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08.04.2024
Mb

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 2391 of 2024
with
W.P.A. No. 2395 of 2024

Bright Security Services
Vs.
The State of West Bengal & Ors.

Mr. S.P. Lahiri,
Mr. Rajesh Naskar
... for the petitioner

Mr. Pantu Deb Roy,
Mr. Jaladhi Das
...for the State in
WPA No. 2391 of 2024

Mr. Amal Kumar Sen,
Mr. Lal Mohan Basu
...for the State in
WPA No. 2395 of 2024

Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh
...for the SBSTC

1. Learned counsel for the petitioner contends that in the impugned tender processes (where the petitioner came out as a successful bidder at the technical evaluation stage), without notifying the date of opening of financial bid as contemplated in the tender document itself, the respondent-authorities opened the financial bid without prior publication.

2. That apart, it transpires that the work order itself was issued before the opening of the financial bid, since according to the petitioner, the opening of the financial bid was notified to the petitioner for the first time on January 31, 2024, which, according to learned counsel for the petitioner, is evident from the communication dated January 31, 2024 with regard to the rejection of the petitioner's financial evaluation bid.

3. Thirdly, it is argued that the standards adopted by the respondent-authorities, that is, the SBSTC (South Bengal State Transport Corporation), are double standards. In pursuance of the terms of the tender document, the petitioner was justified in putting in bids without the GST component. Learned counsel places particular reliance on Clause 3.15 of the tender document and other provisions of the said document to substantiate his argument. By placing reliance on the minutes of a pre-bid meeting held between the bidders and the respondent-authorities, it is sought to be highlighted that the TDS component was to the shown alternatively, either for GST or IT (Income Tax). Since the petitioner chose to include the IT component in the TDS included

in the bid, the petitioner was otherwise eligible for the financial bid. On the other hand, as admitted in the affidavit-in-opposition of the respondent nos. 2 and 3, there was no disclosure of the TDS component, either regarding GST or IT, in the bid submitted by the private respondent, who has been issued the work order.

4. Moreover, learned counsel for the petitioner argues that the private respondent submitted absurdly low quotes, for example, showing the commission in respect of labour as ten paise per month.

5. It is sought to be highlighted that the petitioner previously had to terminate his existing contract with the respondent-authorities on similar ground, since pressure was being exerted by the private respondent at that juncture, by quoting absurdly low amounts, which compelled the petitioner, not being able to match such absurd quotes, to prematurely terminate such contract.

6. It is indicated that such premature termination may be one of the grounds for rejection of the petitioner's financial bid.

7. Learned counsel appearing for the Tender Issuing Authorities seeks to justify the action of

the authorities. It is argued that as evident from the publication of the technical evaluation, the self-same date as opening of the technical bids was fixed also for opening of the financial bids. By placing reliance on the Technical Bid Evaluation Summary dated November 17, 2023, it is contended that the date for opening of both the technical and financial bids was November 17, 2023. Learned counsel also places reliance on correspondence dated December 04, 2023 from the end of the petitioner, annexed at page 27 of the affidavit-in-opposition, to argue that the petitioner was well aware of such date and should not complain of the same.

8. Learned counsel for the Tender Inviting Authorities next argues that it was evident from the pre-bid meeting that the agreed position between all the stakeholders was that the TDS component, both for GST as well as IT, were to be shown in the bid documents.

9. It is, thus, argued that the petitioner cannot resile from such position and contend that only IT component would suffice.

10. Insofar as the argument of the petitioner that the private respondent's bid did not include either of the GST or IT components in its TDS,

learned counsel for the Tender Inviting Authorities submits that in view of none of the bidders having fulfilled the tender conditions and being compelled due to sudden termination of the petitioner's prior contract at his behest, the Tender Inviting Authorities were left with no alternative but to choose the private respondent in view of the private respondent having given the lowest financial bid, as floating a fresh tender would stall the vital public service contemplated under the tender. It is, in fact, pointed out from the averments made in the affidavit-in-opposition that due to the abnormally low rates quoted by the private respondent, the Tender Inviting Authorities gave him an opportunity to explain, upon which it was clarified by the private respondent that since the private respondent was earning from other work orders, he would be able to bear the loss suffered due to such low rates.

11. Heard learned counsel for the parties.

12. Insofar as the date of opening of the financial bid is concerned, the petitioner is justified in contending that there was substantial irregularity, as the Tender Inviting Authorities was duty-bound under Clause 3.5 of the tender document itself to inform beforehand the date

of opening of the financial bid. Surprisingly, in the present case, whereas the technical bid evaluation summary was uploaded on the scheduled date, that is, on November 17, 2023 at 3.58 p.m., barely two minutes after, the financial bid was also opened, thereby making the requirement of prior declaration of the date of opening of financial bid a farce.

13. That apart, there are other palpable irregularities in the present case.

14. Even if the interpretation sought to be lent by the Tender Inviting Authorities is to be given to the pre-bid minutes, the bidders had to necessarily show the TDS component for both GST as well Income Tax.

