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Ceeco Technologies Pvt. Ltd Vs. Central Public Works Department and Ors

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Court : Delhi

Decided On : Dec-19-2014

Judge : Siddharth Mridul

Appellant : Ceeco Technologies Pvt. Ltd

Respondent : Central Public Works Department and Ors

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

07. 11.2014 Judgment pronounced on:

19. 12.2014 W.P.(C) 1062/2014 & CM No.2189/2014 CEECO TECHNOLOGIES PVT. LTD Petitioner versus CENTRAL PUBLIC WORKS DEPARTMENT & ORS Respondents Advocates who appeared in this case: For the Petitioner : Mr N.N. Aggarwal and Ms Manpreet Kaur, Advocates For the Respondents : Mr Manish Mohan and Mr Gaurav Sharma, Advocates for R-1 & R-2 Mr Sanjay Jain, ASG with Mr Manish Mohan, CGSC and Ms Noor Anand, Advocate for UOI. CORAM: HON'BLE MR JUSTICE BADAR DURREZ AHMED HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

SIDDHARTH MRIDUL, J1 The petitioner herein seeks quashing of impugned order dated 03.02.2014 passed by respondent Nos. 1 and 2 whereby the representation made by the petitioner in terms of order dated 22.01.2014 passed

by this Court in W.P(C) No.444/2014 has been rejected. The petitioner further seeks a direction compelling respondent Nos. 1 and 2 to reconsider the tender submitted by the petitioner in response to NIT No.07/SE(E)/PEWC/201314.

2. Vide NIT No.07/SE(E)/PEWC/2013-14, respondent Nos.1 and 2 invited bids for the replacement of old video projectors through supply and installation of new video projectors. In addition to this, column 20 of the price bid pertained to the buyback of old projectors. Since the quote in column 20 referred to the amount that the bidder would have to pay to the respondent, therefore, it was categorized as a minus item of the work.

3. As fate would have it, the petitioner bid an amount of Rs.8000/- towards column 20 prefixed with a minus sign. The price bid being an online standardized excel sheet was designed in accordance with the buyback categorization. This led to an unfortunate circumstance and the input of the petitioner was taken as a positive item of Rs.8000/-.

4. The petitioners bid towards buyback of 7 projectors came to be Rs.56,000/- and towards the entire contract was Rs.1,77,27,750/-. The winning bid being Rs.1,77,27,500/- the petitioners bid was accordingly, rejected.

5. Counsel for the petitioner argues that the petitioner has not been awarded the contract due to an inadvertent arithmetical error on its part. The petitioner had prefixed a minus before his bid in column 20 which increased his bid from Rs.1,76,15,750/- to Rs.1,77,27,750/-. The petitioner seeks to justify this error owing to a Note that was annexed to the price bid excel sheet. The Note reads thus:

1. If quoted rates is Normal item this amount will be paid to contractors/Firm by CPWD. If quoted rates is Minus Item this amount will be paid to CPWD by contractor/Firm.

6. It is the case of the petitioner that this note makes it sufficiently evident that the amount in column 20 was required to be paid to CPWD and therefore subtracted, rather than added, towards the grand total. Such an error was occasioned due to

the pre-determined formatting in the excel sheet and the petitioner should not be penalized for the same. It would be absurd to assume that the respondent would pay an amount of Rs.56,000/- in addition to handing over of 7 old projectors to the bidder. It is also argued that allotting the bid to the present successful bidder would result in a loss amounting to Rs.1,11,750/- to the exchequer and this aspect should have been considered while awarding the tender to the respondent No.3.

7. Reliance is placed on a Supreme Court decision reported as West Bengal State Electricity Board v. Patel Engineering Co. Ltd & Ors: (2001) 2 SCC451 Paragraph 32 reads as under:

