

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 4670 of 2021**

M/s Kanchan Creation Ltd. A Company Registered Under The Provisions Companies Act 1956, Having Its Registered Office At 30 Jail Road, Indore M.P. Through Its Authorized Signatory Representative Namely Shri Mubarik Khan Ghouri, S/o Late Mahammad Khan Aged About 78 Years, R/o Nurani Chowk, Raja Talab, Raipur, District Raipur Chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh State Power Transmission Company Limited
Chhattisgarh State Power Transmission Company Limited A Government Of Chhattisgarh Undertaking, Through Its Managing Director, Chhattisgarh State Power Transmission Company Limited, Vidyut Sewa Bhawan, Daganiya Raipur, District Raipur Chhattisgarh
2. Chief Engineer, Chhattisgarh State Power Transmission Company Limited, Shed No. 4 Daganiya Raipur, District Raipur Chhattisgarh
3. M/s Effective Enterprises, A Partnership Firm Registered Under The Partnership Act, 1932 Having Its Registered Office At Shop No. 131 E Market Sector - 6 Bhilai District Durg Chhattisgarh Through Its One Of The Partner Namely Vijay Ashish Sharma S/o M.D. Sharma Aged About 53 Years, R/o Quarter No. 5-A Street No. 38 Sector 4 Bhilai District Durg Chhattisgarh
4. Bank Of Baroda, Through Its Branch Manager, Bank Of Baroda, Choubey Colony Branch, Raipur District Raipur Chhattisgarh

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner

: Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Goutam Bhaduri, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

18.11.2021

Heard Mr. Manoj Paranjpe, learned counsel for the petitioner.

2. Chhattisgarh State Power Transmission Company Limited issued a Tender No.S/S-O&M-12/21-24/72 dated 30.04.2021 on the subject of "Operation (including cleaning, watch and ward) Work of 31 Nos.220/132 KV Sub-stations of CG State". The last date and time of sale of tender documents was fixed on 29.05.2021 at 17.00 Hrs. The last date and time of submission of tender was fixed on 31.05.2021 at 11.30 Hrs and the last date and time of opening of tender (techno-commercial) was fixed on 29.05.2021 at 17.00 Hrs.
3. The petitioner along with three others participated in the aforesaid tender process. While the petitioner was declared as L-3 bidder, the respondent No.3 was declared as L-1 bidder and one M/s. Jai Enterprises was declared as L-2 bidder.
4. Clause 1.17 of the tender is on the subject of "Criteria for Placement of Order" and it provides that the tendering authority reserves the right to distribute entire tendered quantity amongst 03 No. (maximum) bidders as per rules of the tendering authority. The distribution ratio is also indicated therein in a tabular form. It envisages distribution of work from L-1 to L-3 bidder by counter offered rate of L-1 bidder. In case, any bidder refuses to accept the

counter offered rate, then next rank bidder, will be given chance to accept the quantity at the counter offered rate of L-1 bidder. In case, L-2 and L-3 bidders refuse to accept the offer, then the complete quantity will be allotted to L-1 bidder. The quantity distribution to various bidders standing at different position would be 60% and 40% in respect of L-1 bidder and L-2 bidder, respectively, in case there are two bidders and 50%, 30% and 20% in respect of L-1 bidder, L-2 bidder and L-3 bidder, respectively, in case there are three bidders. There is a note appended to Clause 1.17, but for the purpose of this case, it is not relevant and therefore, it is not considered necessary to deal with the stipulations put-forth in the note.

5. Clause 1.19 of the tender is on the subject of “Lol / LoA” and it provides as follows :

“1.19 Lol / LoA :- Accepted L-1 rate shall be counter offer to bidders standing up to L-3 position, accordingly Lol/LoA shall be issued to L-2 and L-3 bidders. The bidder shall submit acceptance of Lol within 07 days from its issuance along with one copy of Lol signed by bidder. In case of acceptance of Lols is not received in time, the allotted quantity shall be distributed to the other bidder as per the distribution ratio mentioned in the table above.”

6. Clause 1.20 of the tender is on the subject of “Agreement” and it provides as follows :

“1.20 Agreement :- The contractor will execute an agreement on non-judicial stamp paper worth Rs.300/- with revenue stamp of Rs.01 (one) affixed on it, as per the Annexure-I enclosed with this tender document. The cost of stamp paper etc. shall be borne by the contractor. The agreement shall be executed within 07 days from the date of issue of detailed order for execution of contract.”

7. The petitioner being L-3 bidder, having accepted offered rate of L-1 bidder, was allotted Letter of Intent ('LoI') by the respondent No.2 on 24.09.2021 and after acceptance of LoI, Letter of Acceptance ('LoA') was issued to it on 30.09.2021.

8. By the said LoI dated 24.09.2021, the petitioner was requested to comply with the Security Deposit clause of tender within 30 days (i.e. up to 23.10.2021) of issuance of LoI, further indicating that the amount of Security Deposit is Rs.42,47,900/-, being 10% of contract value. It was also indicated that if the petitioner fails to submit Security Deposit / Bank Guarantee within 30 days (i.e. up to 23.10.2021) from the date of issuance of the letter dated 24.09.2021, the work that may be allotted to the petitioner might be distributed among other bidders as per tender clause.

