23.02.2024
Item No.25
RP/AN
Ct. No.1

MAT 93 of 2024
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IA No.CAN 1 of 2024

Mandeepa Enterprise
Vs.
The State of West Bengal & Ors.

Mr. Sumeet Gadodia
Mr. Avra Mazumder
Mr. Kausheyo Roy
Mr. Suman Bhowmick
Ms. Alisha Das
Mr. Samrat Das
.....for the Appellant
Sk. Md. Galib
Mr. Tanay Chakraborty
Ms. Sujata Mukherjee
.....for the State

1. This intra-Court appeal by the writ petitioner is directed against the order dated 3rd January, 2024 passed in WPA 29001 of 2023. In the said writ petition the appellant had challenged the order passed by the respondent dated 20th December, 2023 informing the appellant that their request for correction of financial bid as submitted against the tender, which was invited by the respondent is not possible to be entertained in order to keep the sanctity of the tender formalities for such e-Procurement system of tendering. The learned Single Bench had dismissed the writ petition and aggrieved by the same the present appeal has been filed.

2. We have heard the learned advocate for the parties and carefully considered the materials placed on record. Before we proceed to examine whether the learned Single Bench was right in dismissing the writ petition we need to point out that in two paragraphs of the impugned order there is a clear indication that the learned writ Court was partially convinced with the case of the appellant. Those paragraphs are paragraph nos.6 and 7 which are quoted hereinbelow.

"6. A perusal of the documents handed over and annexed to the writ petition clearly shows that it would be absurd for the petitioner to have quoted the amount which it did.

7. Whereas the annual potential collection was clearly indicated to be Rs.21.60 crore and the bid amount Rs.25 lakh, no bidder in its senses could have quoted Rs.9,72,999/- as the bid amount for the entire period of 1095 days. However, the fact remains that the mistake of the petitioner, although costly, was after all a mistake and found place in the bid of the petitioner."

3. As could be seen from the above observation the learned writ Court was of the view that the appellant could not have quoted such a marginal amount for such a huge tender and if the same is to be accepted it would be an absurd proposition.

Furthermore, the learned writ Court also opined that the mistake of the appellant, although costly, was after all a mistake and found placed in the bid of the petitioner. For such observation as fell from the learned writ Court the writ petition should be dismissed. The question would be as to whether the contention raised by the appellant with regard to BOQ submitted by them would merit consideration.

4. The tender was for certain work for a period of 1095 days and the annual potential collection was Rs.21.60 crores. The intending bidder was to furnish the EMD/bid security of Rs.25 lakh. Admittedly, the appellant complied with the same and submitted his bid. While submitting the bid the appellant had mentioned the amount as Rs.9,72,999/-. Subsequently, the appellant realized the mistake and submitted an affidavit along with their letter dated 13th December, 2023 whereby they declared and affirmed that Rs.9,72,999/- in BOQ is per day and the same shall apply while converting the rate in three years i.e. Rs.106,54,33,905/- for 1095 days. Further, in the affidavit it has been requested to the tender inviting authority to treat the quoted amount of BOQ is a typographical error (instead of 1095 days it has been quoted per day) as many PWD West

Bengal Tenders sought figures on per day basis. Therefore, the appellant submitted that the uploaded BOQ amount of Rs.9,72,999/- should be read as Rs.106,54,33,905/-. As on date the financial bids have been opened and it appears to be not in dispute that difference between the amount of BOQ quoted by the appellant and the next highest BOQ is Rs.16 crore. Therefore, even looking the case from the said angle the tender inviting authority was bound to benefit by processing the tender submitted by the appellant as the difference between the amount quoted by the appellant as per the affidavit dated 13th December, 2023 is Rs.16/- crore more than the highest bid amount which has been offered by the other bidders. The question would be whether such correction is permissible.

5. Learned government counsel appearing for the respondent would vehemently contend that such correction cannot be permitted and it will affect the sanctity of the entire tender process. Further, it is contended that Clause 4(g) of the tender condition clearly states that any change in template of BOQ will not be accepted under any circumstances. Thus, it is to be examined as to whether the tender document provides for any discretion to the tender inviting authority, specially in matters where such

prayers have to be considered whether to be accepted or not. Instructions to the bidders which forms part of the notice tender document gives a clear picture. Clause 5 of the Instructions to Bidders deals with participation in one or more than one work. Under the said clause there are three sub-clauses, namely, (a) technical proposal, (b) Bid evaluation, (c) financial proposal. Sub-clause (v) of clause 5 reads as follows:-

"While evaluation the Notice Inviting Authority may summon of the bids and seek clarification/information or additional supporting documents or original hard copies against any of the documents only, which are already submitted/uploaded in the web portal & if these are not produced by the intending Bidders within the stipulated time frame, their proposals will be liable for rejection."

