IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C). No. 10 of 2024

M/s Vijay Bahadur Thapa Security Agency   ..... Petitioner

Versus

1. Central Mine Planning & Design Institute Limited (CMPDI) through General Manager (CMC) Ranchi, Jharkhand.
2. Union of India through Chief Executive Officer, Government E Market Place, New Delhi
3. C.D.O. Securities and Public Helpline Service through its Managing Director   ..... Respondents

----

CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner   : Mr. Anup Kumar Agrawal, Adv.
For the Respondents   : Mr. A.K. Mehta, Adv.

3/23.01.2024   Heard Mr. Anup Kumar Agrawal learned counsel for the petitioner and Mr. Anup Kumar Mehta learned counsel for the respondent.

2.   In this writ application the petitioner has prayed for quashing of the technical evaluation dated 15.12.2023 whereby the technical bid of the petitioner in Tender Reference No. CMPDI/CMC/2023-24/20 floated by CMPDI corresponding to Bid document having Bid No. GEM/2023/B/3933839 dated 08.09.2023 has been rejected as disqualified mentioning the reasons therein that the petitioner was not meeting the eligibility criteria specified in the Bid Clause as per details indicated in the comment. Further prayer has been made for a direction upon the respondents to consider the case of the petitioner as according to the petitioner he is duly qualified of participating in the tender floated by the respondents.

3.   It has been submitted by Mr. Anup Kumar Agrawal learned counsel appearing for the petitioner that the petitioner had submitted the bid document well within the time specified in the same and in-fact the petitioner had not uploaded the undertaking regarding financial standing for which the respondent could have taken recourse to clause 13.2 of the terms and conditions of the tender documents and within the time of 7 days to allow the petitioner to fulfill the shortcomings in not uploading the said documents. It has been submitted that admittedly the

petitioner was never informed about the shortcomings in his tender documents and as soon as the petitioner had come to know of the same the petitioner had uploaded the undertaking regarding his financial standing on 15.12.2023.

4. Mr. Anup Kumar Mehta, learned counsel appearing for the respondent-CMPDI has submitted that clause 13.2 of the terms and conditions of the tender document is subject to clause 13.6 which is with respect to clarification regarding the submitted documents/online information and since it was a pre-condition that the financial standing has to be uploaded along with the buyer added bid as a specific terms and condition and the petitioner having failed to do so, the technical bid of the petitioner was rejected. It is further been submitted that the bid end date was 29.09.2023 and admittedly the petitioner had not deposited the certificate with respect to his financial standing within the said date thereby obliterating his claim for his bid being considered by the respondent. It has also been submitted by Mr. Mehta that the tender process has been over and the respondent no.3 has been declared as L-1 and work order is likely to be issued to the respondent no. 3.

5. Briefly stated the facts reveal that the respondent No.1 had floated a tender for hiring of 122 Non Ex-Servicemen Security personnel for providing round the clock security cover at R1-V CMPDIL offices and establishments in the State of Chhatishgarh and Madya Pradesh vide tender reference No.CMPDI/CMC/2023-24/20. According to the petitioner it was fulfilling all the requisite criteria and accordingly had submitted the bid document. However, vide the technical evaluation dated 15.12.2023 the technical bid of the petitioner was rejected and the reasons which were assigned was that "Not meeting the eligibility criteria specified in Bid Clause as per details indicated in the comment" and the comments were mentioned as "the bidder has not submitted undertaking for bidder's financial standing as per clause 2 under STC".

6. In order to appreciate the contention of the learned counsels for the respective parties we have perused clause 13.2 of the terms and conditions of the tender document and which reads as under:

> "**13.2** *In case the Tender Committee finds that there is some deficiency in uploaded documents corresponding to the information furnished online or in case corresponding document have not been*

uploaded by bidder(s) then the same will be specified online by Evaluator clearly indicating the omissions/shortcomings in the uploaded documents and indicating start date and end date allowing 7 days (7 x 24 hours) time for online re-submission by bidder(s). The bidder(s) will get this information on their personalized dashboard under "Upload confirmatory document" link. Additionally, information shall also be sent by system generated email and SMS, but it will be the bidder's responsibility to check the updated status/information on their personalized dash board regularly after opening of bid. No separate communication will be required in this regard. Non-receipt of e-mail and SMS will not be accepted as a reason of non-submission of documents within prescribed time. The bidder(s) will upload the scanned copy of all those specified documents in support of the information/ declarations furnished by them online within the specified period of 7 days. No further clarification shall be sought from Bidder."

It is the claim of the petitioner that in case there were any shortcomings on the part of the petitioner to upload certain documents it was the bounden duty of the evaluator indicating such shortcomings in the uploaded documents and allowing a period of 7 days for online re-submission. This according to the learned counsel for the petitioner has not been followed by the respondent-CMPDI and without giving an opportunity to the petitioner to remove the shortcomings by uploading the necessary documents the technical bid of the petitioner was rejected. However, it appears that clause 13.2 is followed by the 13.6 which is relevant for the purpose as clause 13.6 is with respect to clarification which shall be restricted to confirmation of the submitted document/online information only and it should be only one time for a period of up to 7 days.

7. Relying on clause 13.6 of the terms and conditions of the tender rather Mr. Mehta has vehemently submitted that the sphere of clause 13.2 has been restricted by virtue of clause 13.6 as the same seeks clarification only with respect to the documents which have been submitted and not with respect to any shortcomings or any documents which have not been submitted by the bidder. It further appears from the specific terms and conditions that the bidder should upload an undertaking with the bid to the effect that the bidder should not be under liquidation or similar proceeding and should not be bankrupt. The buyer and its bid specific terms and condition at clause-1,

therefore clearly reveals that the bidder financial standing has to be uploaded along with bid documents and admittedly the said document was never uploaded with the bid documents by the petitioner and therefore merely taking recourse to clause 13.2 of the terms and conditions of the tender documents will not facilitate the claim of the petitioner, rather clause 13.2 as indicated above has to be read with the rider as contemplated in clause 13.6 of the terms and conditions of the tender documents as well as clause 1 of the buyer added bid specific terms and conditions. Therefore, it cannot be concluded that an illegality has been committed by the respondent-CMPDI in rejecting the technical bid of the petitioner on the ground of the shortcomings referred to in the same.

8. Apart from the above, it appears that the respondent no.3 has been declared as L-1 and the work order as submitted by Mr. Mehta is on the verge of being issued to him. We do not therefore, in the circumstances noted above, feel inclined to accede to the prayer made by the writ petitioner in this writ application and consequently this writ application stands dismissed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Fahim/Amardeep/