32. The submission that remains to be considered is that as the price bid of respondent Nos.1 to 4 is lesser by 40 crores and 80 crores than that of respondent Nos.11 and 10 respectively, public interest demands that the bid of respondent Nos.1 to 4 should be considered. The project undertaken by the appellant is undoubtedly for the benefit of public. The mode of execution of the work of the project should also ensure that the public interest is best served. Tenders are invited on the basis of competitive bidding for execution of the work of the project as it serves dual purposes. On the one hand it offers a fair opportunity to all those who are interested in competing for the contract relating to execution of the work and on the other hand it affords the appellant a choice to select the best of the competitors on competitive price without prejudice to the quality of the work. Above all it eliminates favouritism and discrimination in awarding public works to contractors. The contract is, therefore, awarded normally to the lowest tenderer which is in public interest. The principle of awarding contract to the lowest tenderer applies when all things are equal. It is equally in public interest to adhere to the rules and conditions subject to which bids are invited. Merely because a bid is the lowest the requirements of compliance of rules and conditions cannot be ignored. It is obvious that the bid of respondent Nos.1 to 4 is the lowest of bids offered. As the bid documents of respondent Nos.1 to 4 stands without correction there will be inherent inconsistency between the particulars given in the annexure and the total bid amount, it cannot be directed to be considered along with other bid on the sole ground of being the lowest.

8. Per contra, respondent Nos. 1 and 2 argues that the petitioners bid has been rejected in accordance with the terms of tender. The note clearly states that minus item will be paid to CPWD; it is nowhere prescribed that the bidder must include a minus sign before making a quote. The excel sheet for the purpose of e-tendering prompts a message saying enter value which greater than 0 when it is clicked. It is therefore, contended that the petitioner had complete opportunity to correct an error, if any.

9. It is also argued that the process of selling the old projectors includes cost of dismantling, removing from site and transportation and salvage value. The bidder makes its own assessment in this regard. It would not be absurd to assume that the bidder intends on charging CPWD additionally to cover these costs. If a bidder assesses that the cost of dismantling and removal is more than the salvage value then the quote ought to be in the negative.

10. We have heard parties to the petition. The impugned order has rejected the representation of the petitioner on two broad considerations. The first being that Note 1 to the price quote excel sheet clarifies the purpose of normal items and minus items and does not leave scope for ambiguity. The argument of arithmetical error therefore, seems to be an afterthought. The second consideration is that it is completely plausible that column 20 displays a positive amount based on the cost-benefit analysis of every prospective bidder and therefore, the respondent could not have anticipated that this was not a conscious decision by the petitioner.

11. Reliance on West Bengal State Electricity (supra) is also misplaced in as much as the Court subsequently rejects the submission regarding discounting of errors in the interest of public and re-emphasizes the importance of adherence to prescribed rules.

12. The Supreme Court in the case reported as Jagdish Mandal v. State of Orissa: 2007. (14) SCC517 has observed on the scope of judicial review in such matters as under:

19. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

- i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone. OR Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'
- ii) Whether public interest is affected.

13. In the case of B.S.N. Joshi v. Nair Coal Services Ltd.:

2006.

11) SCALE526 the Supreme Court observed:

24. It may be true that a contract need not be given to the lowest tenderer but it is equally true that the employer is the best judge therefor; the same ordinarily being

within its domain, court's interference in such matter should be minimal. The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record.

14. In a recent case reported as *Goldyne Technoserve Ltd v. State of MP and Ors*: AIR 2011 SC2574 the Supreme Court has observed on inadvertent errors in submission of a bid in the following terms:

33. The submissions made on behalf of the Appellant proceeds on the basis that it was entitled, almost as a matter of right, not to submit the documents required to be submitted along with the bid documents on the supposition that, even if such documents were valid and active, they could be submitted at the time of signing of the Memorandum of Understanding. The Appellant had a valid and active ISO90012000 certification which it did not submit along with the Bid documents, may be due to inadvertence, but whether such explanation was to be accepted or not lay within the discretionary powers of the authority inviting the bids. The decision taken to reject the Technical Bid of the Appellant cannot be said to be perverse or arbitrary. We need not refer to the decisions cited by the learned Attorney General or the Appellant in this regard, as the principles enunciated therein are well established. 15. In view of the aforesaid discussion, the conspectus that emerges clearly is that decisions regarding propriety of a bidder towards awarding of a tender are best dealt with by the authority awarding the said tender. As long as the decision is well reasoned and in conformity with the principles of reasonableness, judicial intervention should be limited. In our opinion, the impugned order has considered the case of the petitioner with sufficient reasoning and does not suffer from the vice of unreasonableness.

16. The writ petition is dismissed. The pending application also stands disposed of. There shall be no order as to costs. SIDDHARTH MRIDUL, J BADAR DURREZ AHMED, J DECEMBER19 2014 dn