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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4144 of 2016.

Mr. Dattaprasad Krishna Mhatre ..Petitioner.
Vs
The Managing Director,
Container Corporation of India Ltd.
& Ors ..Respondents.

Mr. Vijay S. Gharat for the Petitioner.
Ms Mallika Taly a/with Mr. R.R. Kumar for
Respondent Nos. 1 and 2.

**CORAM: NARESH H. PATIL &
SMT. BHARATI H.DANGRE, JJ.
RESERVED ON : 23rd June, 2017.
PRONOUNCED ON : 7th July, 2017.**

P.C. (PER : SMT. BHARATI H.DANGRE, J)

1) The petitioner has questioned the tender process, which was set in motion by respondent nos. 1 and 2, and further prays for quashing the work orders dated 14/7/2015 issued by respondent no.2. The Division Bench of this Court had issued notice dated 11/4/2016. However, no interim relief

was granted as prayed for by the petitioner.

2) It would be necessary to refer to certain relevant facts involved in the present case:

i) Respondent No.1 is the Container Corporation of India Limited, which is a Company registered under the Companies Act, 1956 fully controlled and managed by the Union of India. Respondent No.2 is the Chief General Manager of the said Corporation. Respondent Nos. 1 and 2 have floated a open tender for services pertaining to sub-station and electrical installations at CFS/Dronagiri/JNPT, DCT/Turbhe, ICD/Mulund,MRO and CONCOR flats of Mumbai Region. The estimated cost of the tender was quoted as Rs.103.59 lakhs and the completion period was estimated to be of three years. The tenders were invited in single bid system and the date and time of the tender submission was fixed 12/5/2015 upto 15:00 hours and opening of the tender was specified as 12/5/2015 at 15:30 hours. The notice inviting tender (NIT) listed certain financial eligibility criteria as well as the experience criteria.

ii) Some of the important clauses which would be required to be considered for adjudication of the present matter which the NIT prescribed are quoted below:

Financial eligibility criteria	Tenderer should have received the total contract payment during last three financial years i.e. 2011-12, 2012-13 and 2013-14 of value not less than Rs.155.39 lakhs (The information shall be supported by Chartered Accountant's Certificate & balance sheet with profit & loss statement).
Experience with respect to similar nature of work.	Tenderer should have completed successfully at least one similar nature of work i.e. AMC of electrical installation of value not less than Rs.36.25 lakhs in the last 3 financial years (i.e. 2011-12, 2012-13, 2013-14 & current year 2014-15 upto the date of tender submission.
Electrical License	Suitable for working upto 11KV/33KV/415 volts installation and valid on the date of opening.

iii) The tender document consisted of 68 pages and was accompanied with a Letter of Instructions to tenderer, general and special terms and conditions of contract, scope of works and other technical specifications. The qualification criteria was enumerated in clause 2.0 of Section-I of the tender document which is as follows:-

2.0 : QUALIFICATION CRITERIA :-

2.1 Earnest money/bid guarantee deposit for Rs.2,01,800/- in the form of a crossed bank draft drawn in favour of "Container Corporation of India Limited", payable at Mumbai drawn from Nationalized/Scheduled Banks only.

2.2 Tenderer should have received the total contract payment during last three financial year i.e. 2011-12, 2012-13 and 2013-14 of value not less than Rs.155.39 lakhs (The information shall be supported by Chartered Accountant's Certificate & balance sheet with profit & loss statement).

2.3 Tenderer should have completed successfully at least one similar nature of work i.e. AMC of electrical installation of value not less than Rs.36.25 lakhs in the last 3 financial years (i.e. 2011-12, 2012-13 & current year 2014-15 upto the date of tender submission."

iv) The petitioner claims to be a ex-contractor who contends that he had served continuously in electrical installations more than three years for respondent No.1 which came to an end in the month of August, 2015. The petitioner contends that he responded to the tender notice floated by the respondents by which open tenders were invited for services pertaining to sub-station and electrical installations with a estimated cost of Rs.103.59 lakhs. The contention of the petitioner is that he submitted his tender as per terms and conditions contained in the NIT. According to the petitioner, he had suspicion that the tender process was not fairly and transparently conducted and lowest bidder respondent no.3 was chosen to be the successful bidder without checking his technical papers and on 12th May, 2015 he was declared as the lowest bidder. The petitioner has made allegations that one Mr. Dilip Sen and officer of respondent no.1 and 2 was not a member of a tender committee but he participated in the proceedings without evaluating the technical papers, the respondent no.3 was declared as the lowest bidder. The petitioner demanded inspection of the technical documents

