

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2012/2016

Vaidya Industries through its Sole Proprietor Vivek Vinayak Vaidya, Nagpur
...Versus...
Sant Rohidas Leather Industries and Charmakar Development Corporation
Limited (Leather Industries Development Corporation of Maharashtra Ltd.)
LIDCOM through its Managing Director, Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.S. Giripunje, Advocate for petitioner
Shri D.M. Kakani, Advocate for respondent no.1
Shri A.M. Joshi, AGP for respondent no.2
Shri Anand Jaiswal, Sr. Adv. with Shri M.R. Pillai, Adv. for respondent no.3

CORAM : SMT. VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.

DATE : 18.04.2016

By this writ petition, the petitioner seeks a direction to the respondents to open the Commercial Bid C1 of the petitioner and then proceed to finalize the process of tender in accordance with law.

In pursuance of a tender notice issued by the respondent no.1 – Sant Rohidas Leather Industries and Charmakar Development Corporation Limited through its Managing Director on 25.12.2015, inviting tenders for supply of M.S. Fabricated Gatai Stalls, the petitioner as well as the respondent no.3 applied, along with others. The technical as well as financial bids were required to be separately submitted and the financial bid could have been opened only if the technical bid was

found to be responsive. By the said notice, tenders were invited from the eligible Indian Metal Fabricators or their authorized dealers for supply of M.S. Fabricated Gatai Stalls. As per the tender notice, the bidders who possess all the relevant facilities of fabrication and galvanization were required to submit their offers along with letter of authority of such M.S. Fabricator as per the Proforma Annexure – B on the letterhead in original, of the concerned M.S. Fabricator. Also, the M.S. Fabricator was required to confirm the possession of in-house fabrication cum galvanization facility requirements on an undertaking as per Annexure-C on a stamp paper of Rs.100/-. The authorized signatory of M.S. Fabricator was further required to submit its power of attorney along with the concerned Board Resolution. Admittedly, the petitioner herein had secured the authorization of M/s. Sunrise Structurals and Engineering Private Limited in terms of the qualification requirements. Though it was necessary to confirm in the authorization letter as per Annexure-B that the Company – Manufacturer, M/s. Sunrise Structurals and Engineering Private Limited had not authorized any Company, Firm or Individual other than the petitioner to tender, negotiate and conclude the contract in regard to the business against the specific invitation of the bid as per the tender notice, dated 25.12.2015, admittedly, there was no mention in the authorization letter as per the Proforma in Annexure – B that M/s. Sunrise Structurals and Engineering Private Limited had not authorized any Company, Firm or Individual other than the petitioner to tender, negotiate and conclude the contract. Also,

the petitioner had not appended the Resolution of the Board of M/s. Sunrise Structurals and Engineering Private Limited as per the qualification requirements while submitting the mandatory document confirming the possession of the in-house fabrication and galvanization facility requirement. The technical bids of the bidders were opened on 21.2.2016 and the technical bid of the petitioner was found to be non-responsive. While holding so, the respondent no.1 had secured the information from M/s. Sunrise Structurals and Engineering Private Limited and it was revealed that M/s. Sunrise Structurals and Engineering Private Limited had granted an authorization as per Annexure – B in favour of a tenderer, namely, M/s. Preksha Enterprises. It was noticed by the respondent no.1 that though a statement, as required in terms of Annexure-B that no Company, Firm or Individual other than the tenderer was authorized to tender, negotiate and conclude the contract, was not found in the authorization issued in favour of the petitioner, the same was found to be present in the authorization issued in favour of M/s. Preksha Enterprises. When the respondent no.1 was informed by M/s. Sunrise Structurals and Engineering Private Limited that it had not granted the authorization in favour of the petitioner, the respondent no.1 held that the technical bid of the petitioner was non-responsive. The action of the respondent no.1 in rejecting the technical bid of the petitioner is challenged by the petitioner in the instant petition.

The learned Counsel for the petitioner has raised three grounds for challenging the disqualification of the technical

bid of the petitioner. Firstly, according to the petitioner, though M/s. Sunrise Structurals and Engineering Private Limited had issued the authorization in favour of the petitioner as well as M/s. Preksha Enterprises and M/s. Sunrise Structurals and Engineering Private Limited had conveyed to the respondent no.1 that no authorization was issued in favour of the petitioner, it was subsequently affirmed by M/s. Sunrise Structurals and Engineering Private Limited that an authorization was indeed issued in favour of the petitioner. Secondly, it is submitted that as per clauses 8.3 and 8.4 of the tender document, a bidder was required to pay the testing charges and the samples of bidders whose technical bids were found to be responsive were required to be sent to the Government approved laboratory for testing. It is submitted that the petitioner had paid the testing charges of Rs.1,00,000/- and the respondent no.1 illegally failed to send the samples of the petitioner for technical scrutiny though the samples of the other bidders were sent for testing even before the closing of the technical bid. Thirdly, it is submitted that the procedure, as laid down by the Government Resolution dated 30.10.2015, was not followed by the respondent no.1, inasmuch as the petitioner was not permitted to rectify the irregularities in the submission of the bid and the tender process was not stayed till then.

