



\$~78

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9566/2024**

NAVANSH ENGINEERS AND CONSULTANTSPetitioner

Through: **Mr. Somnath Bhattacharya, Advocate.**

versus

UNION OF INDIA & ORS.Respondents

Through: **Mr. Rakesh Kumar, CGSC with Mr. Sunil for UOI.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **15.07.2024**

1. The present petition assails the order dated 14th August, 2023,¹ passed by Respondent No. 3 whereby the Earnest Money Deposit ² amounting to INR 98,000/- deposited by the Petitioner, was forfeited despite cancellation of the tender bid by Respondent No. 3.

2. The brief background leading to the filing of the present petition is as follows:

2.1. The Petitioner, an enlisted contractor of the Ministry of Defence, participated in tender bearing tender ID No. 2022_MES_560630_1 of INR 49,00,000/- wherein Petitioner was declared as the lowest bidder.³

2.2. During the scrutiny of the said tender, Respondent No. 3 noticed that certain items were quoted '*freakishly high*' by the Petitioner. In such

¹ "impugned order"

² "EMD"

³ "L-1 bidder"



circumstances, Petitioner was called upon to reduce the quoted rates through communication dated 22nd December, 2022. However, Petitioner revoked its bid through letter dated 26th December, 2022 as it was not possible for them to revise the rates as requested by Respondent No. 3.

2.3. Considering the fact that Petitioner had withdrawn their bid, as per the terms and conditions of the Notice Inviting Tender,⁴ 2% of the NIT amount i.e., INR 98,000/- was imposed as a penalty on the Petitioner. Accordingly, on 17th January, 2023, the Petitioner deposited the said amount through submission of Military Receivable Order.

2.4. Subsequently, the first tender was scrapped, and on 30th January, 2023, the same tender was floated again under tender ID No. 2022_MES_560630_2 in which the Petitioner could not participate as they were not eligible as per the policy of Respondent No. 3. However, this tender was also was withdrawn on account of administrative reasons and regrouping various works that led to reduction of Technical Sanctioned amount from INR 49,00,000/- to INR 40,00,000/-.

2.5. This led to third tender being floated bearing tender ID No. 2022_MES_560630_3, with the tendered cost being reduced by INR 9,00,000/- on account of deletion of certain items from the scope of work.

2.6. Petitioner participated in the third tender but the same was rejected by Respondent No. 3 on the ground that the Petitioner's bid was revoked in the first call for NIT.

2.7. Aggrieved from the rejection of their bid, the Petitioner filed an appeal to Respondent No. 2 and, on 22nd March, 2023, the said Respondent directed Respondent No. 3 to cancel the tender bearing tender ID No.

⁴ "NIT"



2022_MES_560630_3 and upload the same with a new tender ID for fair and healthy competition.

2.8. In terms of the said order, the Petitioner requested Respondent No. 3 for a refund of his EMD amount of INR 98,000/- to which the said Respondent stated that the said amount was deposited by the Petitioner with respect to penalty for revocation of bid with respect to the NIT amount in the first call for NIT and, therefore, the said amount is not refundable.

2.9. In light of the given circumstances, the present petition was filed seeking following reliefs:

“(i) issue writ of certiorari, or any other writ, order or direction quashing the impugned order dated 14.08.2023 (Annexure-P-1) issued by the respondent No.3 AND CONSEQUENTLY and to release forfeited EMD amounting of Rs.98000/- to the petitioner firm with interest @15% consequential benefits for loss to business due to withheld of EMD.”

3. Against the above backdrop, counsel for the Petitioner submits the following:

3.1. The scope of work under the first tender bearing tender ID No. 2022_MES_560630_1 was bifurcated into two different tenders bearing tender ID 2022_MES_560630_3 and 2023_MES_579357_1, which proves that there is deviation and breach of the conditions by Respondent No. 3.