9. Mr. Manoj Pranajpe, learned counsel appearing for the petitioner submits that in order to comply with the requirement of making deposit of Security Deposit, petitioner had taken steps for obtaining Bank Guarantee, but for reasons beyond his control, formalities for obtaining the Bank Guarantee could not be completed due to technical reasons and as such, by

letter dated 29.10.2021, the petitioner had informed the Chief Engineer, i.e., respondent No. 2 that the Bank Gurantee will be submitted by 20.11.2021. Even the Bank had issued a letter dated 29.10.2021 informing the respondent No. 2, that issuance of Bank Gurantee will take 10-15 days more, but without responding to the said request, the work order was issued in favour of respondent No.3 on 29.10.2021 for the balance work in addition to the work which was earlier allotted to him being 50% of total 31 Nos. of 220/132 KV Sub-stations. Learned counsel has drawn the attention of the Court to Clause 1.21 of the tender on the subject of "Security Deposit" to contend that the Bank Guarantee is to be submitted normally within 30 days from the date of issue of Lol / LoA and therefore, when the petitioner had requested for extension of time, the respondent authorities were obligated to consider the request of the petitioner for extension of period of time for furnishing Bank Guarantee and they having not done so, allotment of work meant for the petitioner in favour of respondent No.3 is not sustainable in law.

10. By an order dated 29.10.2021, respondent No.3 has been allotted 12 Nos. of 220/132 KV Sub-stations in addition to an order dated 29.10.2021, which Mr. Paranjpe submits was towards allotted quantity of the respondent No. 3 being the L-1 bidder. 50% of 31 Sub-stations works out to be 15 or 16. The total Sub-stations allotted to respondent No.3 does not add up to 31 as the two orders dated 29.10.2021 add up to only 27 or 28. Be that as it may.

11. To appreciate the contention advanced by Mr. Paranjpe, it would be appropriate to quote Clause 1.21 in its entirety :

"1.21 Security Deposit :- The contractor shall furnish

security deposit either in the form of DD drawn in favour of Manager (RAO-HQ), CSPTCL, Raipur or in the form of Bank Guarantee issued by Nationalized/Scheduled Bank for faithful performance of the order and to cover the contract period. The contractor shall be required to pay security deposit for an amount of 10% of contract value (including GST/Cess etc, if any).

The bank guarantee shall be submitted normally within 30 days from the date of issue of Lol / LoA and shall be kept valid for complete contract period including 06 Month claim period. The bank guarantee shall be submitted on stamp paper worth Rs.250/- or as per the prevailing legal requirements/ any other amount as per the C.G. Stamp Duty Act. No interest shall be paid by CSPTCL on the security deposit. In case of non-fulfillment of contractual obligations by the supplier the security deposit shall be forfeited.

If bidder fails to submit Security Deposit/Bank Guarantee within 30 days from the date of issue of LoA/Lol, the work allotted to them may be distributed among other bidders as per company's rule. In the event of extension of completion date, the validity of the bank guarantee shall also be suitably extended.

Note : 1) Without acceptance of security deposit by order placing authority, no payment will be released to the contractor.

However, it shall be the sole responsibility of the bidder to ensure the payment to their staff within 07 days after the end of each calendar month.

2) The security deposit shall be released only after satisfactory completion of the work duly certified by the concerned OIC.”

12. According to the own case of the petitioner, the request was made to the respondent No.2 to extend the period of time for furnishing Bank Guarantee on 29.10.2021. The Lol to which reference is made in the earlier part of the judgment, goes to show that the petitioner was required to make Security Deposit on or before 23.10.2021. Therefore, the request was beyond the prescribed period of time. That apart, it is not that the bidder was required to furnish only Bank Guarantee as it is made explicitly clear in Clause 1.21 that the contractor shall furnish Security Deposit either in the form of Demand Draft or in the form of Bank Guarantee. If for any reason, there was any difficulty in obtaining the Bank Guarantee, nothing prevented the petitioner to furnish Demand Draft within the stipulated period of time. No doubt, it is also indicated that the Bank Guarantee is normally to be submitted within a period of 30 days from the date of issue of Lol / LoA. But it is to be noticed that it was also indicated that if the bidder fails to submit Security Deposit/Bank Guarantee within 30 days from the date of issue of Lol / LoA, the work allotted to them might be distributed among other bidders as per rules of the tendering authority. Therefore, if a bidder does not submit the Bank Guarantee within a period of 30 days (in the present case, 30 days from issuance of Lol), he runs the risk of his work being allotted to others at

the discretion of the tendering authority. In the instant case, the petitioner had accepted the Lol wherein Security Deposit was directed to be furnished within 30 days.

13. In view of the above discussion, we are of the considered opinion that the respondents No.1 and 2 did not act arbitrarily or illegally in allotting the work of the petitioner in favour of the L-1 bidder. Accordingly, the writ petition is dismissed at the motion stage *in limine*. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge

Anu