

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 4010 of 2021**

Jalaram Transport, Through Partner - Bharat Khanderia S/o Chandu Lal Khanderia, Aged about 58 years, R/o Sai Parisar Near Rama Magneto Mall, Shrikant Varma Marg, Bilaspur C.G.)

Petitioner**versus**

1. Union of India Through - The Secretary, Ministry of Coal, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi.
2. Coal India Limited A Govt. of India undertaking Through Its Chairman, Shastri Bhawan, New Delhi.
3. General Manager, South Eastern Coalfields Ltd., Vasant Vihar, Seepat Road, Bilaspur (C.G.)
4. General Manager, (CMC) Sough Eastern Coalfields Ltd., Vasant Vihar, Seepat Road, Bilaspur (C.G.)
5. Ministry of Environment, Forest and Climate Change Through Secretary, Indira Parvavaran Bhawan, Lorbagh Road, New Delhi - 110003.

Respondents

For Petitioner : Mr. Prafull N. Bharat, Senior Advocate assisted by Mr. P.R. Patankar, Advocate

For Respondents No.2 to 4 : Mr. R.K. Gupta, Advocate

For Respondent No.5 : Ms. Purnima Singh, Advocate

Date of hearing : 17.11.2021.

Date of Judgment : 10.12.2021

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Goutam Bhaduri, Judge

CAV JUDGMENT

Per Arup Kumar Goswami, Chief Justice

Heard Mr. Prafull N. Bharat, learned senior counsel for the petitioner, Mr. R.K. Gupta, learned counsel appearing for respondents No. 2 to 4 and Ms. Purnima Singh, learned counsel appearing for respondents No.1 and 5.

2. The petitioner is a partnership firm engaged in the business of loading and transportation of coal of South Eastern Coalfields Limited (SECL). Pursuant to an e-Tender notice dated 11.02.2021, bearing N.I.T. No. SECL/BSP/CMC/e-Tender/439, the petitioner participated in the tender process. Subsequently, Letter of Intent (LOI) dated 13.07.2021 was issued for executing tendered work for a total value of Rs. 23,59,57,171.97 for a period of 1095 days, as detailed in the tender notice. The petitioner commenced the work with effect from 30.07.2021. It is averred that LOI will violate the environmental clearance condition of the mine as total awarded capacity by the LOI exceeds the environmental clearance.

3. By the writ petition, writ petitioner challenges an e-Tender notice No.SECL/BSP/CMC/e-Tender/475 dated 04.09.2021, with particular reference to Clause (c) (4) thereof.

4. Mr. Prafull N. Bharat, learned senior counsel for the petitioner submits that impugned tender has been issued for the same work that the petitioner is executing pursuant to LOI issued on 13.07.2021 and during the subsistence of the contract, issuance of the said tender is, *ex facie*, arbitrary and illegal.

5. In the reply filed by the respondents No.2 to 4, it is stated that the work offered to be executed in the two tender notices are entirely different, as by the impugned tender, crushing of coal to (-) 100mm size by mobile crusher is meant for coal mined through drilling and blasting mode, which is not the case in the e-Tender notice dated 11.02.2021. It is pleaded that mining capacity, calculated on the basis of ideal per day production capacity, though higher than the environment clearance, is of no consequence, as the contractor entrusted to do the mining by surface miner is not able to achieve normal per day production during rainy season, thereby resulting in huge shortfall in

production and when the petitioner was also the contractor, it had also failed to achieve the production target.

6. By filing a rejoinder-affidavit, the petitioner reiterated that the same work, as was allotted to the petitioner, is sought to be awarded by issuing the impugned tender.

7. Mr. Bharat, learned senior counsel for the petitioner makes only a pointed submission to the effect that scope of work of the e-Tender notice dated 04.09.2021, having regard to the description therein, is same as what was offered to the petitioner pursuant to the e-Tender notice dated 11.02.2021. It is his submission that during the subsistence of the contract with the petitioner, the respondent authorities could not have issued another tender with the same scope of work and therefore, the impugned e-Tender notice is liable to be quashed.

8. Inviting our attention to the reply-affidavit filed, Mr. R.K. Gupta, learned counsel appearing for respondents No. 2 to 4 submits that scope of work is entirely different and the contention advanced by the petitioner to contrary is mis-conceived.

9. Having regard to the arguments advanced by the learned counsel for the parties, the only question that is required to be answered by this Court is whether the description of work in the e-Tender notice dated 04.09.2021 is same as that of the e-Tender notice dated 11.02.2021.

10. It is relevant to note that the location in both the tender notices are shown to be Jampali OC, Tehsil - Gharghoda, District : Raigarh, State : Chhattisgarh. The description of work in the e-Tender notice dated 11.02.2021 is hiring of surface miner and allied equipments for mechanical excavation / cutting of coal / coal measure strata & deployment of dozer on hiring basis for removal of ridges left out coal / coal measure strata while working coal seam in

the mine. It is indicated therein that the work involves extraction / breaking of coal in slices / layers to lump size of (-) 100mm without resorting to drilling and blasting at Jampali OCP.

11. The description of work, in the e-Tender notice dated 04.09.2021, goes to show that the same is for hiring of (a) Pay Loaders for mechanical transfer of uncrushed and crushed coal into tippers at various coal faces, at surface coal stock and also at mobile crusher, and (b) hiring of tippers for transportation of coal from various coal faces to siding, surface coal stocks and mobile crusher and for coal transportation from coal stocks to mobile crusher and mobile crusher to railway siding.

12. Description of work at (a) and (b) in the e-Tender notice dated 04.09.2021 has no connection with the e-Tender notice dated 11.02.2021. Clause (c)(4) of description of work relates to hiring of mobile crusher for crushing of coal to (-)100mm size for a period of 1095 days at Jampali open cast mine in the manner prescribed at Sl.Nos. 1, 2(a), 2(b), 2(c), 3(a), 3(b), 4, 5(a) and 5(b). Since heavy reliance is placed to buttress the contention that the tenders are identical in clause c(4) of description of work of e-Tender notice dated 04.09.2021, it would be appropriate to quote the same herein under, as follows :

"c) 4) Hiring of 01 no. of mobile crusher for crushing of blasted coal into (-) 100mm size in all dimension including providing and installation of suitable and matching crushing arrangement with all infrastructure including dust suppression arrangement for minimum capacity of 2170 TPD for a period of 1095 days for total quantity of 23,76,150Te. The equipment includes operation and maintenance of mobile crusher machine."

13. The e-Tender notice dated 11.02.2021 relates to extraction/ breaking of coal in slices / layers to lump size of (-) 100mm without resorting to drilling and blasting. In contrast to the same, hiring of 01 no. of mobile crusher is for crushing of blasted coal into (-) 100mm size in all dimension. Therefore, there is fundamental difference in the aforesaid two tender notices in that the work in e-Tender notice dated 11.02.2021 involves breaking of coal in slices / layers to lump size of (-) 100mm without resorting to drilling and blasting whereas clause c(4) of e-Tender notice dated 04.09.2021 is for crushing of "blasted coal" into (-) 100mm size. Therefore, the scope of work, in our considered opinion, is different and the contention of the petitioner that same work is sought to be allotted by e-Tender notice dated 04.09.2021 is not tenable.

14. In that view of the matter, we find no merit in this writ petition and accordingly, the writ petition is dismissed.

15. Interim order, if any, shall stand vacated. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge