

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CONTEMPT CASE No. 609 OF 2018

J U D G M E N T:

This Contempt Case is filed alleging violation of the order dated 02.02.2018 in I.A. No. 1 of 2018 in Writ Petition No. 3053 of 2018.

The Writ Petition was filed alleging that notwithstanding the fact that the petitioner is of the relevant class for which he is eligible to submit his bid, the same was not being considered and the respondent authorities are refusing to receive his tender.

Considering the submission made at the admission stage and particularly, considering G.O.Ms. No. 94, dated 01.07.2003 read with G.O.Ms. No. 202, dated 15.11.2003 and G.O.Ms.No.130, dated 22.05.2007, apart from COT Letter dated 05.11.2003, finding that the petitioner is a Class - III (civil) contractor and is eligible to bid up to Rs. 100 lacs, a direction was issued to the respondents to receive and consider the petitioner's bid dated 21.01.2018.

In the Contempt Case, after receiving notice, Respondents 1 to 3 filed their respective counter-affidavits. In the counter-affidavit filed by respondent No.3, it was stated that Respondent No. 3 had received the tender of the petitioner, processed and forwarded the same to the 2nd respondent - Engineer-in-Chief who is a superior and tender-accepting authority. Noticing the stand taken by the 3rd respondent, this Court directed the 2nd respondent to file an affidavit. The 2nd respondent initially filed an affidavit stating that the petitioner's tender was considered and the same was submitted to the Chief Engineer-IV for finalization.

At that stage, it is brought to the notice of this Court that the Chief Engineer - IV is none other than the 2nd respondent himself. Finding the stand taken by the 2nd respondent not acceptable, this Court directed him to be present before the Court.

Today, an additional affidavit is filed by the 2nd respondent setting out that though the petitioner satisfied the criteria of being a class-III contractor eligible to do the works up to 100 lacs, this particular work for which the tender was called for had stipulated certain special conditions. As a matter of fact, the petitioner's tender was considered and having found that he had not executed similar works particularly execution of laying of a pipe line which is a special kind of work, was found not eligible to offer his price bid and in those circumstances, the offer made by him could not be considered and hence, his offer was rejected. However, it is conceded that by oversight, the factum of the petitioner being ineligible to offer his bid was not communicated to him, though the rejection as such was reflected *online* on the relevant date itself. The 2nd respondent, who is present in the Court, through his counsel, has submitted the detailed tender schedule, by drawing the attention of this Court to para 6 of the tender document which reads as under:

“ 6. ELIGIBILITY AND QUALIFYING CRITERIA AS PER GO MS NO. 195 DATED 10.05.1999.

6.1 To qualify for award of the Contract, the Bidder, in his/her name, should have experience certificate(s) of the works of sufficient value executed by him/her during the last five financial years, i.e. after 01.04.2012 for fulfilling the financial requirement.

The experience relating to the works executed in State / Central Government departments or State / Central undertakings / Boards/ Corporations, Municipalities and Municipal Corporations, and Urban Development Authorities shall only be considered. The experience certificate shall be certified by the Engineer of State / Central Government Departments / State / Central Government undertaking not below the rank of Executive Engineer and counter-signed by the next higher authority.

The past performance of the Bidder is established from record of successful execution and completion of similar type of works in time and in professional manner. For this purpose testimonials etc. from clients for whom the applicant had executed similar type of works during the past five years and

having present worth equal to or higher than minimum percentage indicated below will have to be submitted by the bidder and wherever necessary, reference will be made to previous clients. Bidders are expected to furnish past performance data for the works referred by them and indicated in prescribed proformas (enclosed).

i. The Bidder should have executed successfully similar type of work or works in the past five financial years i.e. not earlier than 01.04.2011 in any one year of the last five years. The total contract value of the similar works completed or 90% completed shall be not less than Rs. 63,80,080.00. The present worth of each of these jobs executed and completed by the Bidder in the past will be calculated duly escalating the value by 10% per annum.

ii. Sub-contractors experience and resources will not be taken into account in determining the bidder's compliance with the qualifying criteria.

iii. The Bidder should have executed the following items and quantities in any one year after 01.04.2012. All the items need not be executed in the same financial year. Only items of the completed and tested (or) commissioned schemes / works as the case be, will be considered.

If any item other than pipeline is executed in more than one year, proportionate quantity will be considered. For pipeline items, the year in which the items are completed and tested (or) commissioned as the case be, will be considered.

1. PVC/HDPE/DI/GI/CI pipelines : 4870 RM (total length)
(Earthwork, laying, jointing & testing)
2. Earth work for formation of Tank Bund : 3511.05 cum

Heard learned counsel for the petitioner and learned counsel for the respondents.

In the facts of the present case, though there is a lapse on the part of the respondents to the extent of non-communication of the rejection order, the same cannot be considered to be fatal, particularly in view of the fact that, admittedly, the petitioner was not eligible to bid on account of his non-fulfilling the special conditions of the tender.

In those circumstances, there is no contempt, much less wilful disobedience on the part of the respondents. Accordingly, the Contempt Case is dismissed.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

27th July 2018

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