

Gurbax Singh
2016.09.21 11:45

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 12573 of 2016
Date of decision: 31.08.2016**

M/s Gurunanak Engineering Services

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. S.S.Sahu, Advocate for the petitioner in CWP Nos.12573 and 12587 of 2016.

Mr. K.S.Dadwal, Advocate for the petitioner in CWP No.12575 of 2016.

Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Deepak Sabharwal, Advocate respondent Nos. 2 and 3.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos.12573, 12587 and 12575 of 2016 as learned counsel for the parties are agreed that the issue involved in all the three petitions is identical. However, the facts are being extracted from CWP No.12573 of 2016.

2. In CWP No.12573 of 2016 filed under Articles 226/227 of the Constitution of India, prayer has been made for quashing the impugned order dated 8.6.2016, Annexure P.9 passed by Managing Director, Haryana State Roads and Bridge Development Corporation Limited (HSRBDC), respondent No.2 and report dated 5.5.2016, Annexure P.10 whereby the bid submitted by the petitioner had been rejected on the ground that power of attorney for signing the bid had not been submitted whereas as per clause 2.12 of the instructions, the due date for submission of power of attorney for

the bid was mandatory to be fixed but the respondent-Corporation while issuing corrigendum dated 5.4.2016, Annexure P.2 and 18.4.2016, Annexure P.3 failed to fix any date. Further direction has been sought to respondent Nos. 1 and 2 to permit the petitioner to participate in the technical bid.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The HSRBDC invited online bids from eligible bidders for the works, planning, design, construction, defect liability, maintenance and all other works contingent thereto for the construction of additional 2 lane ROB at LC No.3 on Hissar Sadalpur railway line crossing old DHS at RD 164.60 at Dabra Chowk, Hissar. The approximate value of the work was fixed at ₹ 19 crores and bid security was fixed at ₹ 38 lacs. The cost of the documents was approved as ₹ 20,000/- and completion period had been stipulated as 18 months. The date and time for bid preparation and submissions was fixed as 25.2.2016 from 17.01 hours to 6.4.2016 – 17.00 hours and defect liability period and maintenance was fixed upto four years. As per terms and conditions stipulated in the tender notice, the first pre-bid meeting was to be held on 14.3.2016 at Panchkula and second pre-bid meeting was fixed for 15.3.2016 at New Delhi. The willing bidder had to pay ₹ 1000/- as e-service fee in the form of demand draft in favour of the Society for IT initiative fund for e-governance payable at Chandigarh. As per key date schedule fixed by the respondent, the starting date and time to release the tender was fixed as 25.2.2016 and expiry date and time was fixed as 25.2.2016 – 17.00 hours. The date for opening the technical bid was fixed as 11.4.2016 – 10.00 hours and 11.4.2016 – 17.00 hours. The date for evaluation bid was fixed as 11.4.2016 -17.01 hours and so far as the date for opening of financial bid was concerned, it was stated in the tender notice in column No.6 of key date

schedule that “date to be intimated later on”. As per note mentioned in the tender notice, “the online bidders were required to submit the physical BS in a physical BS envelop BS Price Bids and Technical bids were to be submitted mandatory online and shall not be accepted in any physical form”. On 5.4.2016, respondent No.2 issued corrigendum and fixed revised key date schedule for the work. However, no date was fixed for opening of financial bid. The date for submitting the power of attorney for signing the bid was not fixed which was mandatory under clause 2.12. On 18.4.2016, respondent No.2 again issued corrigendum revising key dates for inviting bids. The date for submitting the power of attorney for signing the bid was again not fixed which was mandatory under clause 2.12. The petitioner being eligible and having experience and turnover, required to allot the aforementioned work, prepared bank guarantee amounting to ₹ 38 lacs on 29.4.2016 and demand drafts of ₹ 20,000/- and ₹ 1000/-. It also got prepared power of attorney for signing of financial bid on 29.4.2016 and submitted online for the said work. The last date for submission of power of attorney fixed by the respondent as per clause 2.12 was dated 7.4.2016 and before 8.4.2016. According to the petitioner, in the absence of date fixed for submitting the power of attorney, respondent No.2 could not reject its bid. It was not possible for the petitioner who had submitted online applications on 30.4.2016, to submit power of attorney for signing the bid on 7.4.2016 and before 8.4.2016. The Financial Consultant Gianender and Associates, Chartered Accountants on verification found that the petitioner had not submitted physical copy of power of attorney for signing the financial bid. Therefore, the bid submitted by the petitioner was rejected for opening the technical bid being non responsive as the petitioner had not submitted physical copy of power of attorney for signing the financial bid. Hence the

instant writ petitions.

