

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7655 OF 2017

Technogem Consultants Pvt. Ltd.

...Petitioner

Vs.

Union of India & Ors.

...Respondents

Mr.Dushyant Purekar for Petitioner.

None appears for Respondents.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 5th JUNE 2018

P.C.:

The petitioner submitted a tender issued by the respondent No.2- Ministry of Road Transport and Highways, Government of India, on 24th January 2017, inviting bids for the work of “*consultancy services for authority's engineer for supervision of rehabilitation and up-gradation to 2 lane with paved shoulder / 4 lane standards of National Highway section Aurangabad-Sillod section of NH753-F Design Chainage Km 0.00 to 60.630 (L=60.630 Km) in the State of Maharashtra under EPC Mode*”. The consultancy services required appointment of Engineer for supervision of rehabilitation and up-gradation and Engineers for various categories including highway design specialist and bridge design specialist. The tender documents are annexed by the petitioner at

Exhibit A-1 Collectively. Clause 11.2 refers to broad job-description and minimum qualification for Key Personnel mentioned in the enclosure. The relevant part of Clause 11.2 provides that the “age of the Key Personnel should not be more than 65 years on the date of submission of proposal”. Under the caption “Qualification of Key Personnel”, one of the essential qualifications reads as “not more than 65 years of age” as an essential qualification for different technical personnel. For Resident Engineer + Road safety Expert, also one of the essential qualifications referred is “not more than 65 years of age”. For Bridge/Structural Engineer, one of the essential qualifications as to the age is, “not more than 65 years of age”.

2. While submitting the tender, the petitioner appointed two experts i.e. Highway Design Specialist and Bridge Design Specialist whose age was more than 65 years not in consonance to the age criteria under the essential qualifications. While assessing the technical bid, the chart annexed at page 268 shows that the evaluation Committee allotted 0.00 marks against the columns “Bridge Design Specialist” and “Highway Design Specialist”, due to the fact that age of these experts was more than 65 years. A note to that effect was placed at the bottom of the chart by the Committee. The successful bidder, according to the learned Counsel for the petitioner, is respondent No.3 namely STUP Consultants

Private Limited in association with Ceoma Consulting. It is an admitted position that the work order was issued on 27th June 2017, practically a year back.

3. The learned Counsel appearing for the petitioner submits that if the tender documents although specifically and clearly mention the age criteria as an essential qualification for certain experts, but omitted to mention such requirement in respect of Highway Design Specialist and Bridge Design Specialist in the corrigendum issued on 21st March 2017. Thus the petitioner has reason to believe that there was no restriction on the age limit of these experts and therefore, the petitioner while submitting the tender documents included appointing experts whose age was more than 65 years. The tender document of the petitioner was submitted on 29th April 2017. A representation was made by the petitioner in respect of the said age only after the submission of the bid which is annexed at page 151. The corrigendum reiterates the age criteria and the requirements which are exhibited in the tender document as special/essential condition. General conditions are remaining the same. The learned Counsel appearing for the petitioner therefore submits that in case a clear indication was to be given in the corrigendum as per the tender document, in respect of age limit of these two experts, the petitioner would have submitted the tender by

mentioning the age of these experts in accordance with the terms and conditions of the tender document. The petitioner was misled by ambiguity of the tender document. The Committee was wrong in allotting "0" marks on the age criteria due to which the petitioner could not comply with the successful candidate and had to loose the allotment of tender.

4. We have perused the record produced before us. With the assistance of the learned Counsel appearing for the petitioner, we have gone through the documents placed on record. We have gone through the tender document, the communication made by the Regional Officer, Mumbai, Ministry of Road Transport and Highways dated 21st March 2017 and the communication made by the Executive Engineer, Government of India, dated 16th May 2017, relevant charts indicating marks given by the Committee and the representation made. The respondent Nos.1 and 2 filed affidavit in reply. In paragraph Nos.21, 22 and 23 the respondent Nos.1 and 2 state as under:-

"21. The said bids were evaluated by the evaluation committee when it was observed by evaluation committee that the age of two key personnel i.e. Bridge Design Specialist and Highway Design Specialist was more than 65 years in the technical bid submitted by the petitioner.
22. As set out herein above the maximum age of any of the key personnel should not be more than 65 years as specifically mentioned in clause 11.2 of section 6, terms of reference. Since the age of the above two key personnel in the technical bid submitted by the petitioner was more than 65 years, they were not found fit for being proposed as part of team as per clause 11.2 and pre-bid clarifications issued. Therefore, zero marks were assigned to the said two key personnel in technical evaluation. The CV's of other key personnel were evaluated as per

information in the bid and marks were assigned accordingly. The result of technical evaluation was uploaded on 16.05.2017. The technical score of petitioner was declared as 83.73 as against self-marking of 94.7. 23. All the bidders including the petitioner were given time upto 29.05.2017 for their comments on the technical score declared by the respondent 2. Accordingly, the petitioner submitted the comments vide their letter 19.05.2017 requesting reconsideration of zero marks being assigned to two key personnel on account of higher age.”

5. We find much substance in the contention as urged on behalf of the respondent, that the challenge as raised in this petition is an after thought. The respondent has stated that the over all technical marks for M/s.Technogem along with other bidders were notified by MSRDC and financial bids were also opened by MSRDC and after opening of financial bids, during overall examination, the evaluation committee comprising of officers noted that due to inadvertent error marks were assigned to two key personnel in package 35 and 41 while the same key personnel were not found eligible and were assigned 0 marks in package 7. It is submitted that the bidding process was carried out in most equitable and transparent manner and did not do any injustice with petitioner. The authority has acted as per provisions of RFP conditions.

6. From the documents on record, we find that in accordance with the conditions of the tender documents, the Committee evaluated and allotted marks. As the petitioner's two experts were above 65 years of age, could not specify the essential conditions' criteria. General condition specified under the caption “qualification of Key Personnel” indicated that the respondent expected and required the experts to be

not more than 65 years of age considering the nature of work and the subject matter of the tender. One of the submissions advanced by the Counsel for the petitioner is that in the corrigendum, there is no mention that Highway Design Specialist and Bridge Design Specialist should not be more than 65 years of age. The petitioner in fact believed that age limit was not the essential condition of these two experts. We find that appropriate clarification at the relevant time was not asked for. It appears that the petitioner nonetheless wanted to take a chance, having full knowledge of the said essential requirement. The bid was accordingly submitted by the petitioner which the Committee did not approve by taking into consideration the terms and conditions, tender document, essential conditions, corrigendum and the relevant rules.

7. The work order has been admittedly issued on 21st July 2017. Taking into consideration the nature of work to be carried out and the objection raised to the awarding of the tender and the issuance of the work order, we do not find that interference at this stage is required by this Court in exercising writ jurisdiction. We are, therefore, not inclined to entertain the petition.

8. The petition is dismissed.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]