

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.611 OF 2018

The Principal General Manager

Telecom District Goa Bharat

Sanchar Nigam Ltd.

Rep. by Anand V. Gudi.

.... Petitioner

Versus

State of Goa & Ors.

.... Respondents

Mr. P. P. Singh, Advocate for the Petitioner.

Mr. Deep Shirodkar, Additional Government Advocate for the
Respondents No.1 and 2.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 23 July 2018.

P.C.:

The Petitioner is aggrieved by the rejection of the technical bid of the Petitioner and consequent action of the Respondents-Authorities pursuant to a tender notice issued for selection of Master System Integrator for Goa Intelligent City Management System - Panaji City.

2. Panaji city has been selected for implementation of smart city solutions under the National Smart Cities Project of Government

of India. The Government of Goa has created a Special Purpose Vehicle known as “Imagine Panaji Smart City Development Ltd” for this smart city initiative. Some of the components of the smart city are: City Wifi; City Surveillance; ICT enabled Solid Waste Management; Environmental Sensors; Smart Parking, Command & Control Centre. The smart city solutions are envisaged at the identified sites across the city.

3. A tender notice was issued by the Respondents-Authorities for the purpose of selection of Master System Integrator for Goa Intelligent City Management System on 19 March 2018. A corrigendum was issued on 27 March 2018. Last date for submission of the bid was 26 April 2018.

4. Instructions forming part of the tender were annexed to the tender notice. Various instructions and conditions were enlisted. Under Clause 2.32, a proof of concept was required, including ICC Data handling capabilities, smart city application integrations, video management solution, etc. The Clause 3 of the instructions lays down selection process for bidder, where preliminary examination of bids, clarification on bids, evaluation process were specified. The Clause 3.4.2 deals with technical evaluation. It stated that the technical evaluation would be as per the requirements specified in

the technical evaluation frame work specified in the instructions. The bidders were required to submit in detail, the approach, methodology and solutions proposed.

5. Under Clause 3.4.2(f), each technical bid was assigned a technical score out of a maximum of 1000 marks and only those bidders who got an overall technical score of 70% and minimum 50% in each section of the technical evaluation framework as given in Section 3.6 could qualify for commercial evaluation stage. Failing to secure minimum marks was to lead to rejection of the technical bid. The Petitioner, by submitting its bid, accepted the said conditions.

6. Clause No.3.6.1 laid down the technical bid criteria and evaluation specified marks for annual turn over. Under Clause A, 100 marks were allotted, A2 – Man Power 30 marks were allotted. Clause B dealt with work experience which had 420 marks. B1 WiFi Projects was given 100 marks, B2 ICT based solid waste management was given 50 marks, B3-City Surveillance Project had 100 marks, B4 Smart Parking had 40 marks, B5 Environmental Sensors had 20 marks and B6 Integrated Command Control Center and Data Center was given 50 marks. B7 an IOT platform based visualization and command center in India/Global, had 60 marks. Clause C

Approach Methodology & Solutions carried 300 marks. Criteria regarding personnel was also provided for.

7. Clause B6 deals with the “Integrated Command Control Center and Data Centre”. It states that the Sole Bidder or any consortium member (in case of consortium) should have been successfully executed projects in Data Centre (DC) or Command Control Center build in the last 5 years in India The marks are to be allotted as bellow :

- a) Each Project with 3000 Sq. Feet (with min. value INR 10 Cr.)= 30 marks.
- b) Each Project with 4500 Sq. Feet (with min. value INR 15 Cr.)= 40 marks.
- c) Each Project with 6000 Sq. Feet (with min. value INR 20 Cr.)= 50 marks. Maximum marks – 100 marks.

The Sole Bidder/any Member of consortium was required to submit work order/contract clearly highlighting the scope of work, Bill of Material and value of the contract/order, Completion Certificate issued & signed by the competent authority of the client entity on the entity's letterhead or Self-certificate from the bidder signed by the concerned project in-charge of the bidder and counter signed by authorized signatory for this bid holding written special power of attorney on stamp paper along with the official contract details of

the competent authority of the client entity. In case of large order/orders with operations and maintenance phase, the completion/self-certificate was to specify successful execution and inoperation status of a part of the order meeting the requirement. The format of the self-certificate was provided in Section 6.7 of RFP volume I.

8. The Petitioner, along with Sterling & Wilson Pvt. Ltd., and M/s. Allied Digital Services Ltd., submitted its bid. Along with the Petitioner, three other tenderers submitted their bids i.e. M/s. NEC Technologies India Pvt. Ltd.; M/s. Honeywell Automation India Ltd., and M/s. Larsen & Toubro Ltd.. The technical committee constituted by the Respondents-Authorities examined the bids and results of the technical bids were announced on 4 June 2018. The Petitioner was not qualified for opening of the financial bid. The Petitioner, thereafter, moved this Petition, challenging the action of the Respondents-Authorities in disqualifying the Petitioner in the technical bid.