3.2. In light of the order passed by Respondent No. 2, no changes can be made in a tender which has been re-tendered due to revocation of the previous tender and, if for any reason the change in the tender is unavoidable, then the said tender must first be cancelled and fresh tendering process must be adopted.

3.3. Additionally, Respondent No. 3 is responsible for vitiating the tender process and, hence, the penalty imposed by the said Respondent, that too in



violation of the principles of natural justice by denying the opportunity of hearing, is unsustainable in law. Therefore, the penalty imposed by Respondent No. 3 is arbitrary and unreasonable.

4. The Court has considered the afore-noted facts and contentions.

5. It must be noted that on Petitioner's representation, Respondent No. 3 rejected the refund of Petitioner's penalty amount through the impugned order which reads as follows:

REGISTERED
Garrison Engineer (AF)
Military Engineer Services
Sohna Awar Road
Gurgaon-122001

14 Aug 2023

No.8158/GE/GUR-071 /EB

M/s Navansh Engineers & Consultants
D-35,1st Floor, Clock Tower,
Hari Nagar
New Delhi-110064

**CA NO. GE/GUR/NIT-50/2022-23 : REQUEST FOR
REFUND EMD AMOUNT RS. 98000/-**

Dear Sir(s),

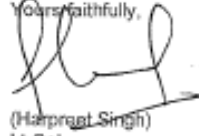
1. Reference your letter No NV/refund/NIT-50/22-23 dt 23 Jun 2023 and NV/ref/50/Ram /22-23 dt 25 Jul 2023.

2. Tender for the subject NIT-50 (Tender ID : 2022_MES_560630_1) was opened on 12 Dec 2022. M/s Navansh Engineers & Consultants was lowest bidder (L1). During scrutiny of the tender it was noticed that 05 Nos items were quoted freakishly high by L1. The same was referred to you to reduce your quoted rates vide this office letter No 8157/GE/GUR-/NIT-50/17/EB dt 22 Dec 2022. Meanwhile you (i.e. lowest tenderer M/s Navansh Engineers & Consultants) revoked your bid vide letter No NV/APP/GUR-50/Revoked/22-23 dt 26 Dec 2022. On the request by you, the tender was revoked & retendered. Penalty amount @ 2% of NIT amount to wards revocation of tender was intimated by the Department as per policy in vogue and deposited by you.

3. Further, you have appealed to HQ CWE (AF) Gurgaon against the rejection of Bid in respect of tender ID : 2022_MES_560630_3 vide your letter No NV/APPE/GUR-50/22-23 dt 03 Mar 2023.

4. As per directions of HQ CWE (AF) Gurgaon, tender was uploaded with new tender ID : 2023_MES_587526_1 in which you have also participated.

5. In view of above it is submitted that penalty amount for Rs. 98,000.00 deposited by you against revocation of bid with respect to NIT amount in 1st call. Further actions post revocation is not related with penalty amount. Therefore, EMD amount is not refundable. Directions for the same have been received by HQ CWE (AF) Gurgaon.

Yours faithfully,

(Harpreet Singh)
Lt Col
Garrison Engineer

6. As can be seen from the above, the imposition of penalty of INR



98,000/- on Petitioner was against the revocation of the bid with respect to the first call for NIT. Therefore, the further actions of floating the second and third tenders are post-revocation of the first call for NIT, are not related to the penalty imposed.

7. Since the Petitioner violated the terms of the first call for NIT, imposition of penalty was, therefore, in accordance with terms of the said NIT. In fact, the challenge through this petition is not on account of any violation of the terms of the NIT, but it is premised on further tendering processes to indicate arbitrariness in the action of Respondent No. 3. This, in the opinion of the Court, is not related to imposition of penalty and, therefore, the EMD cannot be refunded under the present proceedings.

8. In light of the above, there is no merit in the present petition and the same is dismissed.

SANJEEV NARULA, J

JULY 15, 2024
d.negi