Court No. - 2

Case :- WRIT - C No. 122 of 2024

Petitioner :- M/S Patel Infrastructure Ltd. Thru. Its Authorized Representative Mr. Sushant Singh And Another
Respondent :- Union Of India Ministry Of Railway, Thru. Secy. Railway Board New Delhi And 3 Others
Counsel for Petitioner :- Mudit Agarwal
Counsel for Respondent :- A.S.G.I.

Hon'ble Vivek Chaudhary,J.
Hon'ble Om Prakash Shukla,J.

Supplementary Affidavits filed by learned counsel for the petitioners are taken on record.

Heard Sri Jaideep Narain Mathur, learned Senior Advocate assisted by Sri Mudit Agarwal and Sri Tarun Dua, learned counsel for the petitioners and Sri S.B.Pandey, learned Senior Advocate and D.S.G.I. assisted by Sri Varun Pandey, learned counsel for the respondents/Union of India.

Petitioners have approached this Court challenging the order dated 01.01.2024 whereby the technical bid of petitioner is rejected.

In the instant case set up by the petitioners, there are only two grounds; namely, (1) That there is deficiency in the stamp duty in the Bank guarantee submitted by the petitioners and; (2) that the Bank guarantee is not submitted within the time prescribed by the tender conditions.

At the stage of hearing of petition, Sri S.B. Pandey, learned Senior Advocate, learned counsel for the respondents, on written instructions, submitted that so far as the deficiency of stamp duty, is concerned, the said ground is not being pressed against the petitioners and now only the second ground remains against the petitioners that they have not submitted the original Bank guarantee within the prescribed time. The relevant clause reads as follows:-

"Sr.DEN/Co./LJN acting for and on behalf of the President of India invites E-Tenders against Tender No.NER-LJN-2023-172 Closing Date/Time 11/09/2023 15:00 Hrs. Bidders will be able to submit their original/revised bids upto closing date and time only. Manual offers are not allowed against this tender, and any

such manual offer received shall be ignored."

Initially, the tender closing dated was 11.09.2023 15:00 hrs, the same was extended by corrigendum to 18.09.2023 15:00 hrs. Clause (6) (3) (II) further provides that:-

"II The original Bank Guarantee should be delivered in person to the official nominated as indicated in the Tender document within 5 working days before closing date for submission of bid."

The said clause was also repeated in the general conditions of the Tender at Clause 5 (3) (ii) that the original Bank Guarantee should be delivered in person to the official nominated as indicated in the tender document "*within 5 working days before closing date for submission of bids.*"

Petitioners raised a query inquiring the details with regard for submission of the original bid documents; requesting that;

"We presume that due date at present is 11/09/2023 15:00 hrs. accordingly bid security can be submitted from 07/09/2023 to 11/09/2023 15:00 hrs, please confirm."

A reply to the same was given only stating "Date of opening is extended upto 18.09.2023." The aforesaid clearly indicates that the interpretation as given by the petitioners in the clarification note was accepted and it was clarified that date now modified and extended from 11.09.2023 to 18.09.2023 .

The very language itself is very clear that the original Bank Guarantee was to be delivered in person within 5 working days before the closing date of submission of bids, which was 18.09.2023.

Admittedly, the petitioners' Bank Guarantee was submitted before 15.00 hrs on 18.09.2023, the same falls within 5 working days before 18.09.2023 and also the time provided in the tender. Thus, there is no illegality in the submission of the original Bank Guarantee by the petitioners. The said ground is wrongly taken by the respondents in rejecting the technical bid of the petitioners.

In view thereof, the order dated 01.01.2024, rejecting the bid of petitioners, thus, cannot stand is hereby set aside.

Sri S.B. Pandey, learned counsel for the respondents states that the financial bids are already opened but the tender is not yet finalized.

The respondents are directed also to consider the bid of the petitioners as technically qualified while considering the financial bids with regard to the tender concerned along with other qualified competitors. The financial bid of the petitioner shall also be opened and considered along with remaining other qualified bidders

The writ petition is allowed.

(Om Prakash Shukla,J.) **(Vivek Chaudhary,J.)**

Order Date :- 12.1.2024
Arjun/-