On hearing the learned Counsel for the parties, we find that there is no merit whatsoever in the grounds raised by the petitioner for challenging the tender process and the disqualification of the technical bid of the petitioner. It is

apparent from a reading of the tender document that the Indian Metal Fabricators or its authorized dealers were entitled to submit the bids for supply of M.S. Fabricated Gatai Stalls. As per the qualification requirements, the authorized dealers like the petitioner were required to submit their offers along with letter of authority from M.S. Fabricator, M/s. Sunrise Structural and Engineering Private Limited, in the case of the petitioner herein, as per the Proforma at Annexure-B on the letterhead in the original from M/s Sunrise. On a perusal of the Proforma at Annexure – B, it is clear that it was necessary for the M.S. Fabricator i.e. M/s. Sunrise Structural and Engineering Private Limited to mention in the authorization letter that no Company, Firm or Individual other than the bidder i.e. the petitioner herein was authorized to tender, negotiate and conclude the contract. In the absence of tendering the authorization in the Proforma at Annexure-B, the petitioner failed to fulfil the qualification requirement. The respondent no.1, however, enquired from M/s. Sunrise Structural and Engineering Private Limited whether the petitioner was authorized by M/s. Sunrise Structural and Engineering Private Limited to tender, negotiate and conclude the contract. M/s. Sunrise Structural and Engineering Private Limited, however, informed the respondent no.1 that the petitioner was not so authorized. It was also noticed by the respondent no.1 that the authorization was issued by M/s. Sunrise Structural and Engineering Private Limited in favour of M/s. Preksha Enterprises when the M.S. Fabricator was required to issue an

authorization only in favour of one bidder. The respondent no.1 further found that in the authorization letter submitted by M/s. Preksha Enterprises there was a clear mention that no Company, Firm or Individual other than M/s. Preksha Enterprises was authorized to tender, negotiate and conclude the contract. After securing the aforesaid information, the respondent no.1 rightly held that the technical bid of the petitioner was non-responsive. The respondent no.1 was entitled to hold so, more so, when the petitioner had not appended a copy of the concerned Board Resolution of the M.S. Fabricator i.e. M/s. Sunrise Structurals and Engineering Private Limited along with the undertaking in Proforma at Annexure-C. Since the undertaking tendered by M/s. Sunrise Structurals and Engineering Private Limited was not supported by the Resolution of the Board of Directors of the said Company, the respondent no.1 did not commit any error in holding that the technical bid of the petitioner was non-responsive.

We do not find any merit in the submission made on behalf of the petitioner that the respondent no.1 ought to have sent the bid samples of the petitioner to the Government approved laboratory for testing as the bid samples of the other bidders were sent for testing. On a reading of clause 8.4 of the tender document, it is apparent that the bid samples of the bidders that are not responsive in the technical scrutiny were not required to be sent to the Government approved laboratory for testing. Since the technical bid of the petitioner was non-responsive, there was no occasion for the respondent no.1 to

send the bid samples of the petitioner to the Government approved laboratory. Admittedly, the technical bid was opened on 20.1.2016 and the bid samples of the other bidders were sent to the Government approved laboratory for testing after 20.1.2016. It is apparent from the aforesaid position that the respondent no.1 sent the bid samples of only those bidders whose technical bids were found to be responsive, to the Government approved laboratory for testing.

We also do not find any force in the last submission made on behalf of the petitioner that the procedure, as laid down in clause 5.8.1 of the Government Resolution dated 30.10.2015, was not followed. Under clause 5.8.1, the bidder who is aggrieved by the disqualification of his technical bid is entitled to make a representation before the concerned authority issuing the tender notice. In the instant case, no complaint-application was made by the petitioner to the respondent no.1 but the same was directly made to the Hon'ble Minister for Social Welfare. Also, it is stated on behalf of the respondent no.1 that the authorized officer of the petitioner – Company was present at the time of opening of the technical bid on 20.1.2016 and he was informed about the reason for the rejection of the technical bid.

Since there is no merit in any of the submissions made on behalf of the petitioner, we dismiss the writ petition with no order as to costs.

JUDGE

Wadkar

JUDGE