15. However, admittedly, none of the bidders had shown such components in their bids. Rather, the petitioner and another bidder had admittedly given at least the TDS component for IT, which was not given by the private respondent at all.

16. It is evident, in any event, if such interpretation is to be given to the pre-bid meeting minutes, none of the bidders would qualify even *ab initio*.

17. There is, however, substance in the contention of the respondent-authorities that the interpretation lent by the Tender Inviting

Authorities is of paramount importance in interpreting tender clauses. Although the petitioner argues that the clause in the pre-bid meeting regarding both GST and IT to be incorporated is contrary to Clause 3.15 of the tender document, the two are not entirely irreconcilable insofar as the pre-bid meeting was held prior to the bids being submitted and, as such, it cannot be said that there was a proverbial shifting of goal posts after the game had begun. Since all the participants, including the petitioner, were well aware of the incorporation of the requirement to include TDS including GST and IT before submission of the bids, it cannot be said that there was any discrimination on such score between the respective bidders.

18. However, even if such interpretation is lent to the pre-bid meeting and the conditions incorporated thereby into the tender document, none of the participants/bidders qualified on the ground that they did not disclose the GST component in their bids. Hence, the only recourse open to the Tender Inviting Authority was to cancel the entire tender process and to hold the entire tender process afresh.

19. The justification for accepting the bid of the private respondent sought to be offered by the respondent-authorities, that it was the lowest financial bidder, is not sufficient, since it was ineligible in the first place, on more counts than the writ petitioner.

20. Also, the justification for the abnormally low bid of the private respondent, that it earned sufficiently from other works, is not satisfactory, since it might result in cutting corners regarding payments to labourers and compromising on the quality of the public work envisaged under the tender.

21. Another component is required to be discussed here before parting with the matter. The Tender Inviting Authorities, admittedly, cite as a source of inconvenience and the reason for calling the present tender the petitioner's calling of the previous contract with him. However, although in its affidavit-in-opposition the Tender Inviting Authorities had disclosed the last letter whereby the petitioner parted ways with the Tender Inviting Authorities, in the affidavit-in-reply, the petitioner has disclosed previous communications, which were referred to in its parting letter. From the said documents, it is clearly seen that the petitioner might have had

justification for so parting, citing unequal treatment between the petitioner and the private respondent, who was vying for the same work and was prepared to quote absurdly low rates.

22. Thus, if the termination of the previous contract by the petitioner is to be cited as a reason of inconvenience of the Tender inviting Authorities, the said Authorities ought to have given an opportunity to the petitioner to justify his stance.

23. Having not done so and it being stressed upon by the Tender Inviting Authorities that the petitioner's conduct was a reason for floating the tender, the possibility of mala fides in the thinking process of the respondent-authorities cannot be ruled out insofar as the petitioner is concerned.

24. In any event, the said ground is not one of the valid grounds of ineligibility for the present tender under the tender terms, particularly since the petitioner was allowed to participate in the present tender and crossed the hurdle of the technical stage successfully.

25. The illegality was palpable inasmuch as despite none of the bidders having qualified even as per the respondents' interpretation of the tender

conditions, one of them, that is, the private respondent, was specially favoured by the Tender Inviting Authorities.

26. Accordingly, WPA No. 2391 of 2024 along with WPA No. 2395 of 2024 are allowed on contest, thereby setting aside the entire process of the tenders which have been impugned herein and quashing all consequential actions taken pursuant thereto, including the issuance of work order pursuant thereto in favour of the private respondent.

27. Since the respondent authorities have sought some breathing space as, otherwise, the entire public work contemplated under the tender would halt immediately, the respondent nos. 2 and 3 are directed to take immediate steps to float fresh tenders for the works as contemplated under the quashed tenders at the earliest.

28. Tender notice(s) in respect of the fresh tenders shall be issued by the respondent authorities within a week from date. Thereafter, the tender processes shall be concluded within a month thereafter.

29. It is made clear that the respondent nos. 2 and 3 shall ensure, in the light of the above observations, that this time the tender clauses

are clear inasmuch as the requirements to be met by the bidders is concerned and it is expected that the respondent nos. 2 and 3 shall also ensure that the process of the entire tenders and grant of work order pursuant thereto is transparent, leaving no manner of any apprehension in the mind of any of the participants.

30. It is made clear that it will be open to the petitioner as well as the other bidders who were successful at the technical evaluation stage of the present impugned tenders, if they so choose, to institute suits for damages against the respondent-authorities.

31. However, I desist from commenting on the merits of such course of action, if chosen by any of the said participants and it will be open to the competent civil court, if so instituted, to decide the suits on their own merits.

32. Till the new tenders to be floated by the respondent-authorities culminate in issuance of work orders, the existing contractor, who was chosen in terms of the quashed tenders, shall continue the work on an ad hoc basis, which shall not confer on the said respondent any legal right whatsoever.

33. There will be no order as to costs.

34. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)