

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) No. 377/2020 (O&M)
(Through Video Conferencing)

Reserved on : 16.10.2020

Pronounced on : 23.10.2020

Rayaiz Ahmed

...Petitioner(s)

Through:- Mr. S.S. Ahmed, Advocate and
Mr. Sheikh Ayaz Hussain, Advocate.

v/s

Union Territory of J&K and others

....Respondent(s)

Through:- Ms. Seema Shekher, Sr. AAG

Coram: HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

ORDER

1. The petitioner had filed the present petition praying for quashing the action of the respondent Nos. 1 to 4, whereby the technical bid of the petitioner has been rejected. A communication dated 27.01.2020, has also been challenged whereby the respondent No. 5, has been asked to furnish hard copy of the documents after declaring him qualified. Further direction has been sought to consider the online bid submitted by the petitioner for tender in question and for not allotting the work to respondent No. 5.

2. Learned counsel for the petitioner submitted that e-NIT No. 26 of 2019-20 was issued on 01.01.2020. It was for construction of motorable road from Sarh to Neram. The tender was uploaded on 01.01.2020. The last date of receipt of bids was 09.01.2020. The bids were to be opened online on 10.01.2020. He further referred to clause 17 in the tender document, which provides for the list of the documents required to be annexed while uploading the bid. The petitioner fulfilling all the requisites, had submitted his bid online. Acknowledgement thereof was received by him. Vide message received by him (page 16), the petitioner was informed that on technical evaluation, his bid was rejected, as turnover, completion certificates and details of the ongoing projects was not uploaded.

3. The submission is that all the requisite documents were uploaded by the petitioner. There may be some error at the end of the official respondents. The technical bids were required to be opened in the presence of the bidders on 10.01.2020. The petitioner was present at the spot, however, the bids were not opened. The date was changed without intimation to the petitioner. As per the stand taken in the objections filed by the official respondents, the technical bids were opened on 15.01.2020. If the date for opening of technical bids had been informed to the petitioner, he would have been present at the spot and could clarify all the doubts. He further submitted that in case there was any deficiency in the documents submitted by the petitioner, he should have been granted the opportunity to complete the same. Though, as per the requirement in the tender documents, with reference to the turn over for the last five years, a certificate from the Chartered Accountant was to be furnished, however, the respondent No. 5, had merely furnished the data without any certificate. It is evident from the documents available on the

website as the tender documents furnished by all the bidders were available for viewing and downloading. The petitioner's bid has been rejected for no fault on his part. The communication sent to him for rejection of his technical bid deserves to be set aside and he should be allowed to participate in the tendering process.

4. In response, Ms. Seema Shekher, learned Sr. AAG appearing for the respondents submitted that it is not that only the documents as mentioned at serial No. 17 in the tender documents, which were to be uploaded. In terms of the general terms and conditions in clause 4.3 thereof, there is list of documents which were required to be submitted. The petitioner has not pleaded that the aforesaid documents were submitted by him. He only mentioned that the documents as mentioned in clause 17, were submitted. No doubt as per the tender documents, the technical bids were to be opened on 10.01.2020, however, on account of certain unavoidable circumstances, the same could not be opened on that day the documents could not be downloaded. The petitioner was not present on that day, as is claimed by him. All the technical bids were downloaded by a multi-member committee and were evaluated by it. On a perusal of the documents annexed with the bid submitted by the petitioner, the same was found to be deficient as three certificates had not been annexed. Hence, the technical bid submitted by the petitioner was rejected.

5. She further submitted that the respondent No.5, has not been given chance to furnish any further documents. The communication sent to him merely states that being the lowest bidder, he was required to furnish hard copies of the documents, which had been uploaded by him online. In addition, he was required to furnish security vide communication dated 21.07.2020.

6. She further submitted that to the objections filed by the official respondents, the petitioner has not filed any rejoinder to controvert any of the facts stated, hence, the petitioner has not been able to make out any case for interference by this Court.

7. Heard learned counsel for the parties and perused the paper book.

8. The grievance raised by the petitioner is that his technical bid has been rejected by the official respondents on erroneous ground as the documents which according to them were not uploaded online, had in fact been submitted by the petitioner. However, the same may not have been down loaded by them or there may be some technical error. The aforesaid stand taken by the petitioner has been specifically denied by the respondents in the objections filed. In para 5 of the objections, it has been stated that the petitioner did not submit completion certificate, turn over certificate and the details of the ongoing works, which were mandatory for technical evaluation. As his technical bid was rejected, hence, his financial bid was not required to be opened. To this, the petitioner has not filed any rejoinder, hence, the stand taken by the respondents remained uncontroverted or it will take issue in the realm of disputed question of facts.

