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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 1952 of 2019

Pradeep Kumar Roy S/o Late Ajeet Kumar Roy, aged about 67 years, R/o Torwa, Guru Nanak Chowk, Bilaspur, Tahsil & District Bilaspur (C.G.).

---- Petitioner

Versus

1. Union of India through The Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The Divisional Railway Manager, South Eastern Central Railway, Bilaspur (C.G.).
3. Divisional Engineer (East) South Eastern Central Railway, Bilaspur (C.G.).
4. The Sr. Divisional Engineer (Co-ordination) South Eastern Central Railway, Bilaspur (C.G.).
5. Shekhar and Company, R/o Mangal, Bilaspur (C.G.).

---- Respondents

For Petitioner	:	Shri Ravi Ranjan Sinha, Advocate
For Respondents No.1 to 4	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Parth Prateem Sahu, Judge

26.07.2019

1. Respondent No.2 has floated a Notice Inviting Tender bearing No.DRM-ENGG-BSP-T-236-18-19 (Annexure P-1) having its closing date on 18/02/2019 for construction of boundary wall along with Railway track at locations specified under the jurisdiction of ADEN/CPH of Bilaspur division. The Petitioner who is one of participants of tender proceeding, has challenged the award of contract to Respondent No. 5 on the grounds mentioned in the writ petition and sought for following relief(s) :

> “10.1 That this Hon'ble Court may kindly be pleased to call for entire records pertaining to the case of petitioner for kind perusal of this Hon'ble Court.
>
> 10.2 That this Hon'ble Court may kindly be pleased to direct the respondent authority to cancel the award of tender bid in favour of respondent No.5 and re-tender the entire process.
>
> 10.3 That this Hon'ble Court may kindly be pleased to direct to consider the petitioner’s document as submitted in the tender and award in his favour.
>
> 10.4 Any other relief, which may be deemed, fit by this Hon'ble Court just and proper in the facts and circumstances of the case may also be provided in favour of the petitioner.”

2. Learned counsel for Petitioner submits that he has submitted all relevant documents as prescribed under the tender form, but even then, his tender form was rejected. He further submits that at the time of opining of technical bid, he has been technically disqualified ignoring the documents submitted by him along with tender form. He further submits that his turnover was less than Rs.1 crore at that relevant point of time and he was not required to undergo audit of the balance sheets, therefore, he has not submitted audited balance sheet. He further submits that special financial criteria as provided in tender document i.e. Clause-1 specifically provides that out of three documents which are required to be submitted along with tender document, fulfilment of condition will be satisfied if anyone of the three documents has been submitted and he has submitted a certificate of contractual receipt issued by the Chartered Accountant, which is one of the required criteria.

3. Per contra, learned counsel appearing for Respondent-Railways submits that special financial criteria which has been made part of tender document is only to ascertain the financial capacity and ability of contractor to perform tender work. Looking to the nature of work in tender document, it has been specifically mentioned that balance sheet which has been annexed with the tender document would be an audited balance sheet. He further submits that contractual receipt which is to be certified by the Chartered Accountant is also required to be certified by him on the basis of audited balance sheet, which is specifically mentioned in Annexure 'Y', which is a part of tender document.

4. During course of argument, the format of Annexure 'Y' has been placed by learned counsel for the Respondent-Railways before this Court. The document was not refuted by the counsel for Petitioner.

5. We have heard learned counsel appearing for the parties.

6. The only question which is required to be decided by this Court is whether Petitioner has submitted document as required under the special financial criteria of the tender document or not?

7. The case of Petitioner is that he has submitted certificate of the contractual receipt issued by the Chartered Accountant as one of the documents, which is one of the documents as mentioned in Clause of special financial criteria. The document is Annexed as Annexure P-4.

8. From perusal of Annexure P-4, it would show that it is typed as Annexure 'Y' of the tender document, but perusal of observation made by the Chartered Accountant, it is clear that certificate with respect to contractual payment receipt by the Petitioner was taken out from the unaudited balance sheet. Annexure P-4 do not fulfill the requirement of Annexure 'Y' of the tender document as there is specific stipulation that the receipt are to be taken from audited balance sheet.

9. There is a specific requirement and also mentioned in Annexure 'Y' of the tender document that certificate of contractual receipt to be issued by the Chartered Accountant is to be based on audited balance sheet only, which admittedly the Petitioner has not fulfilled the said criteria and even he has not submitted the audited balance sheet along with the tender document. The requirement of audited balance sheet is one of the important condition specifically mentioned in the tender document. The Petitioner was aware of the conditions and requirements of tender document from inception, but has not raised any voice against it. It is for the Institution floating tender to impose condition of eligibility to participate in the proceedings. The Courts cannot interfere with the condition of eligibility criteria fixed by the Agency/Institution floating tender unless it is pleaded and proved to be highly arbitrary. The Petitioner could not able to point out any arbitrariness in imposing the condition of audited balance sheet.

10. The other ground raised by learned counsel for the Petitioner that Respondent No.5 i.e. successful bidder also do not fulfill the criteria as he has not filed the affidavit as mentioned in Annexure 'Z' of tender document as he has submitted GST 12. The Petitioner along with writ petition submitted tender document with Annexure 'W', but formate of Annexure 'Y' and Annexure 'Z' which is part of tender document and questioned by him was not enclosed.

11. Learned counsel for Respondent-Railways submitted that the Techno Commercial Tabulation Chart is a computer generated document. Respondent No.5 has submitted the affidavit in the formate of Annexure 'Z', but while uploading in computer, it is mentioned as ZAFFI. He placed on record the copy of affidavit in the format of Annexure 'Z' of Respondent No.5. He submits that document uploaded was correct, but while uploading document in description column ZAFFI is mentioned. He also submits that document of Annexure 'Z' uploaded by Respondent No.5 is in conformity with the requirement of tender document.

12. We have gone through the document Annexure R-1 filed by the Respondent-Railways along with reply. The Petitioner could not able to point out any mistake in the document Annexure R-1 and submitted that while uploading the document, the description mentioned in the document is not correct and thereby the Respondent-Railways have given discriminatory treatment.

13. The document Annexure 'Y' filed by the Petitioner is not in conformity with the requirements of tender document and balance sheet was not audited, whereas the affidavit of Respondent No.5 questioned by Petitioner was in prescribed format, but only at the time of uploading instead of mentioning Affidavit 'Z', it is mentioned as ZAFFI. We do not find any error in decision making process of Respondent-Railways.

14. In view of aforementioned facts and figures of the case and also considering that the Petitioner do not fulfill the special financial criteria as mentioned in formate i.e. Annexure 'Y', we do not find any merit in the writ petition. Consequently, the writ petition being devoid of any substance which is liable to be and is hereby dismissed.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh