

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (M/B) NO. 285 OF 2023

10TH OCTOBER, 2023

Vimal Negi

.....Petitioner.

Versus

Union of India & others

....Respondents.

Counsel for the Petitioner : Mr. Navnish Negi, learned counsel.

Counsel for the Respondent No.2 : Ms. Puja Banga, learned Brief Holder.

Counsel for the Respondent No.3 : Mr. S.S. Chauhan, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

We have heard learned counsels and proceed to dispose of this writ petition.

2. The petitioner has preferred the present writ petition to assail the order dated 24.09.2023, whereby the respondents have declared the petitioner's bid to be technically disqualified. The petitioner had participated in the bids invited by the respondents for construction of "*T04-Khaludanda to Bhaoun to Apoloseri MR & MRL 11- Listiyakhet to Khaludanda MR under Package Nos.UT08553 & UT08554*".

3. The case of the petitioner is that the petitioner is registered as a Micro & Small Enterprise (*for short 'MSE'*). The petitioner is, therefore, exempted under Government Orders

from compliance with, either the past experience requirement, or the turnover criteria fixed under the tenders issued by the Government. The case of the petitioner is that, despite that being the position, the petitioner's bid has been rejected, *inter alia*, on the ground that the petitioner did not meet, either the turnover criteria, or the past experience criteria, stipulated in Clauses 4.4A(a)(ii) and 4.4A(b) of the Standing Bidding Documents (*for short* 'SBD'). The reasons given by the respondents for rejection of the petitioner's bid are the following:-

"1. As per SBD ITB clause 4.4A (a)(ii) Turnover is less than required.

2. As per SBD ITB clause 4.4A (b) Experience is less than required.

3. As per SBD ITB clause 4.6 Bid capacity is less than required.

4. As per SBD ITB clause 4.4B (b)(i) Lease agreement/ ownership evidence of Lab equipment and machinery is partially submitted".

4. The above would show that the petitioner has been disqualified on four grounds, including the ground that the petitioner did not meet either the turnover, or the past experience criteria. The other two grounds on which the petitioner's technical bid has been rejected, are less bid capacity than required under Clause 4.6, and the lease agreement/ ownership evidence of Lab equipment and machinery is partially submitted, as required under Clause 4.4B (b)(i).

5. The bid capacity stipulated under the tender is over Rs.19.00 crores. The manner of calculation of the bid capacity is stipulated in Clause 4.6. The same, insofar, as it is relevant, reads as follows:-

"The available bid capacity will be calculated as under:-

$$\textbf{Assessed Available Bid Capacity} = (A * N * M - B)$$

Where

A= Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the last year at the rate of 8 percent a year) taking into account the completed as well as works in progress.

N= Number of years prescribed for completion of the works for which bids are invited (period upto 6 months to be taken as ½ and more than 6 months as 1 in a year).

M= 2 or such higher figure not exceeding 3 as may be specified in the Appendix to ITB.

B= Value, at the current price level, of existing commitments and on-going works to be completed during the period of completion of the works for which bids are invited".

6. The submission of Mr. Negi is that, for the purpose of calculation of the bid capacity, the bidder should have past experience which, in the formula, provided in Clause 4.6 is indicated by 'W'. He submits that, since the petitioner is a new enterprise and does not have past experience, the said formula cannot apply to the petitioner. Mr. Negi submits that, therefore, there is no requirement of any bid capacity with a bidder who is a new MSE.

7. Mr. Chauhan, who has appeared on advance notice, has drawn the attention of the Court to the certificate issued in favour of the petitioner by the National Small Industries Corporation Limited, on 04.09.2023. The said certificate, apart from enlisting the definition of activity/ services, which the petitioner could offer, also sets out "quantitative capacity/ services PA", which is stipulated as Rs.8.00 crore per annum.

8. Mr. Chauhan submits that the bid capacity of the petitioner was, therefore, only Rs.8.00 crore, and even if the formula stipulated in Clause 4.6 is not applied to the petitioner, the petitioner still does not meet the bid capacity, which, as aforesaid, is in excess of Rs.25.00 crores.

9. So far as the aspect of the petitioner not submitting the proof of, either lease agreement/ ownership evidence of Lab testing equipment is concerned, Mr. Chauhan submits that the documents provided by the petitioner with regard to the testing equipment, did not establish that the petitioner was either in the ownership/ lease of the equipment.

10. In this regard, Mr. Negi has produced a photocopy of a Bill issued by the Tilok Chand Narsingh Lal, dated 16.10.2020, issued in the name of the petitioner, in respect of purchase of testing equipment. He states that the said document was filed with the petitioner's bid.

11. On the other hand, Mr. Chauhan has shown to the Court softcopy of the document provided by the petitioner along with the tender on the letter head of Tilok Chand Narsingh Lal, which only enlists the testing equipment without mentioning the name of the petitioner, either as the purchaser, or the lease of the equipment.

12. Even if, we were to agree with the submission of Mr. Negi in relation to the three reasons for rejection of the petitioner's technical bid, namely, that the turnover of the petitioner is less; the experience of the petitioner is less, and' the lease agreement/ ownership evidence of Lab equipment and machinery is partially submitted, we are of the view that the petitioner must fail, since the petitioner does not have the requisite bid capacity in terms of Clause 4.6 of the SBD.

13. Admittedly, the stipulation of the bid capacity under the tender is Rs.2575.69 Lakhs, which is the estimated construction cost. Even if the submission of Mr. Negi were to be accepted that the bid capacity of the petitioner cannot be computed under Clause 4.6, since the petitioner has no past experience, or turnover, it does not mean that such a bidder, which belongs to a MSE category, need not have any bid capacity at all. After all, a sizable public work is required to be executed by the successful bidder, and it cannot be that the bidder with either no bid capacity, or very little bid capacity, can stake a claim to be considered for such a work.

The bid capacity of the petitioner, as per the certificated issued to him by the National Small Industries Corporation Limited is stated to be Rs.8.00 crores per annum. The respondents have computed the same at Rs.1426.62 lakhs. Either of these figures is much below the estimated cost of work, which is also the bid capacity, required by the bidder.

14. Therefore, the rejection of the petitioner's bid on the ground that the petitioner does not have the bid capacity, appears to be correct, and does not call for interference. If the petitioner is correctly disqualified even on one ground, that is enough, and we are, therefore, not inclined to interfere with the same. We need not examine the correctness of the petitioner's disqualification on other grounds.

15. For the aforesaid reasons, we do not find any merit in this petition, and the same is, accordingly, dismissed.

16. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 10th October, 2023

NISHANT