petitioner not having been made out any case of the violation of any fundamental or legal right, the writ petition deserves no consideration and the same is liable to be dismissed and that no mandamus can be issued directing for completion of the tender process.

5. Having heard the learned counsels for the parties, and having examined the materials on record, it is noted that the crux of the matter lies in the claim of the petitioner to legitimate expectation for conclusion of the tender process, as per the Procurement Provisions under the heading/caption of Rejection of Bids/Proposals. For easy reference, the said two clauses namely 5.58 and 5.59 are reproduced herein below.

“ 5.58 *Rejection of all Bids/Proposals is justified (for contracts subject to prior review, with the Bank’s no-objection), when:*

a. effective competition is lacking;

5.59 Lack of competition shall not be determined solely on the basis of the number of Bidders/Proposers. Even when only one Bid/Proposal is submitted, the process may be considered valid, if:

- a. the procurement was satisfactorily advertised;***
- b. the qualification criteria were not unduly restrictive; and***
- c. prices are reasonable in comparison to market values.”***

6. The above noted clauses, have described the situations, which the owner of the project may resort to in certain situations as given thereunder. It is noted that Clause – 5.59, especially has given the project proponent the latitude and discretion to decide on matters as given at the said clause, which on a detailed examination, in the opinion of this Court indicates that lack of competition as given in Clause – 5.58(a), is not to be determined solely on the basis of the number of bidders, and that the same may be considered, if the conditions contained in Clause – 5.59(a, b and c) are satisfactorily met. The stipulations therefore, it can be clearly seen, has been given in furtherance of the discretionary powers that are vested with the owner of the project, as also in the matters of prescribing tender specification. In this view of the matter therefore, the submissions as advanced by the learned counsel for the petitioner that the petitioner being the sole

bidder it is incumbent upon the respondent Corporation to accept the bid and complete the tender process cannot be accepted.

7. Further, it is noted that this being only the limited point in issue, no other legally enforceable right has been made out by the petitioner to warrant any interference by this Court at this stage. However, as has been apprised to this Court by the learned counsel for the respondent Corporation, that the project is still to be re-started, the writ petitioner therefore will naturally be allowed to take part in any other process, without prejudice to the proceedings that have been brought before this Court.

8. For the foregoing reasons as aforementioned, this writ petition accordingly stands closed and disposed of.

Judge

Meghalaya
11.10.2023
"D.Thabah-PS"