9. The respondents, have justified the rejection of the Petitioner's bid by filing an affidavit-in-reply. It is stated that the Petitioner failed to secure the requisite percentage of marks and, therefore, its factual bid was not opened. It is the specific case of the

Respondents-Authorities that the Petitioner did not secure necessary marks in B6-Integrated Command Control Center and Data Centre.

10. We have heard Mr. P.P. Singh, learned Counsel for the Petitioner and Mr. Deep Shirodkar, learned Government Advocate for Respondents No.1 and 2.

11. After the Petitioner submitted its bid, a clarification was sought by the Respondent-Authority regarding the technical criteria under B1, B2 and B6. The Petitioner replied by letter dated 28 May 2018. As regards the technical criteria B6, the Petitioner submitted a clarification that the services have been done by the consortium partner Sterling Solution Pvt. Ltd. in three works, namely, NSDL e-Governance Infrastructure Limited, Vodafone South Limited, and National Stock Exchange of India. As far as NSDL, it was stated that the civil work was of 36.20 crores, and other services in Data Centre were of 30.79 crores. For Vodafone South Limited, the value of civil work was given as 12.81 crores and the value of other services in Data Centre as 27.30 crores and for National Stock Exchange of India, the value of civil work was 20.16 crores and other services in Data Centre was 17.2 crores. Self certification was annexed. It was also stated that BSNL has seven Internet Data Centres located in Mumbai, Ahmedabad, Faridabad, Jaipur, Ludhiana, Ghaziabad and

Chennai. To this clarification self-certifications of Sterling & Wilson Pvt. Ltd. i.e. the consortium partner of the Petitioner were annexed in which details of the works carried out were stated.

12. The Respondent-Authorities have contended that the experience of the Petitioner in executing projects of Data Centre is not enough. It was submitted that the Petitioner has shown experience more in civil, electrical and plumbing work, which is not contemplated in the criteria.

13. The question, therefore, arises is whether the decision of the Respondent-Authority in not considering the Petitioner for not fulfilling the B6 criteria, can be considered as arbitrary.

14. It is not possible for us to sit in appeal over the decision. We have to ascertain whether there was an arbitrariness in the decision of the Respondent-Authority in not accepting the bid of the Petitioner or that the interpretation of the clause is perverse.

15. The work is a complex one. Technical qualifications have been specified in detail. According to the Respondents, the experience of executing projects of Data Centre or Command Control Center should not only be of civil work, but of the manner

in the entire data centre functions. It is the technical experience that the Respondents-Authorities are looking for in the bidder. Not only this interpretation placed by the Respondents -Authorities will have to be given due deference, but even on the plain reading of the clause it stands to reason. The experience of executing the projects of Data Centre and Command Control Centre cannot mean only civil or plumbing work. This is something any civil contractor can do. This type of expertise is not what the Respondents are looking for.

16. The Petitioner has submitted documents of three projects. It is clear from these documents that the substantial work is of civil nature. Self-certifications of Sterling & Wilson, a Consortium Partner, refer to the other works apart from civil work. These 'other works' also consist of electrical and plumbing work. If the Respondents concluded that most of the work by the Petitioner in this module was not of technical nature and the Petitioner did not fulfilled the criteria, it cannot be said that the view taken is perverse or entirely arbitrary. It is ultimately for the Respondents to choose best out of the bidders, looking at the magnitude of the project that the Respondents intend to undertake.

17. To satisfy ourselves that there is no arbitrariness on the part of the Respondents and they have applied an uniform yardstick,

we called upon the Respondents to produce self certifications submitted by other bidders as regards module B6. This documentation has been placed on record. Larson and Tourbo has given its experience of commencing of the projects of the Government of Maharashtra wherein there is no work of civil and plumbing nature. The Project Completion Certificate in Gujarat placed on record by the Larson and Tourbo also shows that the work is primarily of installation of hardware and intelligent traffic monitoring system. NEC Technologies India Pvt. Ltd., the other bidder has also placed on record their self certification which shows supply, installation, testing and commissioning of IOT based automatic vehicle location system. Honeywell Automation India Ltd, the third bidder, has also submitted self certification wherein the activities carried out by them in Madhya Pradesh have been specified. Identical certifications in respect of installations at Rajkot and various cities such Indore, Jabalpur, Dewas, Sagar, Katni, Singruli, etc have been placed on record.

18. The documentations produced by the other bidder for module B6, thus do not show that major component of the work of data centre done by them is of civil, plumbing or electrical nature. Therefore, it cannot be said that for rejecting the bid of the Petitioner, the Respondents-Authorities have applied any different

yard stick.

19. Thus, we do not find that there was any arbitrariness or perversity in the decision of the Respondents-Authorities in rejecting the bid of the Petitioner on the ground that the Petitioner did not satisfy the criterion under Module B6. As per the terms of the tender to qualify, the tenderer had to secure minimum 50% in each section of total evaluation framework, which the Petitioner failed to secure.

20. It is informed that the work order has already been issued to the successful tenderer on 2 July 2018.

21. In the circumstances, there is no merit in the challenge raised by the Petitioner. The Petition is accordingly rejected.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.