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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 469 of 2020

- Geeken Seating Collection Pvt. Ltd., Having its registered office at 65 (Basement), Furniture Block, Kirti Nagar, New Delhi. Pin Code 110015. Through its Authorized Representative Shri Parampreet Singh Manchanda, S/o Late Shri Gurucharan Singh Manchanda, Aged about 52 years, R/o M/26, Jeevan Vihar, Raipur, Chhattisgarh. Pin Code 492001.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Principal Secretary, Department of Panchayat & Rural Development, Government of Chhattisgarh Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (CG) Pin Code 492002.
2. The Executive Engineer, Rural Engineering Services, Raipur Division, District Raipur (CG). Pin Code 492001.
3. Design Studio Plus Associates, Through Mr. Hardeep Singh Bhatia, 9-10, Surya Vihar Complex, Pachpedi Naka, Raipur (CG)

---- Respondents

For Petitioner	:	Mr. Animesh Tiwari, Advocate
For Respondent No.1 & 2	:	Mr. Vikram Sharma, Dy. Govt. Advocate
For Respondent No.3	:	Mr. Kishore Bhaduri, Advocate with Mr. Sabyasachi Bhaduri, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per P.R. Ramachandra Menon, CJ

11/02/2020

1. Rejection of technical bid submitted by the petitioner in connection with supply of 'modular furniture and furnishing work', pursuant to the Notice Inviting Tender (NIT) dated

13.12.2019 (Annexure P-2) issued by the 2nd respondent, is put to challenge in this writ petition.

2. When the matter was filed, the prayer was confined to give a chance to the petitioner also to participate in the tender proceedings after accepting the bid submitted by him, but when the matter was taken up for consideration, it was brought to the notice of this Court that the tender proceeding had already been finalized and the work has been awarded to the third respondent, which made the petitioner to amend the writ petition by making necessary changes incorporating Prayer No.10 (i) as well.

3. The specific case projected by the petitioner is that the petitioner has been ousted from the tender process stating that the 'Earnest Money Deposit (EMD)' submitted by him as 'bank draft' is not valid and the respondent No.2 had insisted for submission of EMD in the form of 'FDR'. This, according to the petitioner, is contrary to the norms fixed by the respondents themselves, as borne by the tender document, which clearly stipulates that EMD could be by way of 'bank draft' as well or such other modes. In the case of the petitioner, he applied for and obtained the bank draft for the requisite amount and the same was submitted along with all the requirements. According to the petitioner, the 'bank draft' being an alternate to cash is having more credibility than the 'FDR/TDR' and therefore, the petitioner ought not to have been excluded from the zone, which is sought to be interdicted.

4. The respondent State has filed return, pointing out that the

course and proceedings pursued by the respondent authorities are transparent in all respects; that specific instructions were given in the official website to the effect that EMD had to be submitted as 'FDR/TDR'; that the period of validity of EMD was also separately mentioned, which is to be having a life of 'extra three months', which is not possible in the case of 'bank draft'; that the clauses sought to be relied on from the part of the petitioner are rather general guidelines, which are common to various other tenders as well, with regard to which no change can be effected by the department concerned and if at all any change is to be effected, it is for the department concerned to have it done in the official website, which liberty was specifically reserved. It was accordingly that, the requisite information was provided in the official website, giving a clear idea that the EMD had to be submitted in the form of 'FDR/TDR'. Instead of doing that, the petitioner submitted bank draft which came to be rejected then and there. The return filed by the respondent State also refers to similar course of action pursued in respect of some other tenderers as well, adding that the qualified bidders, who had submitted their bids valid in all respects, remained to be only 'two'. Their price bids were considered and the better offer was accepted, thus awarding the contract to the third respondent. Various documents have also been produced along with reply to substantiate the facts and figures as aforesaid.

5. The third respondent, who has been identified by the respondent authorities as 'successful bidder', has also filed a

return highlighting its credentials and un-sustainability of the claim put forth by the petitioner.

6. We have heard Mr. Animesh Tiwari, learned counsel for the petitioner; Mr. Vikram Sharma, Dy. Government Advocate for respondents No.1 & 2 and Mr. Kishore Bhaduri, Advocate for respondent No.3, at length.

7. The question involved is only whether any arbitrary, perverse or discriminatory tactics has been followed by the respondent Nos.1 & 2 in connection with awarding the contract to the third respondent and whether the 'decision making process' so pursued by the respondent State authorities is defective in any manner.

8. It is settled law, as per the decision of the Apex Court in the matter of **Tata Cellular vs. Union of India** reported in **AIR 1996 SC 11**, that the scope of 'judicial scrutiny' by the Courts in contractual matters is very limited and it is not to be with regard to the 'decision taken' but the 'decision making process'.

9. On going through the contents and materials produced by the petitioner, Clause 3.2.1 & 3.2.2 of the NIT are in the following terms;-

> "3.2.1: The amount of earnest money shall be accepted only in the shape of Bank drafts or in other interest bearing shapes mentioned in W.D. Manual Para 2.079 in favour of the Executive Engineer of concerned division, valid for a period of 03 months extra of completion period at least and further subject to appropriate verification by the Executive Engineer

concerned.