4. A written statement has been filed on behalf of respondent Nos. 2 and 3 wherein it has been inter alia stated that the power of attorney was to be submitted physically to the Corporation which was not submitted by the petitioner as verified by the Financial Consultant (Gianender and Associates) and as such the technical bid was not considered responsive and letter dated 8.6.2016 was issued by the Deputy General Manager III for the Managing Director, HSRBDC, Panchkula to the petitioner. The bid of the petitioner was declared non-responsive as it failed to submit the power of attorney physically as stipulated in clauses 2.11.2, 3.1.1 and 3.1.6 (b) and (d). Moreover, the Corporation reserved the right to reject any bid as per clauses 2.1.6.1 and 2.1.6.2 of the instructions. Further, it has been stated that as per clause 2.11.2 of the instructions, the bidder was required to submit original power of attorney for signing the bid as per format at Appendix II. As per clause 3.1.6 of the instructions, the technical bid was responsive only if technical bid was accompanied by power of attorney. The original power of attorney should have been given physically as per requirement of clause 2.11.2 of the instructions in Request for Proposal (RFP). It was specifically denied that no date was fixed for submission of power of attorney as mandatory under clause 2.11.2. Only the revised key schedule had been fixed as per the corrigendum dated 18.4.2016 with the rider that the remaining terms and conditions of the RFP i.e bid document will remain unchanged. Thus, the bidders were required to comply with the remaining terms and conditions including the submission of original power of attorney as per clause 2.11.2 of the bid document which was mandatory for consideration of technical bid of the petitioner as responsive. It was further stated that the petitioner had neither submitted original nor copy of the

power of attorney. On these premises, prayer for dismissal of the petition has been made.

5. Learned counsel for the petitioner submitted that in the notice inviting tender, there was no specific condition that for a technical bid to be responsive, the documents listed at Clause 2.11.2 of the instructions were to be filed physically. According to the learned counsel, rejection of the technical bid on the ground that power of attorney for signing the financial bid had not been submitted was legally untenable whereas as per Clause 2.12 of the instructions, the due date for submission of power of attorney for the financial bid was to be fixed but no such date was fixed by the respondent-Corporation. It was further argued that Clause 2.11.2 related to financial bid and would become operational only after the technical bid had been opened. Reliance was placed on the judgment of the Apex Court in *Dutta Associates Pvt. Limited vs. Indo Merchatiles Pvt. Limited*, (1997) 1 SCC 53.

6. On the other hand, learned counsel for the respondent-corporation submitted that Sections 1, 2 and 3 of Part-I also formed part of the notice inviting tender which contained mandatory clauses for compliance. It was urged that under clause 2.11.2, it was mandatory for the petitioner to have filed the original power of attorney physically and the petitioner having failed to file original power of attorney, in physical form, technical bid had been rightly rejected.

7. We have heard learned counsel for the parties. The original record produced by the learned counsel for the respondents was perused.

8. Before dealing with the controversy involved in the present case, it would be advantageous to reproduce the relevant clauses of the instructions to the bidders issued by the respondent corporation which read

thus:-

“2.1.8 The bidder should submit a power of attorney as per the format and Appendix III, authorizing the signatory of the BID to commit the bidder.

2.11.2. The Bidder shall submit the following documents physically:

- (a) original power of attorney for signing the BID as per format at Appendix III;
- (b) if applicable, original power of attorney for Lead Member of Joint Venture as per the format at Appendix IV;
- (c) if applicable, original Joint Bidding Agreement for Joint Venture as per the format at Appendix V.
- (d) BID Security of ₹.96 lacs (Rupees Ninety Six lac only) in the form of Original Bank Guarantee in the format at Appendix II from a Scheduled Bank.
- (e) Original DD for ₹.20,000/- in favour of “Managing Director, Haryana State Roads and Bridges Development Corporation Limited, Panchkula” payable at Panchkula towards cost of bid document.

