

THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH,
AT JABALPUR

(DIVISION BENCH)

W.P. No. 25896 of 2021

Community Action Through
Motivation Program (CAMP)

.....Petitioner

Versus

State of M.P. and others

.....Respondents

Coram :

Hon'ble Mr. Justice Ravi Malimath, Chief Justice
Hon'ble Mr. Justice Vijay Kumar Shukla, Judge

Presence :

Shri Sanjay Agrawal, learned counsel for the petitioner.

Shri B.D. Singh, learned counsel for the respondent no. 2.

*Shri Naman Nagrath, learned Senior counsel with Shri Kabir Paul,
counsel for the respondent no. 3*

ORDER (Oral)

(10.12.2021)

Per : Ravi Malimath, Chief Justice

The case of the petitioner is that it is a non-profit professional organization operating in the Public-Private Partnership (PPP) mode. That the respondents called for a tender for operating the National Ambulance Services. That the respondent/State to achieve the objective of National Health Mission Scheme floated a tender through its e-portal website for selection of an agency for operation and management of the Integrated Referral Transport System (IRTS) and the 104- Health Helpline for National Health Mission (M.P.). The respondent no. 3 and two others bid for the same.

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The tender was awarded in favour of respondent no. 3. Questioning the same, the instant writ petition is filed.

2. The contention of the petitioner is that respondent no. 3 was not eligible to be awarded the tender. That he does not satisfy the basic requirements as called for in the tender. That he does not possess the basic qualifications. Even assuming that he possesses the basic qualifications, the relevant material in support of the bid were not furnished by him. The last date to furnish the bid was 4th October, 2021. Admittedly, certain documents were not filed within that date. They were filed much later. Therefore, the acceptance of the additional material produced by the respondent no. 3 and consideration of the same by the State by awarding him the tender is illegal and liable to be set aside. Hence, the instant petition seeking for a prayer to reject the technical bid of the respondent no. 3 and for a declaration to declare that the respondent no. 3 is not a successful bidder and on the contrary to declare that the petitioner is a successful bidder.

3. The respondent no. 2 filed objections disputing the plea. The respondent no. 3 supports the impugned order.

4. Heard learned counsels.

5. The learned counsel for the petitioner firstly contends that in terms of the tender document the same has specified the date before which the tender has to be filed. The same could be seen in terms of Annexure P/1 which would indicate that the last date for submission of the bid was 31.08.2021. However, by virtue of a corrigendum, the same was extended to 04.10.2021. He refers to various material produced by respondent no. 3 which would indicate that the documents were produced by him before the respondent no. 2

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on 28th October, 2021. Since the last date was 4th October, 2021 such document could not be accepted. He placed reliance on Clause 2.6.7 of the bid document, which reads as follows:-

“2.6.7. Bidders should note the Proposal Due Date, as specified in Notice of RFP, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the NHM-MP, and the evaluation will be carried out only on the basis of documents received by the closing time of Proposal Due Date as specified in Notice of RFP. Bidders will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material, if submitted, will be summarily rejected. For the avoidance of doubt, the NHM-MP reserves the right to seek clarifications in case the Proposal is non-responsive on any aspects.

6. Therefore, he contends that even though additional documents could be submitted by the bidders in case the relevant material or the crucial material has not been filed by him, the bid requires to be rejected. Therefore, he contends that in the absence of crucial document being filed, the bidder cannot be asked to give additional documents. In support of his case he relies on a judgment of the Hon'ble Supreme Court in the case of Vidarbha Irrigation Development Corporation Vs. Anoj Kumar Garwal reported in 2019 SCC Online SC 89 with reference to para nos. 11 and 17.

7. We have considered the said judgment. In para 17, the Hon'ble Supreme Court has held as follows:-

“17. It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous- they must be given meaning and their necessary significance. Given the fact that in the present case, an essential tender condition which had to be strictly complied with was not so complied with, the

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appellant would have no power to condone lack of such strict compliance. Any such condonation, as has been done in the present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court.”

8. Primarily, the Hon'ble Supreme Court was concerned with the bid document as defined in the tender document defining the substantially responsive bid. The same did not speak of any enlargement of any type of the procurement of additional document. However, in the instant case, clause 2.6.7 clearly indicates that the bidder will ordinarily not be asked to provide additional material, information or documents subsequent to the date of submission etc. So far as the judgment of the Hon'ble Supreme Court in the case of Vidarbha Irrigation (supra) is concerned, the same was decided on the basis that there was no power to condone any belated submission of a document. However, the facts involved herein are quite different. Clause 2.6.7 clearly postulates that additional material, information or document could be provided when asked for from the bidders. Therefore, the same would indicate that in case the bidders were asked to produce additional material, they are liable to furnish the same. In case the bidders were not asked to produce the documents, then the same would be rejected on the ground of non-furnishing of relevant material. Therefore, so far as the conditions of the NIT are concerned, even assuming that relevant material is not produced, the respondent is entitled to ask for additional documents. It is not bound to ask for them. They are entitled to ask for them. In case they are entitled to ask for them it is only then that the bidder is entitled to produce it. The respondent no. 2 is entitled not only not to ask for the documents but even to reject it in

terms of the said clause. Therefore, we find that the said judgment of the Hon'ble Supreme Court is not applicable herein.

9. The learned counsel for the petitioner seeks to contend that what is provided for in the said clause is referable only to the supplementary document as such. That the bidder would necessarily have to file all the crucial and essential documents that are necessary. Only when they fail to produce any supplementary material, it is only in that event that the additional material would be sought for and not otherwise.

10. On considering the contentions and the language used in clause 2.6.7 the same does not indicate so. There is no mention with regard to the type of material that the bidder is entitled to furnish. The Clause merely indicates with regard to additional material, information or document. Additional in the normal sense of the parlance would mean anything in addition to whatever is submitted. In case the submissions of the petitioner were to be accepted then the same would find a place in the tender document which would necessarily narrate what such an additional document should be. Whether an additional document is a crucial document or not a crucial document, has not been specified deliberately so. The State was very well aware of the existence of the relevant crucial material on the one hand and the supplementary material on the other. There is a deliberate attempt not to ensure that only crucial material be filed. Therefore, the word used in clause 2.6.7. is only additional material. Therefore, additional material constitutes any material other than whatever has been filed. In our considered view, we cannot read additional material to mean only crucial or essential material.

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11. Under these circumstances, the contention of the learned counsel for the petitioner with regard to clarification of the word additional material, in our considered view does not arise for consideration. The clause is clear and unambiguous. It does not warrant any interpretation. Various other material relied upon by the learned counsel for the respondents is in order to establish before this court that the material produced by the respondent no. 3 is beyond 04.10.2021. Admittedly, the material have been produced after the last date of 04.10.2021. However, such material have been produced only because they were asked to produce the same in terms of clause 2.6.7. Hence, we find no infirmity in the action taken by the respondents.

12. Consequently, the petition being devoid of merit is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

m.s.p.