
(2020) 06 MP CK 0200

Madhya Pradesh High Court (Indore Bench)

Case No: Writ Petition No. 6681 Of 2020

U.P. State Bridge
Corporation Limited

APPELLANT

Vs

State Of Madhya
Pradesh & Anothers

RESPONDENT

Date of Decision: June 15, 2020

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 2(h)
- Indian Penal Code, 1860 - Section 34, 304, 308, 437
- Prevention From Damage Of Public Property Act, 1984 - Section 3, 4

Hon'ble Judges: S.C. Sharma, J; Shailendra Shukla, J

Bench: Division Bench

Advocate: Manoj Munshi, Vivek Dalal, B.M. Maheshwari

Final Decision: Allowed

Judgement

1. I.A. No.1454/2020 is taken up, the same stands allowed.

The petitioner before this Court, U.P. State Bridge Corporation Limited, a Company registered under the Companies Act, 1956 and a Uttar Pradesh

Government Undertaking, has filed this present petition being aggrieved by the order / decision taken by the Evaluation Committee dated 13.03.2020

(Annexure-P/1), by which, the bid submitted by the petitioner / Company has been declared as non-responsive.

2. The petitioner's contention is that the petitioner is having an expertise in the matter of construction of bridges and they successfully constructed

2346 bridges / flyover, 203 rail over bridges including construction of 56 bridges in the States other than Uttar Pradesh. It has been stated that some of

the prestigious works carried out by the petitioner includes construction 2386 meter long Ghaghra Bridge in District Āĉâ,–" Sitapur with a cost of

Rs.258.56 crores, the second longest bridge across Ganga in Bhagalpur, Bihar having length of 4367 meter with a cost of Rs.120. 00 crore, the Mahi

Setu in Umetha, Gujrat having length of 669 meters with a cost of Rs.5.00 crore, Thane Creek Bridge in Mumbai having length 1837.09 meter with

the cost of Rs.86.7 crore, Grade Āĉâ,–" Separator with flyover in Dhaula Kaun, New Delhi having length of 3500 meter with a cost of Rs.42.36 crore.

The petitioner is presently completing projects work worth Rs.3,093.52 crore of an aggregated bridge length of 29898.28 meter in 2019 Āĉâ,–" 20. Apart

from Uttar Pradesh, the petitioner has undertaken projects in various other states such as Andhra Pradesh, Bihar, Kerela, Assam, Tamil Nadu, Goa,

Maharashtra and Jammu & Kashmir. Apart from that, the petitioner has also undertaken international projects and has completed 5 major bridge

projects in Iraq, 6 major bridge projects in Nepal and 1 major bridge project in Yemen.

3. It has been further stated respondents No.1 and 2 have issued a Notice Inviting Tender on 02.12.2019 for construction of elevated corridor bridge in

the township of Indore from LIG Square to Navlakha Square, A.B. Road with an estimated cost of Rs.272.66 crore. The petitioner submitted its

tender and the bid was to be opened in two parts i.e. technical bid and financial bid.

4. The petitioner's contention is that on 13.03.2020, the Evaluation Committee has held only five bids as responsive out of the total 11 bids and the

petitioner's bid has been treated as non-responsive. The petitioner's further contention is that the Evaluation Committee has assigned the following

reasons to declare the bid of the petitioner as non-responsive:-

Āĉâ,–" (i) In Jabalpur the bid of the Petitioner has been declared as non-responsive.

(ii) The Petitioner had hid the information required under pt.13 and pt. 7(b) of Annexure-1 in the Appendix 1A Āĉâ,–" Letter Comprising Technical Bid.Āĉâ,–"â€

5. The petitioner's contention is that the relevant clause in respect of which, there is an allegation that the petitioner has not furnished information

reads as under:-

“13. We further certify that no investigation by a regulatory authority is pending either against us or against our CEO or any of our directors / managers / employees.

7(b) I / we further certify that no investigation by any investigating agency in India or outside is pending either against us / any member of joint venture or sister

concern or against our CEO or any of our Directors / Managers / Employees.

6. Shri Manoj Munshi, learned counsel has fairly stated that no investigation by Regulatory Authority is pending either against the Chief Executive

Officer or Director / Managers / employees of the Company. He has also stated categorically that no investigation by any of the Investigating

Agencies in India or outside the India is pending against the Company or against the employees of the Company. He has argued that impugned

communication dated 13.03.2020 by respondent No.2 is illegal and arbitrary.

7. It has been stated that the Evaluation committee in its meeting held on 13.03.2020 declared the petitioner's bid as non-responsive merely on the

ground that the petitioner's bid at Jablapur has been declared as non-responsive and the petitioner has suppressed the information as required under

Appendix 1A and Annexure - 1 at pt. 7(b) and 13, without passing a speaking and reasoned order.

8. It has been contended that decision of the Evaluation Committee in respect of declaration of the petitioner's bid as non-responsive is merely on the

ground that the authority in Jabalpur has declared the similar bid of the petitioner as non-responsive, without appreciating the facts of the present

tender and also without affording any opportunity of hearing in the interest of justice.

9. It has further been contended that the respondent No.2, while communicated the decision of the Evaluation Committee has inserted on his own the

sentence “Bidder has not disclose FIR and criminal proceeding in Sessions Trial No.312/2018” whereas no such observation was made by the

Evaluation Committee in the minutes of the meeting.

10. The petitioner has stated on an affidavit that there was an investigation in respect of a F.I.R. registered by the police authorities at Varanasi

Janpad and after completing the investigation, a charge-sheet was filed against some of the employees of the Bridge Corporation. While the trial was

going on, the Allahabad High Court has stayed the proceedings vide interim order dated 30.07.2019 in respect of Trial Case No.312/2018. The copy of

the order passed by the Allahabad High Court is also on record. His contention is that a criminal trial was pending, which has already been stayed, by

no stretch of imagination, it can be held that some investigation was pending against the bridge corporation or its employees, and therefore, the

exercise has been done by the Tender Evaluation Committee only with an aim and object to help certain private companies.

11. This Court, by an interim order dated 17.03.2020, has permitted the Public Works Department to open the financial bids, including the financial bid

of the petitioner.

12. The details of the offer received in the matter are reproduced as under:-

Sl. No.	Bidder Name	Amount
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Bid Rank

No.

1	UP STATE BRIDGE CORPORATION LIMITED	306,27,00,000	L1
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	CORPORATION LIMITED		
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2	RAJKAMAL BUILDERS	315,80,00,00	
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			L2
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Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, INFRASTRUCTURE PVT. LTD.Ã,

3 Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, VIJAY M. MISTRY Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, 317,82,00,000Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã,

L3

Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, CONSTRUCTION PVT. LTD.Ã,

4 Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, ISC PROJECTS PVT. LTD. Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, 348,39,99,999 Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, L4

5 Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, ROYAL INFRASTRUCTURE Ã, Ã, Ã, Ã, Ã, Ã, Ã, 357,75,71,860 Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, L5

Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, LIMITEDÃ,

6 Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, NCC LIMITED Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, 506,35,00,000

Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, L6

The aforesaid chart makes it very clear that the petitioner has submitted the lowest offer (L-1) and the intervenor Rajkamal Builders Infrastructure

Private Limited has submitted offer higher than the petitioner and the intervenor is L-2. The difference between the petitioner and intervenor is

approximately Rs.9.00 crore.

13. A reply has been filed in the matter by Public Works Department, State of Madhya Pradesh and it has been stated that the petitioner was under

an obligation to disclose that the investigation, which is pending against the petitioner / Director / Manager / employees and as the same was not done,

the petitioner has been disqualified.

14. It has also been stated that a session trial is pending against the employees of the petitioner / Company i.e. Sessions Trial No.312/2018 for the

offence under Sections 304, 308, 437 r/w 34 of the Indian Penal Code and also under Section 3/4 of the Prevention from Damage of Public Property

Act, 1984 and the petitioner has not furnished the details of the aforesaid case.

15. It has also been stated that in identical circumstances, the petitioner's bid was held to be non-responsive in respect of construction of Jabalpur

flyover and the matter is pending before the Division Bench at Jabalpur. It has also been stated that the respondents do have a right to reject any

tender and the question of adhering to the principles of natural justice and fair play does not arise in light of the judgment delivered in the case of

Aligarh Muslim University v/s Mansoor Ali Khan reported in 2000 (7) SCC 529. The respondents have prayed for dismissal of the writ petition.

