

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5824/2018

M/S.Saburi Construction Company through its Partner Radharaman Hazarilal Agrawal and anr.
 Vs.

State of Maharashtra through its Secretary, Public Works Department and 5 others.

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

 Shri M.P.Khajanchi, Advocate for petitioners.
 Shri A.M.Deshpande, Additional Government Pleader for respondent
 nos. 1 to 4.
 Shri U.K.Bisen, Advocate for respondent no.5

CORAM : A.S.CHANDURKAR and VINAY JOSHI, JJ.

DATE : March 03, 2020.

Heard.

By the present petition, the petitioners had initially approached this Court on 06.09.2018 with a prayer that the financial bid submitted by the petitioner no.1 pursuant to the tender notice dated 18.06.2018 published for the purposes of construction of hostel building and training school be directed to be opened by the Superintending Engineer. After notice was issued in the writ petition, the Chief Engineer, Public Works Department (PWD) on 07.09.2018 informed the petitioners that the bid of the petitioner no.1 was rejected on technical grounds as the qualification CV was not found in the tender documents especially envelope no.1. By amending the writ petition, the petitioners have challenged that communication dated 07.09.2018

and have prayed that after setting aside that communication further orders for considering the financial bid of the petitioner no.1 be passed.

Shri M.P.Khajanchi, learned counsel for the petitioners submitted that rejection of the petitioners' bid was only with a view to oust the petitioner no.1 firm and to enable that work to be allotted to either respondent no.5 or respondent no.6. The ground for rejecting the bid was non-submission of the documents pertaining to the qualifications of the members of the petitioner no.1 firm and such information was not required to be mandatorily submitted. The Clause in that regard was not a material Clause on the basis of which the financial bid of the petitioner no.1 could not be opened. Referring to various Clauses in the tender notice and especially Clause 23.4.1 it was submitted that it was open for a bidder to clarify or modify his technical bid in case of any rectifiable defects. It was submitted that the petitioner no.1 had in fact on 06.08.2018 submitted the C.Vs which included the resume of the personnel who were to be deployed for the work in question. Placing reliance on the decisions in *Rashmi Metaliks Limited and Another Vs. Kolkata Metropolitan Development Authority and others (2013) 10 SCC 95* and *Khare and Tarkunde Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, 2015(3) Mh.L.J. 668* it was submitted that refusal to open a financial bid on this count amounted to treating a non-essential

condition of the tender document to be an essential condition. It was incumbent upon the respondent nos. 1 to 4 to give a fair treatment to all bidders and the impugned communication refusing to open the financial bid resulted in causing prejudice to the petitioner no.1. He also referred to the decision in ***Maa Binda Express Carrier and Another Vs. North-East frontier Railway and others, (2014) 3 SCC 760*** in that regard. It was thus submitted that even at this stage by directing the petitioners' financial bid to be opened, negotiations with the Authorities was permissible. There was also no reason to re-tender the work in question and hence the prayers made in the writ petition were liable to be granted.

Shri A.M.Deshpande, learned Additional Government Pleader for the respondent nos.1 to 4 supported the impugned communication. He submitted that the tender document contained a mandatory condition relating to submission of C.Vs and this was clearly mentioned in Annexure-II of the tender document. Since the petitioners failed to submit the relevant material, the financial bid was not opened for justifiable reasons. He referred to the affidavit in reply filed on behalf of the respondent nos. 1 to 4 to submit that the averments made by the petitioners that the C.Vs were submitted on 06.08.2018 had been specifically denied. Moreover, the period of validity of the bid was ninety days and the Authorities had the right to cancel any bid if

the documents/requirements were not furnished. He denied that the impugned action was taken to favour to any other bidder.

Shri U.K.Bisen, learned counsel for the respondent no.5 also opposed the prayers made in the writ petition. He referred to Clause 4.2 of the tender document to submit that all documents submitted along with the bid were required to be uploaded. It was rightly found that the C.Vs pertaining to the petitioner no.1 had not been uploaded and therefore the financial bid of the petitioner no.1 was not opened. The bid of the respondent nos. 5 and 6 was found competent for being opened and the respondent no.5 being the lowest bidder, it was entitled to be given the work order. Hence no interference with the impugned order was called for.