9. Further, the petitioner had stated in para 6 of the petition that the documents as mentioned in para 17 of the NIT were uploaded by him. The details of some of the documents have also been mentioned. Para 17, of the tender document provides as under :-

Para No. 17 :-

“In order to qualify, all bidders shall upload scanned copies of documents as defined below: -

- 1) Self-attested photo copy of registration card duly renewed for the current financial year i.e 2019-20
- 2) EMD in the shape of CDR.
- 3) Tender cost in the shape of Treasury Challan / Receipt [MH-0059 Revenue] with name of work.
- 4) Self-attested photocopy of PAN Card.
- 5) Self-attested photocopy of GST number duly issued by the Commercial Taxes Department with latest GSTR-3B Return.
- 6) Correspondence address of Bidders with WhatsApp Mobile Number.
- 7) In case of macadamization works, the qualification criteria for "A" Class contractors who are not registered as Hot Mix Plant Holders shall be to upload an affidavit from, a registered Hot Mix Plant Holder that in case the work is allotted in favour of a Non-Hot Mix Plant Holder, he shall carry out the macadamization. The registered Hot Mix Plant Holder in his affidavit shall mention the make as well as model of the Plant/Machinery owner by him; the macadamization works upto 20.00 lacs or below undertaking is exempted.”

10. On the other hand, the stand taken by the respondents is that in terms of the general instructions to the bidders and clause 4.3 thereof, there were certain other documents were to be furnished. However, the petitioner failed to furnish completion certificate, turn over certificate and the details of

the ongoing works. There is no definite stand taken in the writ petition regarding compliance of the requirements as contained in para 4.3 of the general terms and conditions.

11. As far as the presence of the petitioner on the date of opening of the technical bids i.e. 10.01.2020, is concerned, though the petitioner claimed that he was present on that date in the office, however, this fact has been denied by the respondents. Again, there is no rejoinder filed to controvert their stand. Once, the petitioner was not present on 10.01.2020, he cannot raise any grievance about his absence when technical bids were opened. Even otherwise, the presence of the bidders was not mandatory. It was only if they wish to be present, they were allowed.

12. The evaluation of the technical bids was conducted by a multi-member committee comprising of senior officers, hence, the allegation of the petitioner that the committee may not have downloaded the documents submitted by him, does not carry any weight as whatever was uploaded by the bidders, the same was downloaded and the evaluation was made on the basis thereof.

13. As far as the allegation of the petitioner that the respondent No.5, has been given opportunity to submit the documents later on and the same chance could be given to the petitioner as well, is merely to be noticed and rejected. In the communication dated 21.07.2020, sent by the official respondents to him, it is clearly provided that he was the lowest bidder and in terms of the conditions laid down in the NIT, he was required to submit hard

copies of the documents uploaded with the bid and also furnish additional security.

14. There is no error in the communication. It was not that he was required to make out any deficiencies in the documents submitted by him.

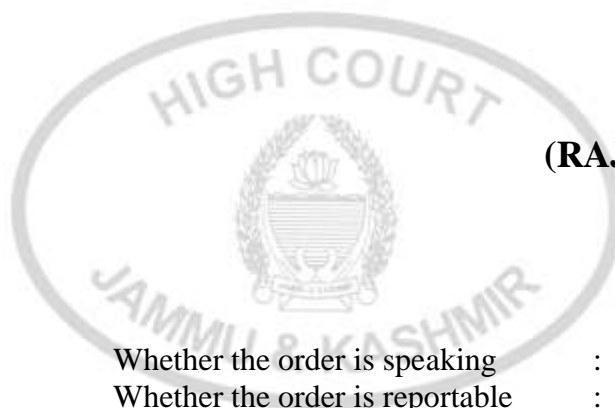
15. For the reasons mentioned above, I do not find any merit in the present petition, the same is accordingly, dismissed.

16. Before parting with the order this court would like to make certain observations regarding pleadings being filed in court. It has been observed that in majority of the petitions Reply/Objections as well as the Rejoinder so filed, are not prepared in sequence with the serial numbers of the paragraphs forming part of the petition/objections. For instance, in the present case, total number of paragraphs in the petition are 15 whereas the objections contain 14 paragraphs. The reason for the discrepancy as has been noticed is that the respondents in their objections have responded to para Nos 4 and 5 of the petition in one single para No. 4. As a result thereof sequence of para numbers changed and it becomes difficult to keep track of pleadings of the parties, which are always to be read with reference to the pleadings in specific para. If the respondents in the Objections/Reply, and for that matter even in the rejoinder by the petitioner, intend to respond to more than one paragraph collectively in a single combined para, in that case proper way is that a combined number is given to the paragraph so that subsequent paras maintain their sequence in consonance with the paras of petition/objections. For example, if para Nos 4-9 are to be responded to collectively, in that case even at the serial number of the paras, 4-9 should be mentioned and not 4 only and then said “in reply to para Nos 4-9”. As

a result, para No. 10 of objections/ rejoinder will have response to the same para of the petition, otherwise para No. 5 in the objections will contain response to para No. 10 and so on, disturbing the entire sequence. In addition to the reply on merits, there can always be Preliminary Submissions/Objections, which can be numbered serial wise Numerically and not Alphabetically, independently, as these are not in response to any specific para of the petition.

17. If this system is followed, the same will be convenient not only for the members of the Bar to refer to the specific pleadings while arguing the cases but even for the court to appreciate the same. This court hopes and expects that in future, pleadings shall be filed in court in this manner.

JAMMU
23.10.2020
SUNIL-I



(RAJESH BINDAL)
JUDGE

Whether the order is speaking	:	Yes/No
Whether the order is reportable	:	Yes/No