

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
HON'BLE SRI JUSTICE RAKESH THAPLIYAL

12TH SEPTEMBER, 2023

WRIT PETITION (M/S) No. 3352 OF 2022

M/s Kunwar Construction.

...Petitioner

Versus

State of Uttarakhand and others.

...Respondents

Counsel for the petitioner. : Mr. Jitendra Chaudhary, learned counsel.

Counsel for the State of : Mr. B.S. Parihar, learned Standing
Uttarakhand. Counsel for the State of Uttarakhand.

Counsel for respondent no. 2. : Mr. S.S. Chauhan, learned counsel.

JUDGMENT : (per Sri Vipin Sanghi, C.J.)

We have heard learned counsels, and proceed to dispose of the Writ Petition.

2. On 19.04.2023, while passing our order, we had recorded the history of this case. The relevant paragraphs read as follows :-

"5. This matter has a chequered history. The petitioner had participated in the bidding process. Petitioner's technical bid was cleared. Objections raised by the competitors were considered, and rejected. Petitioner's financial bid was found to be L1.

6. Thereafter, the petitioner's bid was sought to be rejected on the technical ground that the affidavit

submitted by the petitioner was not in the correct format. The petitioner assailed that decision by preferring Writ Petition (M/S) No.1426 of 2022, which was allowed by this Court on 14.11.2022 by holding that the respondents could not have reviewed their earlier decision of 14.06.2022, qua the petitioner's technical bid, particularly, when the objections of the competitors were examined and rejected.

7. Thereafter, the respondents have proceeded to again hold that the petitioner does not meet the technical criteria, inasmuch, as the bid capacity of the petitioner is much below than that is required in the tender, in question. The bid capacity of the petitioner is stated only to be Rs.12.00 lakhs, as against the minimum bid capacity of over Rs.4.00 crores required for award of the contract.

3. The respondents were called upon to place on record the complete exercise undertaken by the Evaluation Committee, when the petitioner's technical bid was examined, and was found to be in order. The respondents were, specifically, required to disclose as to how the petitioner's bid capacity was held to be acceptable in the first round of evaluation. The further evaluation undertaken, while examining the objections raised by other competitors, was required to be placed on record.

4. The respondents have filed their counter affidavit in pursuance of the said order.

5. In the said counter affidavit, reliance has been placed on the Standard Bidding Document and Manual on Procurement and Contract Management for PMGSY Rural Roads Projects, which, according to the respondents,

states that *“the Procurement Evaluation Committee will check the compliance with bid capacity requirements as stipulated in ITB clause 4.6/ 4.4 D(v) as applicable during evaluation of Part II bids.”*

6. Mr. Chauhan points out that when Part I evaluation was done, the Committee had recommended that *“the Procurement Evaluation Committee will check the compliance with bid capacity requirements as stipulated in ITB Clause 4.6/ 4.4 D (v) as applicable during evaluation of Part II bids”*.

7. The logic behind this methodology being adopted was explained by Mr. Chauhan, to say that the respondents decided to make sure that the successful bidder has the bid capacity, as on the date of evaluation of the financial bid, to execute the work in question

8. However, Mr. Chauhan has submitted that the bid capacity of the petitioner was evaluated as on the date of the issuance of the tender, i.e. 07.05.2022.

9. We find that the respondents have actually acted contrary to their own understanding of the bid evaluation process. Pertinently, the petitioner was issued

a communication on 29.11.2022, requiring the petitioner to provide the list of works being executed by the petitioner, so as to assess his bid capacity before the award of the contract. The petitioner had responded to that communication on 30.11.2022. However, while declaring the petitioner's technical bid to be disqualified - on the ground of lack of bid capacity, the current information provided by the petitioner on 30.11.2022 was ignored, and the petitioner's bid capacity was assessed by examining the position, as it existed, with regard to his bid capacity, on 07.05.2022.

10. Mr. Chauhan does not dispute the fact, on instructions, that, if the bid capacity of the petitioner were to be evaluated as on the date of evaluation of the financial bid, which is 16.12.2022, the petitioner had the bid capacity to execute the work in question.

11. Mr. Chauhan has submitted that the work in question was started way back in the year 2016, which comprised of construction of a road, admeasuring about 14.5 kms. Out of the aforesaid work, about 10 kms. road was constructed by the erstwhile contractor, and the contract in question was to be awarded for completion of

the balance work of the road. He has also pointed out that there was a huge difference of nearly 50% between the bids given by the petitioner and the L2 bidder, i.e. M/s Bhagwan Singh Deopa.

12. The petitioner has placed on record the Standard Bidding Document for PMGSY. The document placed as Annexure No. 2 shows that it is for "*Balance Work of Ailagar to Jumma Motor Road Stage-I (0.000 to 14.500), Package No.RIDF- XXI/09/10 (based on Model SBD June, 2020)*", issued by Uttarakhand Rural Roads Development Agency, Ministry of Rural Development, Government of Uttarakhand.

13. Aforesaid being the position, the rejection of the petitioner's technical bid on 16.12.2022 was, *ex facie*, erroneous. Therefore, the respondents are bound to consider the petitioner as technically qualified, since no other reason for petitioner's technical bid disqualification was found, or pointed out by the respondents. In fact, the petitioner had earlier been declared to be technically qualified by the respondents themselves.

14. Consequently, we allow this Writ Petition, and direct the respondents to award the work to the petitioner

forthwith, who, admittedly, was the L1 bidder. The steps, with regard to award of the contract to the petitioner be taken, subject to the petitioner complying with all other conditions of the tender, and subject to his meeting the bid capacity as on date.

15. The Writ Petition stands disposed of in the aforesaid terms.

16. Consequently, pending application(s), if any, also stand disposed of accordingly.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.

Dt: 12th SEPTEMBER, 2023
Rahul