forwarded by the lowest bidder, however, the same was refused to him. From there the petitioner engaged himself in the marathon of correspondence and sought information in regard to the alleged qualifications of the lowest bidder. The request of the petitioner was turned down by the respondent No.2 by informing him that the tenders have been opened in transparent manner in presence of the representatives and all the financial details have been informed at the time of opening of the tender and hence the request for showing the tender document of the bidders again cannot be entertained as the tender documents are under scrutiny and evaluation with the Tender Evaluation Committee. The petitioner thereafter indulged into repeated correspondence with the respondents either in the form of Right to Information Act or addressing certain letters on email. In the meantime, however, taking cognizance of the representation of the petitioner he was informed by letter dated 28/7/2015 that a committee was appointed to enquire into the allegations of the petitioner in respect of the alleged high handed malpractices and the committee was headed by Shri Kamal Jain, Chief General

Manager. The Committee was constituted to enquire into the allegations of the petitioner about involvement of Mr Dilip Sen, preparation of documents by respondent no.3 under the guidance of Dilip Sen and dealing with the demand made by Mr Dilip Sen. The Committee prepared questionnaire and put several questions to the petitioner and two other bidders who participated in the enquiry. The Committee finally submitted its report on 6th August, 2015 and found that there was no substance in the allegations made by the petitioners. However, the report did not spell the petitioner from continuing his run for seeking further information under the Right to Information Act from various authorities to establish that Respondent No.3 did not comply with the technical requirements.

5) During the course of hearing of the matter, we have extensively heard Mr Vijay Gharat counsel for the petitioner and Ms Mallika Taly for the respondent Nos. 1 and 2. The respondents have filed their affidavit-in-reply. Along with the reply they placed on record the report of the Enquiry Committee appointed by Respondent No. 1 and 2. The

respondents in their detailed affidavit had stated that respondent no.3 complied with the technical specifications and met the eligibility criteria prescribed by NIT and therefore action of the respondents in awarding the work to the respondent no.3 could not be faulted with.

When the matter was heard by us on 16th June, 2017, we have considered the arguments advanced on behalf of the Counsel for the petitioner and we directed respondent No.3 to produce before us the tender document submitted by Respondent No.3.

In pursuance of our order on 16th June, 2017 the bid documents of M/s Ankush Enterprises, the successful bidder was produced before us during the course of hearing.

6) We have carefully considered the eligibility criteria prescribed in the NIT and the terms and conditions of the tender. As quoted in the above paragraph, the NIT had clarified that tenders in single bid system were invited for the tender work. Since it was single bid system, on checking the eligibility documents of the bidders and after the bidder was found to be satisfying the eligibility criteria as per the tender

notice, the respondent proceeded to open the financial bids. Respondent No. 1 and 2 found that respondent no.3 was the lowest bidder and the documents submitted by him complied with the requirement of the tender notice. The financial eligibility criteria along with the experience required in respect of the similar nature of the work was specifically taken into consideration before declaring respondent no.3 as the successful bidder. Respondent No. 1 and 2 accorded a satisfaction in respect of respondent no.3 possessing the requisite eligibility conditions as prescribed by tender notice and it was only thereafter his bid was allowed as a successful bidder.

7) The petitioner has harped upon several non compliances by respondent no.3 and it is alleged by the petitioner that the electrical license of respondent no.3 was issued on 6/3/2014 in the name of the owner of respondent no.3 namely Mr Bhushan Ramesh Bagla and the tender was opened on 12/5/2015, the petitioner did not satisfy the financial eligibility criteria of receiving the tender contract payment of electrical work of value not less than Rs.155.39

lakhs. It is also the contention of the petitioner that as per the terms and conditions of the tender it was a pre condition that bidder should have experience of at-least one similar nature of work i.e. AMC of electrical installation of value not less than 36.26 lakh in the last three financial years i.e. 2011-12, 2012-13 and 2013-14 in the rejoinder filed by the petitioner. The petitioner thus reiterated that the license for electrical inspection was issued on 6/3/2014 whereas the tender was opened on 12/5/2015 which lead to an irresistible conclusion that respondent no.3 was not having experience of three years i.e. for 2011-12, 2012-13 and 2013-14 which is the main condition of tender requirement and he has made false statement in respect of the financial statement.

8) On going through the tender document of respondent no.3 as well as considering the submissions of the rival parties, it can be seen that the condition of possessing electrical licence was quoted in the tender notice in the following manner.

