IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 1984 of 2020

M/s Jeet Ram & Sons. .....Petitioner

Versus

Govind Ballabh Pant University
of Agriculture and Technology,
Pantnagar & others. ...Respondents

Mr. Piyush Garg, Advocate for the petitioner.
Mr. Rajendra Dobhal, Senior Advocate, assisted by Mr. Shubhang Dobhal, Advocate for the respondents.

Dated: 21st December, 2020

Hon'ble Manoj K. Tiwari, J.

Respondent no. 1 invited tenders for the Annual University Rate Contract for supply of Animal & Poultry Feed Ingredients & Feed Additives, by issuing Notice Inviting Tender on 24.08.2020. As per the Notice Inviting Tender, the complete bid document could be downloaded from the official website, by paying a non-transferable bid document fee of ₹ 2,240/- (₹ 2,000/- document fee plus ₹ 240/- GST @ 12%) in the form of crossed Demand Draft issued by the following four banks, namely, State Bank of India/Punjab National Bank/UCO Bank/Union Bank of India.

2. Petitioner is aggrieved by rejection of his technical bid on the sole ground that the bid document fee was paid by him through a bank draft issued by ICICI Bank.

3. By means of this writ petition, petitioner has sought following reliefs:

> "(a) Issue a writ, order or direction in the nature of certiorari for quashing the order/minutes of

> the meeting dated 09.10.2020 passed/recorded by the respondent no. 3, whereby the technical bid of the petitioner has been rejected on an alleged technical ground that the tender document fees was paid through a draft of a different bank then desired in the tender and for quashing the order dated 13.10.2020, by means of which the representation of the petitioner has been rejected.
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> (b) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 and 3 to declare the petitioner as technically qualified and then to proceed further in the tender process from that stage by evaluating the price bid of the petitioner vis a vis other technically qualified bidder and then to award the tender to the best eligible participant."

4. According to the petitioner, in the pre-bid meeting held on 02.09.2020, he had requested that since he does not have account in any of the aforesaid four banks, therefore, he be permitted to submit bank draft issued by some other bank and the members of Tender Committee told him that he may get the draft prepared from other banks also; but, he will have to pay 3% extra towards collection charges. It is further the case of the petitioner that, in view of the assurance given by members of the Tender Committee on 02.09.2020, he prepared a bank draft of ₹ 2240/- + ₹ 100/- = ₹ 2340/- from ICICI Bank and submitted the said bank draft alongwith two other bank drafts amounting to ₹ 1,00,000/- & ₹ 1,50,000/-, both issued by ICICI Bank, towards earnest money deposit. Subsequently, on 30.09.2020, petitioner was informed by the office of respondent no. 1 that following shortcomings were noticed in his bid i.e. (i) technical compliance statement form not duly filled; (ii) affidavit regarding correctness of bid not submitted; and (iii) annual turnover certificate from CA not submitted.

5. According to the petitioner, he supplied the desired documents in terms of the communication dated 30.09.2020; but, his technical bid was rejected by the University Rate Contract Committee, in its meeting held on 09.10.2020, on objection made by a rival bidder.

6. Learned counsel for the petitioner submits that paying tender document fee through a draft issued by a bank other than the four banks specified in the tender notice, does not amount to material deviation, in terms of Clause 2.20.4 of Instructions to Bidders. Clause 2.20.4 provides that "deviations from or objections or reservations to critical provisions such as those concerning Bid Security/Performance Security, Warranty, Force Majeure, Applicable law and Taxes & Duties will be deemed to be a material deviation." He also refers to Clause 3.2.2 in support of his contention that bid document fee is not part of technical bid. Thus, he submits that rejection of petitioner's technical bid is not warranted, as per terms & conditions of the bid document, and at best it can be said to be a small deviation, for which a bid cannot be rejected.

7. Learned counsel for the petitioner further submits that petitioner's demand draft of ₹ 2340/- drawn on ICICI Bank was duly encashed by the University on 24.09.2020. Thus, according to him, after realizing the amount, his technical bid could not have been rejected merely on the ground that the bank draft submitted by the petitioner was drawn on a different bank.

8. This Court finds substance in the contention raised on behalf of the petitioner. Hon'ble Supreme Court

in the case of Poddar Steel Corporation Vs. Ganesh Engineering Works and others, reported in (1991) 3 SCC 273 has held that the requirements in a tender notice can be classified into two categories – those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case, the authority issuing the tender may be required to enforce them rigidly; while, in other cases, the condition mentioned in the tender notice can be relaxed and strict literal compliance of such condition would not be necessary.

9. In the present case, admittedly bid document fee was deposited by the petitioner through a bank draft issued by some other bank; but, after having encashed the said bank draft, it is not open to the respondents to declare his bid as non-responsive. The fact remains that the fee has been realized by the respondents and the amount has been credited in their account. Thus the only logical inference would be that respondents have waived off the requirement as mentioned in the Notice Inviting Tender.

10. Hon'ble Supreme Court in the matter of Om Prakash Sharma Vs. Ramesh Chand Prashar and others, reported in (2016) 12 SCC 632, has reiterated the view taken in Poddar Steel Corporation (Supra). Paragraph no. 12 of the judgment rendered in Om Prakash Sharma's case is extracted below:

> "**12.** In the present case, the site in question was to be sold on outright sale basis. The advertisement or the stipulations therein did not contemplate creation and or continuation of any

> relationship between the parties calling for continued existence of any particular level of financial parameters on part of the bidder, except the ability to pay the price as per his bid. The condition was not an essential condition at all but was merely ancillary to achieve the main object that was to ensure that the bid amount was paid promptly. The advertisement contemplated payment of bid amount whereafter the Sale Deed would be executed and not a relationship which would have continued for considerable period warranting an assurance of continued ability on part of the bidder to fulfill his obligations under the arrangement. Nor was this condition aimed at ensuring a particular level of financial ability on part of the bidder, for example in cases where the benefit is designed to be given to a person coming from a particular financial segment, in which case the condition could well be termed essential. The idea was pure and clear sale simplicitor. As a matter of fact, the appellant did pay the entire bid amount within the prescribed period and the Sale Deed was also executed in his favor. In the circumstances the relevant condition in the advertisement would not fall in the first category of cases as dealt with by this Court in Poddar Steel Corporation (supra). The authorities could therefore validly deviate from and not insist upon strict literal compliance. The discretion so exercised by the authorities could not have therefore been faulted. Thus, the assessment made by the High Court that the condition in question was an essential condition for non-compliance of which, the bid furnished by the appellant was required to be rejected, in our view was not correct."

11. Learned Senior Advocate for the respondents has placed reliance upon the judgment rendered by Hon'ble Supreme Court in the matter of Central Coalfields Limited and another Vs. SLL-SML (Joint Venture Consortium) and others, reported in (2016) 8 SCC 622. The said judgment is distinguishable on facts as, after encashing the bank draft submitted by the petitioner towards tender document fee, respondents cannot insist upon the condition mentioned in the Notice Inviting Tender.

12. Thus in the humble opinion of this Court, rejection of petitioner's technical bid for the reason assigned, does not appear to be justified.

13. Accordingly, the writ petition is allowed and the order of rejection of petitioner's technical bid is quashed.

(Manoj K. Tiwari, J.)
21.12.2020

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