

\$~51

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2266/2018 & CM APPL. 9393-9394/2018

MOHANDAS V RAJANI

..... Petitioner

Through Mr. Varun Pathak and Ms. Sowmya
Saikumari, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA
& ORS

..... Respondents

Through Mr. Mukesh Kumar, Mr. Tavinder
Sindhu and Mr. Simarnjeet Singh,
Advs. for NHAI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

%

12.03.2018

The petitioner articulates two fold grievance. The petitioner had participated in a bid issued by the NHAI, titled "Improvement and Routine maintenance of Lakhanpur Jammu section including Jammu Bypass (hereafter called 'the NIT').

The NIT was issued on 10.01.2018 and pertinently spelt out as essential condition (by clause 15 and 16.2). The requirement of all tenders i.e. to submit bid security in the form of guarantee of ₹30 Lacs, which was to be valid for 120 days plus 45 days from the date of the closure validity of the bid i.e. 02.02.2018. It is urged that the successful tenderer (third respondent M/s Rakesh Kumar Choudhary) was not eligible because its guarantee was scheduled to expire on 13.06.2018. The second ground for challenge is that the successful tenderer M/s Rakesh Kumar Choudhary did not infact

possess the required eligibility conditions and that some of the certificates in support of its claim were not genuine. To say so, the petitioner relies upon the copies of a communication it received in response to RTI queries addressed to J&K Authorities as well as relevant officials, implementing Pradhan Mantri Gram Sadak Yojana. The copies of these correspondences have been produced as part of the record at pages 371-375. The petitioner relies upon certain other documents which are part of the record too, for substantiating his allegations.

The NHAI, which is represented and on whose behalf counsel appears on advance notice, has produced a copy of the Minutes of Meeting dated 02.02.2018. That document discloses that the Tender Evaluation Committee took note of the inadequacy with respect to the validity of the bank guarantee of M/s Rakesh Kumar Choudhary. At the same time, para 7 of the Minutes states as follows :

“(i) however bidder shall be asked to extend the bid validity upto 16.07.2018 and opening of financial bid for M/s Rakesh Kumar Choudhary shall be subject to submission of an undertaking in this regard by the bidder. In case, M/s Rakesh Kumar Choudhary fails to submit the undertaking for extension of Bid security,, the financial bid of M/s Rakesh Kumar Choudhary will not be opened.”

It is evident from this document that Tender Evaluation Committee of NHAI was well aware and on the relevant date i.e. 02.02.2018, brought to the notice of all concern-including the third respondent about defect in the tender specially the validity of the Bank Guarantee. Apparently, M/s Rakesh Kumar Choudhary

complied with the requirement of extension by furnishing an undertaking after which its financial bid was opened. In these circumstances, submission of the petitioner, is insubstantial and therefore rejected.

So far as the second issue i.e. eligibility or lack of it as characterised (of the third respondent), it is quite evident that the petitioner was able to source the documents after the bid was awarded. In these circumstances, the respondent NHAI obviously did not have an occasion to consider them. At the same time, the Court is cognizant that tender conditions bind all parties - including the public agencies (in the present case, NHAI). Consequently a direction is issued to NHAI to conduct suitable enquiry about the genuineness of the documents and claims with respect to the eligibility and past experience, made by the successful tenderer M/s Rakesh Kumar Choudhary and pass an appropriate speaking order in that regard, within three weeks. In doing so, views of M/s Rakesh Kumar Choudhary, who is the successful tenderer, shall also be taken into account after issuing notice specially in case an adverse order is likely to be made. The petition is disposed of in the terms of the above directions. All the pending applications also stand disposed of.

Order *dasti*.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 12, 2018/rc