

Daily List 74.
Bpg.

March 8,
2021

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
(Via Video Conference)**

**W.P.A. No.871 of 2021
With
CAN 1 of 2021**

**Karam Chand Thapar and
Bros. (Coal Sales) Limited
Versus
Damodar Valley Corporation**

Mr. S. N. Mookherjee,
...for the petitioner.

Mr. Jaydip Kar,
Mr. Subir Pal.
...for the DVC.

The petitioner has challenged the rejection of the petitioner's bid in a tender floated by the DVC to ensure availability of quality coal and required number of coal rakes for KTPS and evacuation of the same etc.

Learned senior counsel appearing for the petitioner contends that no reasons for the subsequent rejection of the bid on technical grounds, even after having admitted the submission of bid as valid, were given by the Tender Issuing Authority despite several requests having been made by the petitioner to that effect. Learned senior counsel relies on the General Financial Rules, 2017 issued by the

Government of India, Ministry of Finance, Department of Expenditure. By relying on Rule 1 thereof, it is argued that the provisions contained therein are deemed to be applicable to Autonomous Bodies except to the extent the bye-laws of an Autonomous Body provides for separate Financial Rules which have been approved by the Government. In the absence of any such bye-law having been pointed out, the Rules are squarely applicable to the DVC, which is an Autonomous Statutory Body. By placing reliance of sub-clauses (iv) and (xii) of Rule 173 of the said Rules, learned senior counsel argues that suitable provisions should be kept in the bidding document to enable a bidder to question the bidding conditions, bidding process and/or rejection of its bid. The reasons for rejecting a tender or non-issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder. That apart, it is submitted, bids received should be evaluated in terms of the conditions already incorporated in the bidding documents; no new condition which was not incorporated in the bidding documents should be brought in for evaluation of the bids. Determination of a bid's responsiveness should be based on the contents of the bid itself without recourse to extrinsic evidence.

Next placing reliance of Rule 189 of the 2017 Rules, learned senior counsel for the petitioner argues that technical bids should be analyzed and evaluated by a “Consultancy Evaluation Committee”(CEC) constituted by the Ministry or Department. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it.

Such rules, in the present case, were not adhered to. Placing the qualifying requirements as mentioned in the Notice Inviting Tender itself, learned senior counsel submits that the bidder had to have experience of having completed similar works during the last seven years ending last day of the month previous to the one in which offers were invited. The petitioner met all such criteria and the documents submitted along with the bid of the petitioner, also annexed to the writ petition, are relied on for the said contention.

Thus, it is submitted that, in the absence of any reasons having been disclosed for such rejection to the petitioner, despite several requests, although the petitioner satisfied all the qualifying requirements as contemplated in the tender, such rejection was *de hors* the conditions of the tender itself, as well as opposed to principles of natural justice.

Learned senior counsel appearing for the DVC submits, by placing reliance on clause (a) of the technical credentials, as stipulated in paragraph A of the qualifying requirements in the NIT, that the work experience which was contemplated in the tender document included the unloading of BOBR and/or BOX-N coal rakes by mechanical means at Track Hopper/Wagon Tippler. However, the certificate produced by the petitioner regarding past experience, clearly indicates that the work done by the petitioner was of manual nature in so far as the unloading was concerned. As such, one of the essential criteria as contemplated in the qualifying requirements of the tender was not met.

It is further pointed out that the expression 'similar work' as used in the work experience was defined in terms of the work experience as stipulated in clause (a) of the qualifying requirements.

It is submitted by learned senior counsel for the DVC that the DVC subsequently, on enquiry from the authority which had issued the past experience certificate to the petitioner, learnt that the mechanised unloading was done by the Paradip Port and not by the petitioner itself.

Such development was within the knowledge of the petitioner, it is submitted, as evident from one

of the representations given by the petitioner, also annexed to the writ petition, which clearly mentions such enquiry on the part of the Tender Issuing Authority and admits that the scope of work of the past contract with the concerned employer, included unloading of rakes which was carried out by mechanical system by the Paradip Port.

It is, thus, clear from the representations of the petitioner as well as the certificate uploaded by the petitioner along with its bid that the petitioner only produced documents in support of the petitioner having had past experience regarding manual unloading and not unloading by mechanised means.

It is evident, upon hearing learned senior counsel for both sides, that, although the question of insufficiency of reasons or disclosure of the reasons by the CEC were not addressed by the DVC despite several enquiries on the part of the petitioner, such question is rendered academic in view of the petitioner's own documents.

Since there is nothing in the past experience certificate and documents produced by the petitioner, as annexed to the present writ petition, which indicates that the petitioner itself undertook mechanical unloading of BOX-N wagons, the petitioner ex facie did not meet the criteria stipulated

in the qualifying requirements, which included unloading by mechanical means.

Rather, clause (vii) of the certificate issued by the Tamil Nadu General and Distribution Corporation Limited clearly indicates that manual unloading was undertaken by the petitioner within the scope of contract given by the said authority.

Although learned senior counsel appearing for the petitioner argues that the prevalent system in such works is that manual unloading is done by the contractor while the mechanised portion of the handling of such unloading is undertaken by the Port Authorities, there is no such indication in the documents produced by the petitioner to indicate that the said procedure is the universal rule in all such cases.

Rather, as held in *Afcon Infrastructure Limited Versus Nagpur Metro Rail Corporation Limited* and another reported in (2016) 16 SCC 818, relied on by the DVC, there is very limited scope for interference in a tender process. In the present case, it has not been established by the petitioner that the decision-making process in rejecting the petitioner's tender and issuing the work to third party was arbitrary or irrational to such an extent that the court could say that the decision is one which no

responsible authority acting reasonably and in accordance with law could take.

This Court does not find any patent perversity in the decision-making process as a whole, in view of the documents of the petitioner itself indicating that sufficient past experience regarding mechanised unloading was not demonstrated from the documents uploaded by the petitioner along with the bid.

As far as absence of reasons is concerned, the communication regarding rejection of the petitioner's bid clearly indicated that the tender had been rejected during technical evaluation by the duly constituted committee for the reason 'non-QR quality', meaning thereby that the qualifying requirements as stipulated in the Notice Inviting Tender were not adhered to. Since such orders are of administrative nature and it is within the domain of the employer of a project to understand and appreciate its requirements and interpret its documents from its own perspective, more detailed reasons need not have been given in the order of rejection.

Moreover, the petitioner, in its subsequent representations, clearly admitted that it had not

carried out unloading by mechanised systems, which was done by the Paradip Port.

Although it is doubtful where the Tender Issuing Authority could look into subsequent feed-backs from the previous employers of the petitioner to justify the rejection of the petitioner, the documents of the petitioner itself afforded sufficient reasons for the rejection on the ground of non-compliance with the qualifying requirements.

As such, the academic exercise of subsequent disclosure of reasons loses relevance in view of the above observations.

In the present case, work orders have also been issued long back in favour of third parties and the entities which received the work contracts have already commenced work, as submitted on behalf of the DVC. In such circumstances, it would not be prudent to interfere with the tender process on the flimsy grounds taken by the petitioner.

Accordingly, WPA 871 of 2021 is dismissed without any order as to costs.

CAN 1 of 2021 is also disposed of accordingly.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)