We have heard the learned counsel for the parties and we have also perused the documents placed on record. The document relating to the invitation for bids contains various instructions to bidders. As per those instructions all technical documents were required to be scanned and uploaded along with digital signature. After opening the technical bid in envelope no.1 and thereafter scrutinizing the same, the bidders eligible for financial bidding process were to be shortlisted. Clause 32 of the said document reserves the right of the respondent nos. 1 to 4 to reject or accept any bid or cancel the bidding process at any point of time. Annexure-II to the bid document requires a bidder to

submit a list of key personnel who were to be deployed on contract work. Item-1 thereof reads as under :

“1. Bidder shall submit the name and C.V's of above Personnel in envelope no.1. If CV doesn't fulfill the requirement of qualification mentioned above, Envelope 2 shall not be opened.”

It is thus seen that a bidder is required to submit the names and the C.Vs of the key personnel who were to be deployed on the contract work. If the requirement of qualification in the CV is not fulfilled, envelope no.2 relating to the financial bid is not liable to be opened.

It is seen from the aforesaid stipulation that submission of the names and the C.Vs of the personnel to be deployed on the contract work was required to be submitted in the technical bid-envelope no.1. In paragraph 4 of the writ petition it is averred by the petitioners that the C.Vs of the personnel were submitted on 06.08.2018 to the respondent no.4 as the said information was not uploaded while submitting the tender. In the affidavit in reply filed on behalf of the respondent nos. 1 to 4 this assertion has been denied in paragraph 13 thereof. There is nothing on record to indicate that the C.Vs were furnished to the respondent no.4 on 06.08.2018 as the same were not uploaded when the tender was submitted. It is in the light of this absence of C.Vs that the technical bid of the petitioner no.1 came to be rejected in terms of Item-1 of Annexure-II. Though the petitioners sought to rely upon

the list of technical personnel which is at page 268 of the record, the said document does not indicate that it was submitted along with the technical bid. In any event, it is also the case of the petitioners that the said documents were not uploaded along with the relevant documents. Thus in absence of C.Vs not being submitted in envelope no.1, it is found that the rejection of the technical bid on that count is in accordance with Item-1 of Annexure-II. It has been clearly stated therein that if the CV does not fulfill the requirement of qualifications, the financial bid would not be opened. In the present case, there is absence of the C.Vs itself and hence the further question of fulfilling the requirement of qualifications would not arise.

Though it was sought to be urged on behalf of the petitioners that submission of the C.Vs was not a material Clause warranting rejection of the technical bid, it is not possible to accept said contention. Item-1 of Annexure-II states in clear terms that if the C.Vs do not fulfill the requirement of qualifications, the financial bid would not be opened. Thus in terms of the tender document itself, the respondent nos. 1 to 4 proceeded to reject the technical bid of the petitioner no.1. It is not for this Court to determine whether despite such stipulation in the tender document itself, the condition as imposed was not a material condition and therefore envelope no.2 was liable to be opened. Reference in this regard may be made to the decision in *Afcons*

Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another, (2016) 16 SCC 818, wherein it has been held that the words used in the tender document cannot be ignored or treated as redundant or superfluous. They must be given their necessary significance. In the light of such specific stipulation in the tender document itself, we do not find any scope for interference in writ jurisdiction. The ratio of the decisions relied upon by the learned counsel for the petitioners are clearly distinguishable in the light of the clear wording of Item-1 of Annexure-II of the tender document.

The other contention raised on behalf of the petitioners that the petitioners were ousted to enable the work being allotted either to respondent no. 5 or respondent no.6 and that the action of rejecting the petitioners' bid was malafide also do not warrant consideration in absence of any specific assertion giving details in that regard. As it has been found that the technical bid of the petitioner no.1 was rejected for want of C.Vs by relying upon the stipulation prescribed in Item-1 of Annexure-II, we are not inclined to interfere in writ jurisdiction. Since the technical bid of the petitioner no.1 has been rejected, it is not found necessary to go into the contention as to whether the bid of the respondent no.5 being lowest was liable to be accepted ignoring the validity of the period of the tender. The writ petition therefore stands dismissed leaving the parties to bear their own

costs.

At this stage, learned counsel for the petitioner prays that the order of status-quo granted on 18.09.2018 be continued for some time. This request is opposed by learned counsel for the respondents.

In the facts of the case, the order of status-quo shall operate for further period of three weeks and shall cease to operate automatically thereafter.

JUDGE

JUDGE

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