

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: 21st September, 2015
Judgment Delivered on: 1st October, 2015

+ **W.P.(C) 7896/2014**

SUN BROADCAST EQUIPMENT PVT LTD Petitioner

versus

PRASAR BHARATI & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rajiv Nayar, Sr. Adv. with Mr Jaiveer Shergill,
Mr Ankur Sood, Mr Rook Ray & Mr S. Mukherjee,
Advs.
For the Respondents : Mr Rajeev Sharma, Adv. with Ms Priyanka Raj,
Ms Radhalakshmi R. Advs. for R-1.
Mr Ajit Warriar, Adv. with Ms Tarunima Vijra,
Adv. for R-2.
Mr Sheetesh, Adv. for R-3.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

**W.P.(C) 7896/2014 & CM Nos.18501/2014(stay), 4843/2015 (on b/o. R-2
for deletion of name), 10002/2015(stay)**

1. This petition has been filed by the petitioner impugning order dated 08.08.2014 passed by the respondent No.1 informing the

bidders including the petitioner that the subject tender has been cancelled for administrative reasons.

2. The respondent No.1 had issued Notice Inviting Tender for supply of 3 Chip CCD Multi Format EPF Digital Chain for Studio/OB/EFF Applications vide tender No. 8(5) 2013-14 E1(P)TV dated 26.08.2013. The Petitioner including certain other bidders submitted their bids. The subject tender has been cancelled by the Respondents No. 1 by communication dated 08.08.2014 on administrative grounds.

3. The contention of the counsel for the petitioner is that the subject tender has been wrongfully cancelled and the impugned decision is part of a series/sequence of tenders cancelled by the respondent No.1 and the said cancellation happens when the petitioner is found to be L-1. It is submitted that the said subject tender has been cancelled to deprive the petitioner of the contract. It is contended that on at least two previous occasions, the respondent No.1 floated Tenders for sale/similar products and the said tenders were cancelled once the petitioner was found to be L-1.

4. On the contrary, the learned counsel for the respondent No.1 has contended that the subject tender was cancelled for administrative reasons and there were no *mala fides* in cancellation of the subject tender. It is further contended that all the bidders including the

petitioner had not been found to be technically qualified and in the case of the petitioner, the petitioner quoted for an incorrect tender item, which was not compliant with the tender items. Reference was also made to the letter annexed with petition as Annexure 'L' issued by DDG (Engg.) on behalf of the Director General (Doordarshan) to the CEO of the respondent No.1. The letter reads as under:-

“Sir,

With reference to above referred letter regarding cancellation of 3 Chip CCD Multi-Format EFP Digital Camera Chain for Studio/OB/EFP.

Point wise reply is given below:-

1. Subject tender was published in July 2013 and commercial bid was opened on 06.11.2013. Sony Camera offered by M/s Sun Broadcast Equipment Pvt. Ltd. (Authorized Distributor of M/s Sony) and was the lowest bidder.
2. A letter had received from M/s Hitachi that M/s Sony had offered 'HDVF-C550W' LCD color view finder. M/s Hitachi wished to know that 5 inch LCD color view finder is acceptable to Doordarshan against their requirement of 9 inch LCD view finder.

TEC had corrected 5 inch CRT view finder as 'HDVF-550' in place of 'HDVF-C550W' considering typographical error from side of firm M/s Sun Broadcast.

It was observed that in the commercial bid of M/s Sun Broadcast, Model no. of view finder was 'HDVF-C550W', while in approved TEC; Model no. was 'HDVF-550. TEC has stated that Model no. opted by TEC is based on Technical literature & compliance given by the firm.

