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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 1757 of 2016

Arun Kumar Gupta S/o Late K. P. Gupta, Aged About 42 Years Partner- Uttam Agarwal And Associates, R/o S B I Campus, Nawapara Main Road, Surajpur, P.O. & P S - Surajpur, Distt. Surajpur, (Chhattisgarh) 497229

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat & Rural Development, New Mantralaya, Mahanadi Bhawan, P.S. Rakhi, District Raipur, (Chhattisgarh)
2. Commissioner, Mahatma Gandhi NREGA (Mgnrega) Government Of Chhattisgarh, Indrawati Bhawan, P.S. Rakhi, District New Raipur, (Chhattisgarh)
3. Collector, Surajpur, P.O. & P.S. Surajpur, Distt. Surajpur, (Chhattisgarh) 497229
4. Chief Executive Officer, Jila Panchayat, Surajpur, P.O. & P.S. Surajpur, Distt. Surajpur (Chhattisgarh) 497229
5. J. N. Mittal & Company (Chartered Accountant Firm), Ambikapur Road, Pathalgaon, Distt. Jashpur, (Chhattisgarh)

---- Respondents

For Petitioner	: Shri Abhishek Singh, Advocate.
For Respondent/State	: Shri Y.S. Thakur, Deputy Advocate General.
For Respondent No.5	: Ms. Sharmila Singhai, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board

Per Deepak Gupta, Chief Justice

31/08/2016

1. By means of this petition, the Petitioner has specifically prayed that the procedure followed by the Respondents in evaluating the bids is not proper.

2. Briefly stated facts of the case are that the Collector, Surajpur, issued an advertisement called "Expression of Interest" (Annexure P/2) inviting bids from Chartered Accountants/Firm of the Chartered Accountants to carry on the work of auditing in various units under the Mahatama Gandhi National Rural Employment Guarantee Scheme (hereinafter called as 'MNREGA'). Clause-4 of the tender condition provides that Firm of the Chartered Accountants should have at least five year experience in auditing. Clause-5 provides that the Firm should have been empaneled with the Accountant General, State of Chhattisgarh. Clause-6 provides that the technical bid and financial bid should be submitted in two different envelopes. Clause-9 provides that following must be attached alongwith the tender document:

> "I. Member ship certificate of practice
>
> II. Pan Card
>
> III. Latest IT returns filed by the firms
>
> IV. Latest IT returns of partners.
>
> V. Service tax registration certificate.
>
> VI. Document in support of financial turnover of the firm.
>
> VII. Under taking to be furnished by the firm that there are no legal suit/criminal cases pending against the firm and its partners or having not been earlier convicted on ground of moral turpitude or for violation of laws in force."

3. Column No. 12 of the application form provides that the Firm should give information with regard to any statutory /internal/concurrent audit and other accounting work of any Government Departments including Schemes/Programmes, PSU etc. and details were required to be given in Annexure-C which is as follows:

"(On firm's letter Head)

Annex - C

Details of Statutory/Internal Audit Work/Any Other Accounting Work of Government Departments/Schemes in hand with the firm/undertaken in the last five year as on 31.3.2016.

Name of Client	Type of Audit (Tick appropriate Box)		
	Statutory	Tax	Internal/ Other
Central/State Government (Departments/ Schemes):			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Place:
Date :

(Signature of Authorised Person with Seal of the Firm) "

4. Every tenderer was also required to submit an undertaking in which certain details were required to be mentioned. The evaluation of the technical bid provided the manner in which the bids were to be evaluated. It is not disputed that the Petitioner provided information as per Annexure-C with regard to the statutory/internal audit work/any other accounting work of Government Departments/Schemes. In the case in hand, the Petitioner-Firm had undertaken as many as 15 audit works and most of them related to CG State Civil Supplies Corporation or were Scheme Audit related to MNAREGA programme and large number of works related to District Surajpur. The bids were opened but when evaluation was made marks

were not allotted to the Petitioner on the ground that the Petitioner had not submitted any documents in support of the entries made by him in Annexure-C. The whole issue is whether it was mandatory to supply such documents or not.

5. Shri Abhishek Singh, learned counsel for the Petitioner contends that neither in the tender form nor in any of the document it was specifically mentioned that documents in support of the facts stated in Annexure-C had to be supplied. He further submits that it is not possible to give documents with regard to the work undertaken in the last five years. According to him, the work of a Chartered Accountant is of such nature that the documents would be very voluminous. His last submission is that once the technical bid as well as financial bid have been opened, while evaluating his bids, he could not have been given lesser marks.

6. On the other hand, Shri Y.S.Thakur, appearing for the official Respondents and Ms. Sharmila Singhai, for the private Respondents contend that as per the note attached to the tender document, it was mandatory for the tenderer to submit supporting documents and they have placed reliance on note No. 2 which reads as follows:

> "2. Supporting documents for eligibility criteria: - The firm must submitted required supporting documents to establish minimum eligibility criteria."

