

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 1650 OF 2014

Earthco Spares, a Proprietorship Firm, through its Proprietor/Manager, Rajeev Jhunjhunwala, S/o Shri Kirti Kumar Jhunjhunwala, aged about 44 years, having its office and works at 28 B, Keshab Chandra Sen Street, Kolkata- 700 007 (W.B.)

... Petitioner

Versus

1. South Eastern Coalfields Limited, through its Chairman-cum-Managing Director/HQD, Bilaspur – 495006 (C.G.)
2. South Eastern Coalfields Limited, through its Chief General Manager (MM)/HQD, Seepat Road, Bilaspur – 495006 (C.G.)
3. South Eastern Coalfields Limited, through its Chief General Manager (E&M)/HQD, Seepat Road, Bilaspur – 495006 (C.G.)
4. South Eastern Coalfields Limited, Hasdeo Area, through its General Manager, P.O. South Jhagrakhan Colliery, Korea-497448 (C.G.)
5. South Eastern Coalfields Limited, Hasdeo Area, through Dy. GM (MM), P.O. South Jhagrakhand Colliery, Korea – 497448 (C.G.)
6. South Eastern Coalfields Limited, Hasdeo Area, through GM/Dy. GM/Staff Officer (E&M), P.O. South Jhagrakhand Colliery, Korea – 497448 (C.G.)
7. Coal India Limited, through its Chairman # 10, Netaji Subhash Road, Kolkata – 700001 (W.B.)
8. Union of India, Ministry of Coal, through its Secretary, Shashtri Bhawan, New Delhi.
9. A K Enterprises, through its Contact Person, Mr. Ashutosh Jha, A-12/13, MIDC Industrial Area, Butibori, Nagpur – 441112 (M.H.)

... Respondents

For Petitioner	:	Mr. Romir Sumit Goyal, Advocate.
For Respondents 1 to 7	:	Mr. R.K. Gupta, Advocate.
For Respondent 8	:	Mr. N.K. Vyas, Assistant Solicitor General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

17/02/2016

1. The Respondent, South Eastern Coalfields Limited, published a Notice Inviting Tender (hereinafter referred to as the 'NIT') dated

15.12.2013 through e-tendering process for supply of machined shaft of belt conveyor and pair of seal kit with housing according to the specifications. The Petitioner and Respondent No.9 inter-alia were bidders. The Petitioner is aggrieved by award of works to supply the product given to Respondent No.9.

2. Learned Counsel for the Petitioner submits that according to the NIT the bidding documents were to be submitted on-line complete in all respects. An incomplete bid on-line was to be rejected. Hard copies of the on-line documents were also required to be submitted but according to Clause 36 of the NIT precedence was to be given to bid documents submitted on-line and no clarifications/additional clauses could be furnished on-line. All informations given on-line would supersede anything indicated off-line. The counter-affidavit of the Respondent SECL does not deny that the on-line documents submitted by Respondent No.9 were incomplete. In that event, according to note to Clause 2 of the NIT the price bid of Respondent No.9 could not have been opened and its offer ought to have been rejected as unresponsive. Reliance was placed on 1986 (3) SCC 247 (Harminder Singh Arora v. Union of India & Others) and 2007 (2) SCC 588 (Ramchandra Murarilal Bhattad & Others v. State of Maharashtra & Others).

3. Learned Counsel for the South Eastern Coalfields Limited submitted that not only the bid documents of Respondent No.9 contained incomplete information but even those submitted by the Petitioner were found wanting apart from that of other bidders. The SECL therefore provided a uniform opportunity to all bidders in accordance with Article 14 of the Constitution of India for rectification by off-line submission. The Petitioner has not stated this fact in the writ petition. The technical bid of Respondent No.9 was accepted on

1.2.2014 and its financial bid was opened on 14.7.2014. The work order was issued to Respondent No.9 on 21.8.2014 also being the date on which the writ petition was filed. Delivery was to be effected within 30-60 days and which has been complied with.

4. No one appears on behalf of Respondent No.9 though counter-affidavit has been filed on its behalf. It reiterates the contention in the counter-affidavit of the SECL that an opportunity of rectification was furnished across the board to all bidders.

5. We have considered the submissions on behalf of the parties.

6. In matters relating to award of contracts, judicial review has to be confined primarily to the decision making process. The NIT provided for submission of bids on-line and those whose technical bids were not complete in all respects, their financial bids were not to be opened. The documents were required to be submitted both on-line and off-line. On-line documents would supersede off-line documents. But, Clause 36 of the NIT itself provided that clarifications with regard to documents filed on-line could be submitted if it was specifically asked for. The specific assertion in the counter-affidavit of the SECL that all technically qualified bidders including the Petitioner were given opportunity to make good the defects/shortfalls in their bid documents, has not been denied in the rejoinder filed on behalf of the Petitioner to the counter-affidavit of the SECL. Learned Counsel for the Petitioner sought to persuade us that the opportunity provided for rectification of defects as mentioned in the counter-affidavit was fundamentally different from that alleged against Respondent No.9. But there is absolutely no details in the pleadings in this regard in the writ petition. In-fact the writ petition is completely silent with regard to the opportunity provided to the Petitioner also for rectification of defects.

7. In a contract matter, if the authorities deviate from any term of the tender and provide an individual relaxation so as to give an undue benefit or advantage to a single bidder, matters will fall within the domain of arbitrariness attracting Article 14 of the Constitution. But, if the authority concerned acts uniformly with an element of transparency by providing equal opportunity to all intending bidders for rectification of defects keeping them at par and an opportunity for equal participation, Article 14 of the Constitution stands complied with.

8. The technical bid of Respondent No.9 was accepted on 1.2.2014 and the financial bid was opened on 14.7.2014. Surely, if the Petitioner was a bidder in a commercial contract he was fully aware of all these developments that were taking place. In contract matters there is always an urgency and one who seeks relief must approach the Court at the earliest possible opportunity rather than to wait and allow matters to progress. The Petitioner was aware that the products were to be supplied within a very short period of time. Yet he took no action when the technical and financial bids of Respondent No.9 were accepted and filed the writ petition on the date the work order was issued to Respondent No.9. The NIT and the consequent award of works have run its course and the matter has now stood concluded by supplies having been made also leaving issues in an academic domain, if at all there was an issue to be decided.

9. Reliance on Harminder Singh Arora (supra) is completely misconceived as it did not involve issues with regard to grant of uniform relaxation to all bidders across the board in accordance with Article 14 of the Constitution of India. Likewise, in Ramchandra Murarilal Bhattad (supra) issues related to cancellation of a contract as a matter of policy. It has no application to the present controversy.

10. There is no merit in the writ petition. It is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

/sharad/