Electrical License	Suitable for working upto 11KV/33KV/415 volts installation and valid on the date of opening.
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9) The qualification criteria mentions that the bidder should have received total contract payment during the last three financial year of value not less than 159.39 lakhs. It was also directed that the information should be supported by a Chartered Accountant's certificate and balance-sheet with profit and loss statement. Another qualification criteria was of successful completion of one similar nature of work i.e. AMC of electrical installation of not less than Rs.36.25 lakhs in the last three financial years and current year upto the date of submission of the tender. The petitioner is construing that these two criterias should be fulfilled after being armed with a Electrical Contractor Licence. However, on perusal of the conditions of the tender, we are unable to agree with the submission advanced by the learned Counsel for the petitioner. The qualification criteria mentions two requirements namely that the Contractor should have received a payment of not less

than 155.39 lakhs in the last three financial years. This condition is for assessing the financial capability of the contractor. The condition of completion of similar nature of work for the last preceding three years of value not less than 36.25 lakhs is to test his experience with respect to similar nature of work. However, the condition of being in possession of an electrical licence is an independent condition and it is a condition of tender that a contractor must possess an electrical licence suitable for working up to the 100 KV/33KV/414 volts installation and it should be valid on the date of opening of the tender.

10) We have perused the tender document tendered by respondent No.3 which was produced before us and it can be seen that in support of the financial eligibility criteria, the respondent No.3 has submitted the certificate from the Chartered Accountant and the balance-sheet with profit and loss account. As far as completion of similar nature of work is concerned bid of Respondent No.3 is accompanied with a certificate from Regency Estate Co-operative Housing Society

Limited, Kokan Co-operative Housing Society and Omkar Co-operative Housing Society Limited to demonstrate that he had carried out the only maintenance contract for electrical works required by the tender document. In fact, we have noted that the work done is more than what was prescribed as an essential condition. The petitioner has feebly attempted to argue by seeking recourse to his rejoinder where Exhibit-B is exhibited to canvass that the licence of Respondent No.3 was suspended on 1st July, 2016. However, we have perused it. In the said document it is mentioned that the electrical supervisor of Respondent No.3 has resigned on 1st July, 2016 and therefore till the new supervisor is appointed, the licence is suspended. However, the same is issued on 1st August, 2016. We do not intend to go into the correctness of the said document as we are not aware as to in what circumstance it is issued or whether the person issuing the same is authorized person or the document is authentic one. However, even assessing it on the face value, it can be seen that it is of 1st August, 2016 and the tender condition was that on the date of opening of the tender, contractor should be armed with

electrical licence. Hence, we do not find any substance in the said submission.

11) Learned Counsel for the petitioner has relied upon a judgment reported in the case of M/s G.K. Pasayat v. Orissa State Housing Board and others, (AIR 1996 Orissa 136) wherein the Orissa High Court in paragraph 11 of the judgment has observed that if a pre-condition is to be applied to the rejection of petitioner's bid, the same test should have been applied to the case of other bid which did not fulfill the second precondition i.e. completion of building work costing not less than Rs.1.50 crores. The Court found that the double standard having been applied on the fact situations, the decision-making process has become vulnerable. However, the facts involved in the present case before us are not on similar lines.

The learned Counsel for the petitioner also relied upon decision of the Supreme Court in the case of Central Coalfields Ltd & Ors Vs. SLL-SML (Joint Venture Consortium) & Ors AIR 2016 SC 3814 wherein the Apex Court was dealing with the issue - whether furnishing a bank guarantee in the form

prescribed in the bid itself is an essential requirement in the bidding process of Central Coalfields Limited and whether bid not accompanied by bank guarantee in format prescribed in bid documents could be treated as non-responsive in view of Clause 15.2 of General Terms and Conditions governing bidding process. The Hon'ble Apex Court after considering entire law relating to the judicial review in interfering with administrative action answered the question in the negative. The Hon'ble Supreme Court also considered whether the said condition was essential condition and whether deviation from the said condition is permissible. However, the said judgment is not of any assistance to the petitioner since in the present case the respondent nos. 1 and 2 did not deviated from any essential condition and on the other hand respondent No. 1 and 2 have found that respondent No.3 has complied with the financial criteria and the experience criteria as desired by the tender document and his bid being the lowest bid, the bid was allotted in his favour.

12) The petitioner being a unsuccessful bidder has been trying hard to find some fault with the entire process based on

an apprehension in his mind that the process was not carried out in a transparent manner, the petitioner had approached various authorities seeking information under the Right to Information Act and on non-submission of the desired information had also approached the Appellate Authority. However, we need not to go into the issue whether the information was supplied to him or not since there is no relief sought to that effect. However, what can be seen by us is that at the instance of the petitioner of full-fledged enquiry came to be conducted by respondent no. 1 and 2 to test the allegations made by him and in the enquiry when he was subjected to questionnaire, he comes up with answers which are self-destructive to himself and his contention before the Authorities and also before this Court.

13) We do not find that any case has been made out by the petitioner for interference in the tender process. In the result, the writ petition deserves to be rejected. The same is hereby rejected.

(SMT. BHARATI H. DANGRE, J) (NARESH H.PATIL,J)