

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 26006 of 2021

M/s Hotel Silver Moon

.....

Petitioner

Mr. S. Tibrewal, Adv.

Vs.

State of Odisha and others

.....

Opposite parties

Mr. P.P. Mohanty, AGA

Mr. S. Udgata, Adv. [O.P.No.2&3]

Mr. A.P. Bose, Adv. [O.Ps. No. 4,5,6,7 & 8]

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

14.07.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Tibrewal, learned Counsel for the Petitioner; Mr. P.P. Mohanty, learned Addl. Government Advocate for the State-Opposite Parties; Mr. S. Udgata, learned Counsel for Opposite Party Nos. 2 and 3; and Mr. A.P. Bose, learned Counsel for Opposite Parties No.4,5,6,7 and 8.

3. The Petitioner has filed this Writ Petition seeking to quash the tender process of selection and to issue direction to the Opposite Parties to resurrect the tender process in a fair and transparent manner by allowing the Petitioner and other eligible bidders to participate in the process of tender.

4. Mr. S. Tibrewal, learned Counsel for the Petitioner contended that though the Petitioner has satisfied the requirement of the tender document, but it was not selected for the purpose of awarding the tender. It is further contended that as per the condition stipulated in Clause-3 of the tender document, which provides that minimum annual turn over of bidder should be Rs.50 lakhs (fifty lakhs) supported by audited or CA certified statement of accounts any of last three financial years (2017-

2018, 2018-2019, 2019-2020), the Petitioner produced all the documents certified by the CAs for the aforesaid years, which are placed on record at pages-58 to 60 of the Writ Petition. Therefore, there is no valid and justifiable reason to reject the technical bid of the Petitioner. It is further contended that the Petitioner also produced the turnover certificate to indicate that it has turn over of more than Rs.52,37,459/-, thereby, the petitioner has satisfied the requirement as per Clause-3 of the tender document. It is further contended that in the Counter Affidavit filed by the Opposite Parties, it has been specifically pleaded that since the Petitioner has not satisfied the minimum eligibility condition, i.e., annual turn over of Rs.50 lakhs supported by audited or CA certified statement of accounts of any of the three financial years and, thereby, its bid has been cancelled. As a matter of fact, Petitioner has satisfied the requirement as per Clause-3 of the tender document and, therefore, there is no valid and justifiable reason to reject the technical bid of the Petitioner.

5. Mr. S. Udgata, learned Counsel for Opposite Party Nos. 2 and 3 vehemently contended that since the Petitioner has not satisfied the eligibility criteria as per Clause-3 of the tender document, which provides that minimum annual turn over of bidder should be Rs.50 lakhs (fifty lakhs) supported by audited or CA certified statement of accounts any of last three financial years (2017-2018, 2018-2019, 2019-2020), the petitioner was technically disqualified. More so, while evaluation was made, the representative of the Petitioner was present and, as such, he had not raised any objection at that point of time, rather the representative of the Petitioner was a signatory to the evaluation made by the Authority. Therefore, the Petitioner having not satisfied the requirement, its bid has been cancelled.

6. At this point of time, Mr. S. Tibrewal, learned Counsel for the Petitioner, contended that everywhere tick mark has been given in

Annexure-B/2, but the Authority while opening the technical bid has not uttered anything about the documents not being in format. As such, the technical bids were opened and the signature of the representative were taken on the attendance sheet, but with regard to notifying about the documents being improper, no such information was given to the representative of the Petitioner. Mr. S. Udgata, learned Counsel for Opposite Party Nos. 2 and 3 disputed such contention and contended that if the Petitioner raised such an objection, then it becomes a disputed question of fact, which cannot be redressed by this Court in exercise of powers under Articles 226 and 227 of Constitution of India.

7. Having heard learned Counsel for the parties and after going through the records, this Court finds that pursuant to the tender invited by Opposite Parties Nos.2 and 3 for “Catering and Housekeeping at Veer Surendra Sai University of Technology (VSSUT) Hall of Residences, Burla”, the Petitioner along with others participated in the process of tender and, as such, the Petitioner produced the documents of Trading and Profit and Loss Accounts of the years 2017-18, 2018-19 and 2019-20, endorsed by the Chartered Accountant. But nowhere the said documents indicate that annual turn over of the bidder is Rs.50 lakhs and, as such, the same were produced before the Opposite Parties without supported or audited by CAs by giving statement that turn over was Rs.50 lakhs. Therefore, mere producing the Profit and Loss Account without duly certified by the CA, that itself cannot satisfy the requirement of the bid itself. More so, the Petitioner participated in the process of technical bid knowing fully well that it was not technically qualified because of non-furnishing of required information as per the tender. Furthermore, endorsement has been made that the certificate produced by the Petitioner was not in format, as a result of which it was disqualified from the technical bid. More so, having satisfied with the result of technical

evaluation, the representative of the Petitioner has put his signature. Therefore, subsequently, the Petitioner cannot take a different stand and challenge the tender process,, particularly when the Petitioner has not satisfied the requirement of tender by producing documents showing minimum annual turn over of Rs.50 lakhs supported by audited or CA certified statement of accounts of any of the last three years, as mentioned above.

8. In course of hearing, this Court called upon learned Counsel appearing for the Petitioner to substantiate as to whether the documents, which were supplied by the Petitioner, satisfy the requirement of Clause-3 of the Eligibility Criteria by giving a certificate of annual turn over of Rs.50 lakhs supported by audited or CA certified statement of accounts, he candidly admitted that no such certificate was filed along with the documents before the Tendering Authority.

9. In the above view of the matter, this Court does not find any merit in the Writ Petition, which is accordingly dismissed.

10. Accordingly, the Interim Order passed on 03.09.2021 in I.A. No. 12070 of 2021 stands vacated.

(DR. B.R. SARANGI)
JUDGE

Ashok/PCD

(S.K. MISHRA)
JUDGE