2.11.3: The documents listed at clause 2.11.2 shall be placed in an envelope which shall be sealed. The envelope shall clearly bear the identification “BID for”.

2.15.2 The Corporation shall online open Technical BIDs on 11.4.2016 (Monday) at 10.00 hours at HSRBDC Head Office, Bays No.13-14, Sector 2, Panchkula in the presence of the authorized representatives of the bidders who choose to attend Technical BID of only those bidders shall be opened online whose documents listed at clause 2.11.2 of the RFP have been physically received. The HSRBDC will subsequently examine and evaluate the BIDs in accordance with the provisions of Section 3 of RFP.”

3.1.1 The corporation shall open the BIDs received physically and online on 11.4.2016 (Monday) hours IST at 10.00 hours at the place specified in clause 2.11.4(i) and in the presence of the bidders who choose to attend. Technical BIDs of only those bidders shall be opened online whose documents listed at clause 2.11.2 of the RFP have been received physically. The corporation shall prepare minutes of the BID opening, including information disclosed to those present at the time of BID opening.”

3.1.6.1 As a first step towards evaluation of technical BIDs, the corporation shall determine whether each technical BID is responsive to the requirements of this RFP. A technical BID shall be considered responsive only if:

(a) xxxxxxxxxxxxxxxx

(b) documents listed at clause 2.11.2 are received physically”

(c) xxxxxxxxxxxxxxxx

(d) Technical Bid is accompanied by the Power of Attorney as specified in Clause 2.1.8.

3.1.6.2 The Corporation reserves the right to reject any Technical BID which is non responsive and no request for alteration, modification, substitution, or withdrawal shall be entertained by the Corporation in respect of such BID.”

9. On perusal of the above clauses, we find that as per clauses 2.1.8 and 2.11.2 of the instructions, the bidder had to submit the original power of attorney for signing the BID as per format at Appendix III. It has been specifically provided in clauses 2.15.2 and 3.1.1 that technical bid of only those bidders shall be opened online whose documents listed at clause 2.11.2 of the RFP had been physically received. As per clause 3.1.6.1 (b), the technical bid was to be considered responsive only if documents listed at clause 2.11.2 were received physically. Further, as per clause 3.1.6.2, the Corporation reserved the right to reject any technical bid which was non

responsive and no request for alternation, modification, substitution or withdrawal was to be entertained by the Corporation in respect of such bid.

10. In the present case, admittedly, the petitioner failed to submit the power of attorney physically as per clause 2.11.2 and therefore, in view of clauses 2.15.2, 3.1.1 and 3.1.6.1 (b) and (d), which was the essential condition. Only the revised key schedule had been fixed as per the corrigendum dated 18.4.2016 with the rider that the remaining terms and conditions of the request of proposal i.e. bid document will remain unchanged. Thus, it was clearly evident that the bidder was required to comply with the remaining terms and conditions including the submission of original power of attorney as per clause 2.11.2 of the bid document which was mandatory for consideration of technical bid of the petitioner as responsive. The contention of the petitioner cannot be accepted as the combined reading of various clauses as noticed above clearly shows that the physical filing of power of attorney was mandatory for the technical Bid to be responsive. Hence the bid of the petitioner was found to be non responsive and the impugned order was passed by the Managing Director on 8.6.2016. Learned counsel for the petitioner could not demonstrate to substantiate the claim made in the writ petition.

11. Adverting to the judgment relied upon by the learned counsel for the petitioner in *Dutta Associates Pvt. Limited's* case (supra), it may be noticed that the factual position in the said case was different. There is no quarrel with the proposition that any abuse of power for extraneous reasons would expose the authorities concerned to appropriate penalties at the hands of the courts. Herein, the petitioner did not fulfil the essential requirement of submitting the original power of attorney physically as per the relevant clauses of the instructions which was mandatory for consideration of the

technical bid. Thus, the petitioner cannot derive any benefit from the judgment relied upon.

12. In view of the above, we do not find any ground to interfere in the instant case in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the petition, the same is hereby dismissed. The record produced by the respondents be returned to the learned counsel for the respondents under proper receipt.

(Ajay Kumar Mittal)
Judge

August 31, 2016
'gs'

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes