



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI
&
HON'BLE SMT. JUSTICE ANURADHA SHUKLA
ON THE 20th OF NOVEMBER, 2024
WRIT PETITION No. 34538 of 2024
M/S H.S. SERVICE PROVIDERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS**

Appearance:

Shri Arnav Tiwari- Advocate for petitioner.

Shri Kapil Duggal- Advocate for caveator.

Shri Shashank Shekhar- Senior Advocate with Shri Bhoopesh Tiwari- Advocate for respondent No. 4.

ORDER

Per: Justice Sushrut Arvind Dharmadhikari

In this writ petition under Article 226 of Constitution of India the petitioner has assailed the legality, validity and propriety of technical evaluation dated 27.08.2024 (Annexure-P/4) as well as impugned order dated 03.09.2024 (Annexure-P/4) and order dated 23.10.2024 (Annexure-P/14) whereby the technical bid of the petitioner has been rejected without assigning justifiable reason. The petitioner is also challenging the consequential action of respondent-Corporation in declaring respondent No. 4 as successful bidder. The petitioner has also prayed for quashing of the impugned tender dated 05.01.2024 (Annexure-P/1) with the further prayer to direct the respondent authorities to assess and open the financial bid of the petitioner.



2. The petitioner M/s H.S. Service Providers has been engaged in providing the work of mechanized cleaning service and sanitation conservancy services to the Railways and other government organizations. The respondent-Corporation issued NIT for outsourcing of manpower required for Cleaning and Sweeping Works for Five Groups under the jurisdiction of respondent No. 2- Municipal Corporation. Thereafter, respondent No. 2 issued corrigendum on 11.03.2024 whereby they had prescribed certain documents which have to be uploaded/provided along with bid/application. The respondent-Corporation subsequently issued another corrigendum on 12.03.2024 whereby certain conditions contained in corrigendum issued on 11.03.2024 were modified. The petitioner submitted their bids in pursuance of aforesaid NIT with the respondent-Corporation in prescribed format disclosing all the relevant information wherein all the necessary documents as sought by the respondent-Corporation including corrigendums were filed. However, vide impugned order dated 03.09.2024, respondent-Corporation without assigning any reason disqualified the petitioner in the technical evaluation.

3. Learned counsel for the petitioner contended that the technical evaluation only provides that documents are sought in eligibility criteria has not been provided but does not provide details of the same. Being aggrieved by the same, the petitioner filed representation highlighting the errors committed by the respondent-Corporation in rejecting the technical bid of the petitioner-Company. No reasons whatsoever assigned before rejection of the technical bid.



4. Being aggrieved by the aforesaid, the petitioner had filed W.P. No. 26993/2024 challenging the legality and validity of impugned technical evaluation dated 27.08.2024 and impugned order dated 03.09.2024. The said writ petition was disposed of vide order dated 11.09.2024 directed the petitioner to submit a representation to the respondent-Corporation which shall decide the same and communicate the reasons for rejection of technical bid to the petitioner in order to invite explanation from the petitioner. In compliance of the direction issued by the Hon'ble Court, the petitioner submitted the representation.

5. Learned counsel for the petitioner submitted that the respondents being annoyed declaring only 4 persons technically eligible. The respondent did not consider the objections submitted by the petitioner. The respondent-Corporation did not decide the objections raised against respondent Nos. 4 to 7. The respondents No. 4 has been declared as L-1 and respondents No. 5 to 7 have been declared as L-2. The respondents had pre-determined that the petitioner cannot be awarded contract for the reasons best known to them. The High handed and arbitrary action of the respondent-Corporation becomes axiomatic from bare perusal of the impugned order wherein pre-determined and cavalier manner, the petitioner has been once again disqualified in technical evaluation without assigning any reason thereof. In view of the aforesaid, the order impugned deserves to be set aside.

6. *Per contra*, respondents No. 2 and 3 pointed out the General Eligibility Criteria for Bidders which reads as under:-

The essential eligibility criteria for bidders:-

S.No.	Eligibility Criteria	Supporting	Documents
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		Required
1.	Registration under Society Act, or firm Registration	<p>(a) Co-operative society, committee will have to keep registration certificate and list of committee members under the operative society, society, society registration act and a copy of the registration of the firm in the event of the Bidders participating as a firm.</p> <p>(b) List of its present Directors/Owners/Executive Council Members/Trustees/Board members of the bidder/agency/service provider (as applicable) on official letter head of the service provider duly signed by the authorized signatory of the bidder/agency/service provider.</p>
2.	Goods and Service Tax (GST) Registration certificate with code number.	The attested copy of the original document/certificate.
3.	EPF certification/registration with code number issued by Employee Provident Fund Organization under EPF Act 1952.	The attested copy of the original document/certificate.



4.	(i) ESIC certificate with code number issued by Employees State Insurance Corporation under ESIC Act, 1948.	The attested copy of the original document/certificate.
5.	Bidder should have minimum average annual turnover of 3.75 CR in three financial year, 2020-21, 2021-22, 2022-23 and 2023-24 (if applicable).	Auditor's Certificate (turnover certificate) to certify turnover in three financial year, 2020-21, 2021-22, 2022-23 and 2023-24 (if applicable). Copies duly certified by Chartered Accountant.
6.	No deviations from Terms and Conditions of Bid Document	Proforma for 'No Deviations' given in Annexure of this bid document duly filled and signed by the bidder.
7.	PAN Card stating the number issued by Income Tax Department of India.	The attested copy of the original document/certificate.
8.	IT Return	Copies (duly certified by Chartered Accountant) of its Income Tax Returns filed for three (3) financial years (i.e. 2020-21, 2021-22, 2022-23).
9.	The Bidders will have to give an affidavit that does not have any Dues to him or concern firm, society, company etc.	Affidavit in Non judicial stamp paper of INR 100/- duly registered by notary.
10.	The Bidders will have to give an affidavit that does not have any Cases for PF, ESIC and Labour Law.	Affidavit in Non judicial stamp paper of INR 100/- duly registered by notary.



12.	Undertaking for mandatory compliance of all statutory liabilities and other terms and Conditional as specified in bid document.	Affidavit to be furnished on Non judicial stamp paper of INR 100/- duly registered by notary as per The Proforma for Undertaking given in Annexure.
13.	<p>It is necessary to have experience of any of the following work of providing labor/manpower for cleaning and sweeping work (Housekeeping work will not be considered as cleaning) in the five financial years. (Fy, 2019-20, 2020-21, 2021-22, 2022-23, 2023-24 (till 31/12/2023).</p> <p>1. Experience of three work of total amount more than or equal to 20% of the tender amount (12.38 Cr.)</p> <p style="text-align: center;">Or</p> <p>2. Experience of two work of total amount more than or equal to 30% of the tender amount (12.38 Cr.)</p> <p style="text-align: center;">Or</p> <p>3. Experience of one work of total amount more than or equal to 50% of tender amount (12.38 Cr.).</p>	<p>Only Experience/work completion certificate will be considered/accepted for certifying amount of work experience (Issued by the competent authority of the Central Government/State Governmetn/ULB/Government Autonomous Institution) or public listed company/private company/trust.</p> <p>(अनुभव प्रमाण पत्र पब्लिक लिस्टेड कंपनी/प्राइवेट कंपनी/ट्रस्ट द्वारा जारी करने की स्थिति में पब्लिक लिस्टेड कंपनी/प्राइवेट कंपनी/ट्रस्ट का टर्नओवर 5 वर्षों में 100 करोड को होना चाहिए। संविदाकार द्वारा पब्लिक लिस्टेड कंपनी/प्राइवेट कंपनी/ट्रस्ट द्वारा जारी किये गए अनुभव प्रमाण पत्र लगाये जाने पर पब्लिक लिस्टेड कंपनी/प्राइवेट कंपनी/ट्रस्ट का CA द्वारा सत्यापित टर्नओवर सर्टिफिकेट भी संलग्न करना</p>



		होगा तभी अनुभव प्रमाण पत्र मान्य होगा।) (Note:-Scope of work clause 37 will be applicable in this condition)
14.	Joint venture/consortium	ALLOWED (AS PER SECTION III (ITB) CLAUSE 4) (Format of joint venture agreement is given in Annex-XVIII)
15.	Bidder currently having contract of manpower supply for cleaning and sweeping work in JMC will have to submit work satisfaction certificate issued by JMC. (this condition will not be applicable for other bidder's)	Work Satisfaction certificate given by JMC.