16. An application for intervention has also been filed and the same has been allowed by this Court.

17. Learned counsel for the intervenor has also argued before this Court that the intervenor / Company, since its incorporation, has completed has

completed more than 75 bridges in the State of Maharashtra, Gujrat and Rajasthan and they are expert on the subject and the petitioner's bid was

rightly treated as non-responsive. It has been stated that once the petitioner's bid has been treated as non-responsive keeping in view Clause "3.1.6,

the question of interference by this Court does not arise and the writ petition deserves to be dismissed. Learned counsel for the intervenor has placed

reliance upon a judgment delivered in the case of Vidarbha Irrigation Development Corporation v/s M/s Anoj Kumar Garwala (Civil Appeal

No.1050/2019) dated 23.01.2019 and a prayer has been made for dismissal of the writ petition.

18. Heard Shri Manoj Munshi, learned counsel for the petitioner, Shri Vivek Dalal, learned Additional Advocate General and Shri B.M. Maheshwari,

learned counsel for the intervenor.

19. The petitioner before this Court is a Company registered under the Companies Act, 1956 and is a Government of Uttar Pradesh Undertaking and

has certainly completed significant projects relating to construction of bridges and fly over, as stated in the writ petition.

20. A Notice Inviting Tender was issued on 02.12.2019 for construction of elevated corridor bridge in Indore City from LIG Square to Navlakha

Square, A.B. Road with an estimated cost of Rs.272.66 crore. The petitioner, in response to the Notice Inviting Tender, submitted its bid on

31. 01.2020. The petitioner's bid has been treated as non-responsive by the Technical Evaluation Committee in its meeting held on 13.03.2020 on the

following grounds:-

“(i) In Jabalpur the bid of the Petitioner has been declared as non-responsive.

(ii) The Petitioner had hid the information required under pt.13 and pt. 7(b) of Annexure-1 in the Appendix 1A Letter Comprising Technical Bid.

21. The respondents, after declaring the petitioner's bid as non-responsive, have published a list on 14.03.2020 in respect of the persons, who have

been technically qualified. In the present case, the reasons assigned by the respondents in treating the petitioner's bid as non-responsive are as under:-

“,

“UP State Bridge Corporation Limited,

“ Lucknow “ In the case of construction of Jabalpur flyover, the bidder has been declared non-responsive. The bidder hid the information required under

Appendix 1A Letter Comprising The Technical Bid pt. 13 & Annex - 1 Details of bidder pt. 7(b). Hence, UP State Bridge Corporation considered to be non-

responsive.

22. The Notice Inviting Tender, which is on record, contains relevant clause on the basis of which, the petitioner's bid has been treated as non-

responsive and they are detailed as under:-

“13. We further certify that no investigation by a regulatory authority is pending either against us or against our CEO or any of our directors / managers /

employees.

7(b) I / we further certify that no investigation by any investigating agency in India or outside is pending either against us / any member of joint venture or sister

concern or against our CEO or any of our Directors / Managers / Employees.

So far as the point raised in Clause 13 is concerned, undisputedly, no investigation by any regulatory authority is pending either against the

petitioner's Company or Chief Executive Officer / Director / Manager / employees of the Company.

In respect of the clause i.e. Clause 7(b), the respondents have rejected the petitioner's bid as criminal case is pending against some of the

employees of the Company, which is subject matter of Sessions Trial No.312/2018 in the State of Uttar Pradesh.

23. Another important aspect of the case is that on the date, the tender was submitted by the petitioner / Company, no investigation was pending either

against the petitioner / Company or against its employees. Sessions Trial No.312/2018 has been stayed by the Allahabad High Court vide order dated

30.07.2019 and the matter is still pending before the Allahabad High Court. The order of the Allahabad High Court is also on record. Thus, the only

allegation against the petitioner / Company is that they have suppressed the factum of investigation while submitting the tender. The relevant clause

under the Notice Inviting Tender makes it very clear that information was required to be furnished in respect of the pending investigation by any

investigating agency in India or outside India. The respondents have mixed up the issue in respect of investigation, inquiry and trial.

24. The investigation is defined under the Code of Criminal Procedure under Section 2 (h) and the same reads as under:-

“Section 2(h) in The Code Of Criminal Procedure, 1973

(h) investigation"" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate)

who is authorised by a Magistrate in this behalf;

Keeping in view the definition of investigation, as a session trial is pending, by no stretch of imagination, it can be held that investigation against the

petitioner / Company is pending or was pending at the time the petitioner / Company has submitted the tender. Investigation consists of steps taken by

a police officer other than a Magistrate to ascertain whether any offence has been committed at all and, if so, by whom and what is the evidence on

which the prosecution can be based. Investigation can also be made by a person specially authorized by a Magistrate to do so. The case is only started

if investigation by the police reveals that an offence has been committed by the accused, otherwise not.

