

10.03.2022
Court No.13
Item No.12
sp

WPA 805 of 2022
M/s. Jamal and Malek Company & Anr.
Vs.
Eastern Coalfields Limited & Ors.
(Through Video Conference)

Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Ms. Ria Paul,
Mr. Debashis Das

... For the Petitioners.

Mr. Syed Nurul Arefin,
Mr. Rahul singh

....for the respondent nos. 1 to 9

Affidavit of service filed in Court today is taken on record.

The writ petitioner is aggrieved by a communication dated December 15, 2021 of the Eastern Coalfields Limited with regard to transportation, installation, commissioning and trial run of civil work under a Notice Inviting Tender ('NIT') dated October 28. 2021. By the said communication, the petitioner who was found to be L-1, was declared disqualified and banned for a period of two years for not submitting the Bid Securing Declaration (BSD).

Counsel for the petitioner would argue that in terms of Clause 13(b) of the NIT Rules, the petitioner ought to be notified of any deficiency or default in his bid by the Tender Inviting Authority. By communication dated November 15, 2021, the ECL confirms that the petitioner's bid was admitted. The respondent, therefore, cannot subsequently

turn around after obtaining financial bid and disqualify the petitioner for want of Bid Securing Declaration.

Counsel for the respondents has made detailed submissions refuting the allegations of the petitioner. It appears from the records that the Bid Securing Declaration was in lieu of mandatory earnest money to be furnished by each bidder. The BSD was dispensed with in view of the ongoing pandemic. The BSD being the most vital document for the admission of the petitioner's bid cannot be treated as an omission which could be rectified by the writ petitioner.

The ECL was not obliged to notify the petitioner of such deficiency since non-submission of the Bid Securing Declaration would automatically invalidate the petitioner's bid thereby causing inconvenience to the TEC. It is also quite possible that the petitioner deliberately did not submit the BSD on a speculation that he may not want to carry out the tender work even if awarded.

In those circumstances, this Court does not find any reason to interfere with the impugned orders. The last ground urged by the petitioner is that the successful bidder L-2 was allowed to modify its bid cannot equally be subsisted.

It is now well-settled that a successful bidder cannot be negotiated with by the employer.

In those circumstances, the writ petition must fail and is hereby dismissed.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)