The above clause states that while evaluating the Bids, the Notice Inviting Authority may summon of the bids and seek clarification/information or additional supporting documents or original hard copies against any of the documents only, which are already submitted/uploaded in the web portal & if these are not produced by the intending Bidders within the stipulated time frame, their proposals will be liable to be rejected.

6) The learned advocate for the respondent submits that the said clause would apply only with regard to the technical proposal and not at the financial bid stage. However, we are not persuaded to accept the said submission as Clause 5 as noted above uses the term evaluation and it gives individual leverage to the Notice Inviting Authority to cause summon of the bids and seek clarification/information. Therefore, the Tender Inviting Authority was fully competent to take note of the affidavit filed by the appellant dated 13th December, 2023 wherein they have stated that inadvertent mistake had occurred and the quote per day has to be multiplied by 1095 days. The question is whether the Tender Inviting Authority would be entitled to do so. On this point we are guided by the decisions of various High Courts as well as Supreme Court. The first of such decisions is in the case of Supreme Infrastructure India Limited vs. Rail Vikas Nigam Limited & Anr. reported on 2012 SCC OnLine Del 6176. In the said case also there was also a typographical mistake which had crept in and the bid document had inadvertently filed in the figure “Rs.2820” both in figures and words and the error was explained by pointing that the estimated quantity of this item as mentioned in BOQ form was 2820 M.T. The

Court considered as to whether this error could be permitted to be rectified. In fact, in the said tender document also there is a clarification clause which is more or less identical as Clause 5 of the subject tender as noted above. The Court after elaborately considered the submissions and taking note of the decision of the Hon'ble Supreme Court held that an arithmetical error would mean an error in carrying out the arithmetic exercise of addition/substraction/multiplication or division and where the base figures/numbers on which such arithmetical exercise is carried out are correctly inscribed/typed. Further, it has been held that if the action of the respondent therein were to be sustained the public exchequer would be poorer by Rs.7 crores since the price quoted by the petitioner therein, who was otherwise found to be technically qualified was lowered by the said amount.

6. In the case of Hooghly River Bridge Commissioner & Ors. vs. M/s. MEP Infrastructure Development Pvt. Ltd. reported in 2013 SCC OnLine Cal 7273 it was contended that that mistake committed while submitting the tender document was an inadvertent mistake in mentioning the upfront installment for the first years. The Court after taking into consideration the fact situation held

that the decision of the Tender Inviting Authority therein cannot be said to be fair and just satisfying the requirement of Article 14 of the Constitution of India.

7. In M/s. Darapur Filling Station vs. Indian Oil Corporation Limited & anr. reported in 2010 SCC OnLine P&H 173 the facts therein are more or less identical to the facts of the case on hand where the rate quoted at Rs.66.60 was mentioned as per KM where it should be per KL. The Court found that it cannot be disputed that the rate of Rs.66.60 cannot be disputed that the rate of Rs.66.60 could never be understood as per KM by any sensible person and in any event the rate could only be Rs.66.60 per KL as explained by the petitioner therein. This mistake is unintentional. Thus, in the light of the above undisputed factual position we are of the considered view that the Tender Inviting Authority had sufficient leverage and play in the joints to seek for any clarification or information during the entire evaluation process and sub-clause (b) of clause 5 of the Instruction to Bidders is not restricted to the stage of evaluation of the technical bid along but it encompasses the evaluation of the entire tender right from the stage of inception till the issuance of work order. This interpretation is proper interpretation that should

be given to the said clause or else it would put shackles on the right of the Tender Inviting Authority. The explanation offered by the appellant is acceptable and the appellant's offer is Rs.16 crore over and above the highest offer which is now come to the light after the financial bid has been opened.

8. For the above reasons, the appeal is allowed and order passed in the writ petition is set aside and the writ petition is allowed and the respondents are directed to evaluate the appellant's BOQ by taking the amount of Rs.106,54,33,905/- for the period of 1095 days as called for in the tender notification.

9. Since admittedly the affidavit for correction of the bid document was submitted after opening the financial bid, this Court feels that an opportunity is to be granted to other bidders to match the price quoted by the writ petitioner. The Tender Inviting Authority shall call upon all the bidders who were found to be technically qualified including the petitioner and after evaluating the bids of all such bidders and after giving opportunity to the other bidders, who are found technically qualified, to match the corrected figures quoted by the writ petitioner shall take a final decision with regard to award of the contract in question.

10. With the above observations and directions, the appeal stands allowed and the connected application stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)