3.2.2. The intending tenderers from other state may remit E.M.D. in the form of the bank draft of any schedule bank payable at part at the head quarter of the Executive Engineer.”

10. With reference to the above stipulations, enabling the party concerned to furnish EMD by way of bank draft, though the submission of EMD as 'FDR'/'TDR' is mentioned elsewhere, learned counsel for the petitioner submits, in view of the law declared by the Apex Court in the matter of **Bank of India & another vs. K. Mohandas & ors** reported in **(2009) 5 SCC 313** [Para-31 & 32], if the terms of contract appear to be contradictory, it has to be interpreted in a harmonious way. In the case at hand, since there is much obscurity with respect to submission of EMD, it has to be interpreted in favour of the petitioner so as to have an entry to participate in the tender process and not to oust the petitioner from the field. It is also pointed out by learned counsel for the petitioner that there is a substantial difference insofar as the price factor is concerned, as the quote made by the third respondent is about Rs.40 Lakhs higher than the quote given by the petitioner herein. Reference is made to Clauses 6.1 (i) & 6.1 (iii) of the Pre-contract Integrity Pact (Annexure R-2), providing furnishing of EMD by any other mode as well.

11. Mr. Vikram Sharma, learned counsel representing the State submits that the idea and understanding of the petitioner is thoroughly wrong and misconceived. It is pointed out that

Clause 3.2.1 of the NIT clearly stipulates that the validity of EMD should be <u>three months extra of the completion period</u> and this is with a specific purpose to see that, the supply of modular furniture is to be made within three months as notified and if for any reason, the supply is not effected or defective, the same can be adequately dealt with. By virtue of the instructions issued by the Reserve Bank of India, as per Circular dated 4.11.2011, the demand drafts were earlier being issued for a period of six months, which came to be reduced to three months because of rampant misuse. In the said circumstance, since bank drafts cannot have a life of more than three months, it has to be adequately taken care of and hence the stipulation 'by way of FDR/TDR' has clearly been given in the official website. The learned counsel further submits that all the participants were given clear idea as to the necessity to go to the official website and ascertain the particulars with regard to manner of submission of bid. It was accordingly, that the EMD was furnished by all other participants by way of FDR, whereas the petitioner alone went for bank draft.

12. Further, reference is made to the different stages of the tender process and the manner of submission of bid as provided under Clause 11 of the NIT, where three different stages involving 'Envelope-A, B & C' are provided therein. 'Envelope-A' deals with submission of EMD and pre-integrity pact; 'Envelope-B' deals with the technical qualification; whereas, 'Envelope-C' is in respect of price bid. In the present case, pursuant to tender notification (Annexure P-2), seven parties

came forward by submitting their bids, among whom five participants including the petitioner fell down at the first stage i.e. at Envelope-A stage, either because of submission of defective EMD or defective pre-integrity pact. Only two parties crossed the hurdle at the first stage, getting technically qualified and accordingly their bids were considered, where the third respondent was declared as 'successful bidder' and the work was awarded to him. It is also pointed out, to prove the bona fides, that reason for rejection of bid of one Abhishek Enterprises, Bhilai at the 'Envelope-A' stage was that, even though the said firm had satisfied the EMD by way of FDR, the firm name was not given therein. Reference is also made to the course pursued by the respondent authorities in respect of other tenderers. Based on the materials placed on record, we do not think it necessary to deal with each and every aspect insofar as the crucial question involved herein is of a narrow compass.

13. The circumstance under which a common format has been issued, in a cyclostyled manner, for all the departments in tune with the Work Department Manual, is highlighted by the learned counsel for the petitioner. As mentioned already, if any deviation is to be made, catering to the requirement of different departments, it is to be by causing the same to be stipulated in the official website; to be downloaded and acted upon by the participants concerned.

14. With regard to the right of the petitioner, it is pointed out that it is only to have a fair deal and participation, as declared by the

Apex Court in the matter of **Meerut Development Authority Vs. Association of Management Studies & another** reported in **(2009) SCC 6 171** [Para 26 & 27]. In the case before this Court, no specific plea or instance of malafide has been raised and as such, the 'decision making process' cannot be termed as 'bad' in any manner. Further reliance is sought to be placed on the law declared by the Apex Court in the matter of **Central Coalfields Ltd. vs. SLL-SML (Joint Venture Consortium)** reported in **(2016) 8 SCC 622** (Para-27, 30, 32, 48 & 55) to contend that when a requirement is specified to be done in a particular manner, it has to be done in that manner alone and not in any other way. This is the case which involves the necessity to submit the EMD in a particular form, which has been given effect to. Reliance is sought to be placed also on the verdict passed by the Apex Court in the matter of **Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation & ors** reported in **(2000) 5 SCC 287** [Para-13] in the given context. As it stands so, there is absolutely no pith or substance in the submission that there is much variation between the price quoted by the petitioner and the third respondent. The difference, if at all any, with regard to the price was not the matter of consideration at the time of rejection of the bid of the petitioner i.e. at the first stage ('Envelope-A'), for non-submission of valid EMD.