7. At the outset, we may state that we are not in agreement with learned counsel for the Petitioner as far as two of his contentions are concerned. We do not agree that a Chartered Accountant cannot furnish such proof as required. He can definitely furnish proof because what is required in Annexure-C is the details of the statutory/internal audit work/any other accounting work of Government Departments/Schemes which the Firm has

undertaken in the last five years and the details of the same have been given and it is very easy to give a proof in the nature of certificate which is issued by the Chartered Accountant when audited balance sheet of any firm or organization is prepare. Proof may also be given in the form of letters of appointment of the Chartered Accountants. It is not necessary to enclose the entire documents but only the covering note which the Chartered Accountant issues or the letter of appointment. This would be sufficient proof in this regard.

8. We are also not in agreement with him that merely because the financial bid had been opened, the technical bid, could not be entitled. It is only after opening of the technical bid, the evaluation can be done and it is not necessary that the evaluation process must be done before the financial bid is opened. The purpose of a technical bid is only to ensure that the person is technically qualified and fulfills the minimum eligibility criteria for his financial bid to be opened. However, when the financial bid is to be considered, the evaluation parameters come into play. Merely because financial bid has been opened is no ground to urge that the technical bid cannot be evaluated.

9. Having held so, we are clearly of the view that the main submission of Shri Abhishek Singh, learned counsel for the Petitioner, has merit. In case any authority which invites tenders feels that certain documents should be filed alongwith the tender, it must in explicit terms clearly set out what are the documents required to be filed. We have already mentioned that clause 9 of the condition of the tender specifically mentions the documents, photocopies of which have to be filed. If the Collector while issuing the advertisement could specify that it is necessary to file membership

certificate of practice, Pan Card, latest IT returns filed by the firms, latest IT returns of partners, service tax registration certificate, documents in support of financial turnover etc. we fail to understand why in Annexure-C another note could not have been added that the tenderer must furnish necessary documents in support of his claims made in Annexure-C.

10. As far as the present tender is concerned, it is ambiguous. In the terms and conditions of the tender which we have quoted above, there is no requirement to submit any such document. The only requirement is that the tenderer must supply the information with regard to statutory audit conducted by it in Annexure-C. This is a condition of column 12 of the application form. We have quoted entire Annexure-C above and that does not contain any other note. It only leads to the conclusion that the information which was required by the Department was the details with regard to its claim.

11. Reliance placed by learned Counsel for the both the Respondents on Note 2, in our opinion, is misconceived. Note 2 only provides that statutory document for eligibility criteria must be supplied. The note in very clear cut terms states that the Firm must submit the required eligibility documents with regard to minimum eligibility criteria. Minimum eligibility criteria is totally different from evaluation criteria. The minimum eligibility criteria means that the tenderer must be a Chartered Accountant. He must have five year's experience. He must be empanelled in the office of the Accountant General, State of Chhattisgarh and all the documents to establish minimum eligibility criteria were required to be submitted alongwith the tender document. However, we cannot agree with the Respondents that what is stated in Annexure-C is the minimum eligibility

criteria. It may be true that the experience criteria that may be very relevant to evaluate the working of competing tenderers. The information is very relevant to decide who is more experienced and who should be given more marks. While we are totally in agreement with the Respondents that this information is necessary, the question is whether supporting documents are necessary or not? The information is given in Annexure-C and column No. 12 that all what is stated in the application is correct. It is not for us but for the authorities to decide as to in which manner the form has to be filled in. If in Annexure-C or any other portion, it had been clearly set out that the tenderer is required to furnish supporting documents in support of the claim made in Annexure-C then we would have no hesitation in accepting the plea of the Respondents. However, this is not the case at present. The only reliance is on Note 2 which only deals with eligibility criteria. Even if we would expand the meaning of eligibility criteria to include the evaluation criteria, then we feel that the tender condition is ambiguous and vague and can be interpreted in more than one way, and therefore the tender of the Petitioner cannot be rejected because the condition which is said to be violated is itself a vague and ambiguous condition.

12. Shri Y.S.Thakur, learned Deputy Advocate General points out that in case whole process is set aside and fresh tenders are invited, then the State may be put to extra financial burden because it may lose the central financial assistance which is available under this scheme. We cannot ignore this fact also. However, at the same time, we feel that the Petitioner cannot be penalized on the ground that he has not furnished the documents because we have clearly found that there is no clear cut condition in the tender that such documents should have been supplied.

13. We are not to evaluate the tender and that is required to be done by the Collector. We however feel that in the larger public interest it would not be proper to cancel the entire process but the same can be restarted from the stage when the tenders were submitted. As held by us above, we agree with the Respondents that production of such documents may be necessary to verify the facts stated by the tenderers and also to properly evaluate their tenders.

14. In view of the above discussion, we dispose of this petition with the following directions:-

(i) That the Collector, Surajpur shall within a period of one week from today ask all the bidders including the Petitioner to submit all documents in support of the claims made in Annexure-C. These documents be furnished within three days thereafter. It is made clear that the documents which can be furnished will only relate to what has already been mentioned in Annexure-C and no other fresh documents shall be entertained.

(ii) Thereafter, the Collector shall re-assess the bids as per the evaluation criteria and shall follow the law while awarding the bid work to the person found most suitable.

(iii) A copy of this order be handed over to the learned Deputy Advocate General by tomorrow i.e. 1st September, 2016 by 04:00 pm.

Sd/-	Sd/-
(Deepak Gupta)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

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