7. Learned counsel for the respondents contended that in the mandatory conditions of the eligibility criteria, particularly Clause- 3, 4 and 9 have not been complied with. Therefore, the technical bid of the petitioner has been rightly rejected. It is well settled legal position that the Courts should not normally entertain the writ petitions against tender.

8. Learned counsel for the respondents contended that the instant petition is not maintainable in light of the judgments passed by the Apex Court in the case of **Silppi Constructions Contractors Vs. Union of India and Another**, reported in (2020) 16 SCC 489, Agmatel India



Private Limited Vs. Resoursys Telecom, reported in (2022) 5 SCC 362, **Vinayak Purshottam Dube (Deceased) Through Legal Representatives Vs. Jayashree Padamkar Bhat and Others**, reported in (2024) 9 SCC 398 and **N.G. Projects Limited Vs. Vinod Kumar Jain and Others**, reported in (2022) 6 SCC 127 wherein the Apex Court has taken note of the earlier judgment and has reiterated that it is for the authority inviting the bids to see whether the bidder satisfies the tender conditions and by the court should be reluctant to interfere with the contract for want of necessary expertise. It has also been held that the approach of the High Court should not to find fault with magnifying glass in its hands.

9. The Apex Court in the case of **N.G. Projects Limited (supra)**, in paragraph 13 has held as under:-

13. This Court sounded a word of caution in another judgment reported as *Silppi Constructions Contractors v. Union of India and Ors.*, wherein it was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters could cause. In contracts involving technical issues, the Courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain . As laid down in the judgments cited above, the Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference would cause unnecessary loss to the public exchequer. It was held as under:-

“19. This Court being the guardian of fundamental



rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts, but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial



intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind, we shall deal with the present case.”

(emphasis supplied)”

10. In view of the aforesaid settled legal position, the petition deserves to be dismissed.

11. Heard learned counsel for the parties.

12. In view of the judgment passed by the Apex Court in the case of **Silppi Construction Contractors (supra)** and **N.G. Projects Ltd. (supra)**, it is quite clear as day light that the essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and,



therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. In the instant case no such ingredients are available so as to interfere with the findings of the authority.

13. The respondent No. 2- Municipal Corporation has already declared the respondent No. 4 i.e. Shri Barfani Security Service as the L1 bidder in view of Annexure-13 as it has quoted the bid of Rs.439.42. It is subsequent thereto that the respondent No. 2 vide communication dated 29.10.2024 (Annexure-A/13) had sought an opinion from the competent authority relying upon the validity of the bid amount submitted by the private respondent No. 4 which in turn has given the stamp of approval to the bid amount vide communication dated 07.11.2024.

14. In view of the aforesaid, it is crystal clear that the respondent No. 4 is declared L1 bidder and the rates i.e. 439.42 quoted by respondent No. 4 are valid and legally tenable in view of the expert opinion dated 07.11.2024 given by the competent authority i.e. the Assistant Labour Commissioner, therefore, respondent No. 4 rightly deserves the award of work pursuant to the finalization of the tender process.

15. Admittedly, the petitioner has miserably failed to submit the no dues certificate and as such the essential eligibility criteria as provided



under Section II of the Eligibility Criteria for bidders and bid evaluation of tender documents has not been fulfilled.

16. The petitioner has admitted the said lapse in para 5.29 of the amended writ petitions. Furthermore, the list of workers as mandated in view of the corrigendum letter dated 11.03.2024 has also not been submitted.

17. Thus, the petitioner stands technically disqualified and as such the decision of the tender evaluating committee cannot be faulted with. This Court in exercise of the limited jurisdiction qua tender matters cannot interfere in the said decision and as such the petition fails and is hereby **dismissed**.

No order as to costs.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(ANURADHA SHUKLA)
JUDGE

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