15. Learned counsel for the State submits that the reason for rejection of the bid was communicated to the petitioner, which is sought to be rebutted by the learned counsel for the

petitioner. Reference is made to the letter dated 21.1.2020 and standard format of pre-contract integrity pact, copies of which are produced as Annexure R-1 & R-2 respectively along with the reply. Reference is also made to the prefix “DD” consciously added by the petitioner before the term 'FDR/TDR', as given under Clause 6.1, to justify the course of action pursued by the petitioner, which virtually amounts to manipulation.

16. Learned counsel for the petitioner points out that reason now assigned was never the reason for rejection of bid, as discernible from the screen shot produced by the petitioner, which only shows that the EMD was not valid. It is also pointed out that Annexure R-1 was never communicated to the petitioner and he had not received it.

17. Learned counsel for respondents No.1 & 2 submits that the Annexure R-1 was necessitated to be issued only in view of the letter/ representation dated 17.1.2020 preferred by the petitioner, which has been specifically referred to in Annexure R-1. The necessity to have a validity period of <u>three months extra</u> for the EMD was also clearly mentioned in the Annexure R-1, to make the position clear; which is not a new reason, but already included in Clause 3.2.1 of the NIT.

18. Learned counsel appearing for the third respondent virtually supports the contentions raised by the learned counsel for respondents No.1 to 3 and adds that, Clauses 3.2.1 & 3.2.2 of the NIT, which stipulate for submission of the EMD by way of demand draft, are only part of general guidelines, because the

format used is a 'specimen' applicable to various types of contracts of different departments. It is for this reasons that the parties were alerted to get the clear picture from the official website and to act only as specified therein which insists for furnishing of EMD by way of FDR/TDR. To substantiate the fact that the NIT is a general one, reference is made to Clauses 2.1, 3.2, 4.7, 5.5 of the NIT and such other situations mentioned there. It is seen from the aforesaid clauses that the NIT also refers to some 'Construction and maintenance work'; the need to satisfy the EMD with validity of the offer for 120 days; specification of 'Electrical works' etc., which clearly reveal that the said situations do not have any connection at all with the tender in question. This gives a clear idea that it is in respect of various contracts to be floated by various departments and depending upon the needs and requirements, it is open for the department concerned to make appropriate modifications and have it done in the official website. There is no case that in the official website 'bank draft' is mentioned as a mode of EMD, whereas it has clearly been insisted to be in the form of FDR/TDR. It is also not a matter of dispute that even under Clause 3.2.1 of the NIT, it is stated that the bank draft must have the <u>validity of three months extra of completion period</u>. The EMD furnished by the petitioner in the form of 'bank draft' was admittedly valid for a period of only three months.

19. The respondent Nos.1 & 2 have demonstrated before this Court that a proper scrutiny was made in respect of the tenders

submitted by all the seven participants and the same yardstick was used to test the credentials of each and every participant. The petitioner and four others did not satisfy the requirements at 'Envelope-A' stage and therefore, they could not be considered to be qualified for the next stage and to have the price bid opened. This being the position, it is stated that the course pursued warrants no interference.

20. After hearing both the sides and after going through the materials on record, this Court finds that the Annexure P-2, tender document contains several clauses which are not connected with each other or which may cater to different situations and different circumstances. The necessity to have clarity need not be highlighted by this Court as it is an essential requirement to avoid confusion and unnecessary litigations. At the same time it has to be noted that, all the parties concerned having let known that the details of the tender have to be gathered from the official website. This was because of the fact that the NIT format was a general one, issued in conformity with the Works Department Manual, which could not be varied by any department and if any deviation was to be effected, it could only be by way of appropriate modifications to be published in the official website. The petitioner has not demonstrated that the course of action pursued by the respondent authorities was to extend any undue favour to the third respondent or to oust the petitioner from the tender process in a dubious manner. This being the position, the scope of 'judicial scrutiny' ends there, when it is noted that the

'decision making process' is not tainted in any manner.

21. It may be true that the price quoted by the petitioner may be more attractive than the one quoted by the third respondent, which however came to be accepted by the respondent authorities. Firstly, it is not relevant here, as the petitioner came to be knocked out in the first round itself. That apart, it may be justified due to various reasons, particularly with reference to the nature of the tender and the reputation of the manufacturer/ supplier, as specifically mentioned in the tender notification. The petitioner also may be a reputed manufacturer / supplier as the third respondent is. Still, depending upon the reputation of the manufacturer and the product insofar, it is quite possible for the respondent authorities to identify a particular supplier/ manufacturer and to accept the bid after making deliberations with reference to different traits involved, more so, when the product / brand offered to be supplied by the petitioner is different from the product/brand offered by the third respondent. It also may be possible to say that though the quality maintained by different manufacturers / suppliers of different products/brands, may be similar, still, the style and look may defer, which may also have a bearing with regard to the requirements and preference to be given by the respondents in identifying a particular product. We do not find it necessary to say further, as we do not find anything arbitrary or discriminatory with regard to the course and proceedings pursuant to Annexure P-1 tender.

22. In the above circumstance, interference is declined. Writ petition stands dismissed.

Sd/-	Sd/-
(PR Ramachandra Menon)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-