

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C). No. 1325 of 2017

Open National Social Service Tripura,
B. K. Road, Old Lifeline Hospital Building, 1st Floor, Agartala, West Tripura,
799001, represented by its President, Sri Ratan Acharjee

.....Petitioner

- VERSUS -

1. The Union of India,
represented by the Secretary, Ministry of Telecommunication & Board Casting,
New Delhi
2. Bharat Sanchar Nigam Ltd.,
a Govt. of India Enterprise, office of the General Manager B. S. N. L., Tripura SSA,
Agartala, represented by the General Manager
3. Asst. General Manager (P & A),
office of the G. M. T. D., BSNL, Agartala, 799001
4. Visual Securas and InfoTech Limited,
of Abhoynagar, Agartala, Tripura West, Nabin Thakur Lane Extension,
Abhoynagar, 799005, represented by Sri Nilkanta Sinha, Authorized Signatory &
Chief Executive Officer

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. Somik Deb, Advocate Mr. D. Datta, Advocate
For the respondents No. 1-3	: Mr. H. Deb, ASG Mr. B. Majumder, CGC
For the respondent No. 4	: Mr. P. Majumder, Advocate
Date of hearing & delivery of judgment and order	: 21.12.2017
Whether fit for reporting	: NO

Judgment and Order (Oral)

Heard Mr. Somik Deb, and Mr. D. Datta, learned counsel
appearing for the petitioner as well as Mr. H. Deb, learned ASG and Mr.
B. Majumder, learned CGC appearing for the respondents No. 1, 2 and 3
whereas Mr. P. Majumder, learned counsel appearing for the respondent
No. 4.

[2] By means of this writ petition, the petitioner who is a service provider in respect of sweeping, cleaning, carriage of garbage and management has challenged the work-order issued in favour of the respondent No.4. In response to the Notice Inviting Tender (NIT in short), issued by the respondent No. 2, the petitioner had filed his rate in order to get the work order for execution of the work called House Keeping and carriage of garbage of D. S. Bhavan, Kaman Chowmuhani & CSC North Gate, Agartala for two years from the date of determination of the contract.

[3] The petitioner has made a serious allegation that the private respondent No. 4, who has been favoured with the order, does not have the experience to succeed in the technical bid. For this purpose, the relevant clause in the E-Tender dated 24.08.2017 (**Annexure-C** to the writ petition) has been referred and hence is extracted hereunder:

“5A list of documents to be attached with the technical bid.

(i) The reputed firms/contractors should have the following documents. Original copy of experience certificate for satisfactory execution of House Keeping and Carriage of Garbage services in Central / State Govt. / PSU / BSNL / MTNL/DOT entity worth at least 30% of estimated cost during the last three financial years i.e. 2014-15, 2015-16 and 2016-17.

Note: The experience certificate for House Keeping and Carriage of Garbage Services should be signed by an officer not below the rank of the Divisional Engineer level or equivalent in BSNL/MTNL/DOT/Central/State Govt. /PSU.”

[4] According to the petitioner, the respondent No. 4 does not have any experience in the carriage of garbage etc. The petitioner by way of the notice dated 16.10.2017 (**Annexure-E** to the writ petition)

had pointed out the said deficiency of the respondent No. 4 in terms of Clause-5A-(I). But despite that, the work order has been issued in favour of the respondent No. 4.

[5] Mr. Somik Deb, learned counsel appearing for the petitioner has made reference to Para-3 of the reply filed by the respondents No. 1, 2 and 3, where they have contended that Clause-5A, as quoted above, is not the solitary determining factor to finalize the tender.

[6] Mr. Deb, learned counsel appearing for the petitioner has submitted on the basis of the said statement that the respondents No. 1, 2 and 3 have stated that Clause-5A is not the solitary determining factor, meaning the requirement of Clause-5A has been relaxed for the respondent No. 4. From the other side, Mr. Deb, learned ASG appearing for the respondents No. 1, 2 and 3 had placed his submission on 20.12.2017 and Mr. Majumder, learned CGC have submitted today that no averment has been made by the respondents No. 1, 2 and 3 to the effect that Clause-5A has been relaxed or it has been declared as the non-essential clause.

[7] Mr. Majumder, learned CGC appearing for the respondents No. 1, 2 and 3 has further submitted that from reading of the entire reply it would appear that purport and meaning of the said statement, appeared in Para-3 of the reply filed by the respondent No. 3, are that, Clause-5A is not the only clause based on which the tender is determined, there other determining factors to be satisfied to be

successful in the technical bid. After a comparative assessment of the rates, the best provider is selected by the respondents No. 1, 2 and 3 from the successful in the technical bid.

[8] Mr. Deb, learned ASG has raised the question of maintainability of the writ petition by contending that the petitioner does not have the qualification, even to compete the bidding process inasmuch as the petitioner lacks in the qualification as required by Clause-5A of the NIT. According to Mr. Deb, learned ASG, the petitioner did not execute any work worth of 30% of the estimated cost i.e. 20,00000/- per year.

[9] 30% of that estimated cost comes around 6.66 lakhs. From the documents, it transpires that the petitioner had executed work for Rs. 4,47,792/- under the respondent No. 1 and the petitioner has processed those documents for consideration. It is on the face of the record evinces that it is far below the required worth i.e. 6.66 lakhs.

[10] Mr. Somik Deb, learned counsel has laboured hard for the petitioner to convince this Court that the petitioner has that worth but this Court is not satisfied that the petitioner has that worth. When someone approaches this Court for *certiorari*, the first and for most thing that would be required that he must demonstrate before the Court at the very threshold that he has the eligibility of the fitness to have the consideration vis-a-vis the reliefs prayed. As this Court is of the opinion that the petitioner does not conform to the required qualification to be

considered as fit or to succeed in the technical bid, he cannot maintain this writ petition. Accordingly, the same is dismissed.

[11] Before parting, lot of apprehension have been expressed by the learned counsel appearing for the petitioner that some relaxations or some undue considerations are being made by the BSNL in determining the contract. It is directed that the BSNL shall strictly adhere to the conditions as laid down in the E-Tender, under reference for determining the tender. If it is not settled as yet an appropriate order in terms of this order shall be passed and uploaded in the website so that the every concerned person can see how the decision has been taken.

Having observed thus, this writ petition stands dismissed. There shall be no order as to costs. Interim order, if any, stands vacated.

JUDGE

A.Ghosh