25. The investigation is carried out under Chapter " 12 of the Code of Criminal Procedure, 1973 and after investigation, a charge-sheet is filed by

the prosecuting agency. The provision of Chapter " 13 comes into play and by no stretch of imagination, it can be said that when the trial is pending,

the investigation is also pending. The investigation and trial are two different things altogether. The only requirement under the NIT was to inform

about the investigation. The NIT does not say that a bidder is required to submit the details of criminal cases pending. Had it been so, the allegation of

suppressing the material fact could have been justified, however, in absence of any such clause specially when the Company was required to inform

only about the pending investigation, the petitioner / Company was justified in not furnishing the information in respect of investigation as no

investigation was pending on the date the tender was submitted, and therefore, on such a frivolous ground, a Company owned and controlled by

Government of the Uttar Pradesh could have been thrown out, as has been done by the Evaluation Committee.

26. The Evaluation Committee has also held that the petitioner's bid has been declared to be non-responsive in respect of Jabalpur flyover. Merely

because some other bid in respect of some other work has been rejected, it does not mean that the present bid has to be rejected automatically. Each

and every tender process is a separate and independent process and rejection of tender in absence of any such clause for rejecting the tender

automatically is bad in law.

27. This Court, by an interim order, has directed the respondents to open the financial bid of the petitioner also and the respondents have submitted the

details of the offers received and they are as under:-

Sl. No., Bidder Name, Bid Amount, Bid Rank

1. UP STATE BRIDGE, 306,27,00,000, L1

2. RAJKAMAL BUILDERS, 315,80,00,00, L2

3. VIJAY M. MISTRY, 317,82,00,000, L3

4. ISC PROJECTS PVT. LTD., 348,39,99,999, L4

5. ROYAL INFRASTRUCTURE LIMITED, 357,75,71,860, L5

6. NCC LIMITED, 506,35,00,000, L6

The aforesaid details reflect that the petitioner / Company is L-1. The bid of the intervenor is higher by Rs.9.00 crore than that of the petitioner,

meaning thereby, on a frivolous ground, the bid of the petitioner / Company has been treated as non-responsive and the State Exchequer will have to

incur additional expenditure of Rs.9.00 crore.

28. In the case of Vidarbha Irrigation Development Corporation (supra), over which heavy reliance has been placed upon by the intervenor the tender

was floated for the balance earth work to be done in the canal and as per the terms and conditions of the tender document, a bank guarantee was to

be furnished for a period of 40 months, whereas the person, whose bid was treated as non-responsive, submitted a bank guarantee for a period of six

months only and in those circumstances, the Hon'ble Supreme Court has held that the words used in the tender document cannot be ignored or treated

as redundant or superfluous, they must be given their necessary significance,

29. In the present case taking into account the words used in the tender, the petitioner / Company was not required to furnish any information about

the criminal case, which is pending against its employees. The petitioner / Company was only required to submit whether investigation by any

investigating agency in India or outside India, is pending against the petitioner or against the Director / Manager / employees. No such investigation

was pending in the matter, and therefore, Evaluation Committee has erred in law and facts in treating the petitioner's bid as non-responsive. The

petitioner has certainly adhered to the essential conditions of the NIT. The petitioner / Company fulfills all criteria prescribed under the NIT and in fact

it is one of the biggest organizations in the country having expertise in the matter of construction of bridges, the petitioner is also doing the work at a

lower rate, and therefore, the action of the respondents in declaring the petitioner's bid as non-responsive deserves to be quashed and is accordingly,

quashed.

Resultantly, the impugned communication, dated 13.03.2020 (Annexure-P/1) and also the decision of the Evaluation Committee dated

13.03.2020 declaring the bid of the petitioner as non-responsive are hereby set aside. The respondents themselves have stated on affidavit that the bid

offered by the petitioner is lowest, and therefore, the respondents are directed to take consequential action in the matter by issuing LOI to the

petitioner. The exercise of issuing LOI to the petitioner be concluded at an early date as construction of the bridge has become necessary in larger

public interest, and therefore, LOI be issued at the earliest preferably within a period of thirty days from the date of receipt of certified copy of this

order.

With the aforesaid, the present Writ Petition stands allowed.

The matter has been disposed of through video conferencing and keeping in view the present scenario on account of pandemic COVID " 19, in

case, a certified copy is not made available (physical copy), the e-copy obtained through the High Court Website or even the copy uploaded on the

website of the High Court shall be treated as certified copy for all purposes.