3. File was sent to LE on 14.03.2014 for above clarification in model no. of view finder. As per LE, it is stated that it is a post tender negotiation & cannot be accepted by TEC. It is prohibited under CVC guidelines, Model no. HDVF-550 has been offered by the bidder after opening of technical bid and as such is another and subsequent offer and not acceptable.
4. File was sent for seeking opinion of legal counsel Sh. Rajeev Sharma on 03.04.2014. File was received from standing counsel on 27.05.2014.
5. File was again sent to vigilance section as desired by vigilance section for scrutiny. Sh. Rajeev Sharma submitted the case to solicitor General for advice. File was received on 26.06.2014.
6. As per vigilance section, it is stated that "the doubt regarding a possible typographical error notwithstanding (as opined by the SG), the vigilance wing's view is that DD should have perhaps gone for cancellation and retendering considering the controversy of post tender modification, non diligent manner of filing of bid by the firm and this being a very high value tender".

In light of CVO's above observations, instant

tender has been cancelled by approval of competent authority on 21.07.2014.

(M.K. Garhwal)
DDG (Engg.)
For DG: Doordarshan”

5. It is thus contended that the subject tender was cancelled for the reason that even the petitioner's bid was not found to be compliant and on the recommendation of the Chief Vigilance Officer. It is submitted that the respondent No.1 has issued a fresh Notice Inviting Tenders and the petitioner is free to participate in the same, subject to satisfying the other terms and conditions.

6. The learned counsel for the petitioner has conceded that there was an error in the bid submitted by the petitioner. It is submitted that though the petitioner had intended to offer model No.HDVF-550 but on account of typographical error in some places in the bid document, the model number mentioned was HDVF-C550W. It is submitted that even though in the bid document HDVF-C550W was quoted, however, the brochure of HDVF-550 was submitted along with the bid documents. It is submitted that the Technical Evaluation Committee (TEC), considering the typographical error on the part of the petitioner had corrected the model number.

7. It is conceded that specifications of the model No. HDVF-C550W was not compliant with the specifications of the tender items sought for by the respondent No.1.

8. The law with regard to tenders is well settled. The tender inviting authority has the right to cancel the tender for valid reasons. It is not obligatory on the tender inviting authority to award the tender to the L-1 bidder under all circumstances.

9. In the present case, admittedly, the bid of the petitioner as submitted was not fully compliant. The petitioner had not submitted the bid for the correct item. The item offered by the petitioner was not compliant with the item called for by the respondent No.1 in the subject tender. It is contended that there was a typographical error from the side of the petitioner in mentioning an incorrect model number. Be that as it may, the bid submitted by the petitioner was not error free. There was an ambiguity in the bid submitted by the petitioner.

10. The contention of the Counsel for the respondent No. 1 that even in the price bid, the same model number (HDVF-C550W) was mentioned which model was not compliant has not been denied by the petitioner. The only explanation given by the petitioner is that along with the bid document, the brochures of the correct item were annexed.

11. We are unable to accept the contention of the counsel for the petitioner. The tender inviting authority/the Technical Committee has to examine the bid in the first instance and then the bid documents. If the bid itself is not compliant, then the tender inviting authority/Technical Committee need not examine the documents/annexures. It cannot be said that merely because the brochure of a correct item is annexed with the tender, the same would make the tender compliant even though in the technical and price bid, a non compliant item is offered. Further, the Chief Vigilance Officer has opined that correction of the tender item after opening of the technical bid would amount to a post-tender negotiation and a subsequent offer, which could not be accepted. The CVO has opined that there is doubt regarding the possibility of a typographical error and the respondent No.1 should go for cancellation and re-tendering considering the controversy of post-tender modification and non-diligent manner of filing of bid by the petitioner, more so, in view of the fact that the tender was of a very high value.

12. In the above facts and circumstances, we do not find any infirmity in the cautious approach of the Respondent No. 1 in cancelling the tender and going for a fresh tender. The petitioner was itself not diligent in filling the tender document. We do not find any error in the procedure adopted by the respondent No.1. A person, who himself is not diligent in filling the tender document, cannot

insist upon the award of the contract based on a correction/change of item post the opening of the technical bid.

13. It is submitted by the counsel for the respondent No.1 that in the fresh tender floated, the petitioner is entitled to participate subject to the satisfaction of the other tender conditions.

14. In view of the above, we find no merit in the petition. The petition and the pending applications are accordingly dismissed. There shall be no orders as to costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

October 1 , 2015
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