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Court : Patna

Decided On : Sep-19-2007

Judge : Narayan Roy and M. Saran, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : L.P.A. No. 609 of 2007

Appellant : Niit Ltd.

Respondent : Bihar State Electronics Development Corporation Limited and ors.

Advocate for Def. : P.K. Shahi, Adv. General, Shivaji Pandey and Vikas Kumar, Advs., Ganesh Pd. Singh, Sr. Adv. and Sunil Kumar Singh, Adv. For Respondent No. 5

Advocate for Pet/Ap. : Sudhir Chandra, Sr. Adv., Mrigank Mauli and Alok Singh, Advs.

Disposition : Appeal dismissed

Judgement :

1. Heard counsel for the parties.

2. This Letters Patent Appeal is directed against order dated 3.7.2007 passed by a learned single Judge of this Court in C.W.J.C. No. 4333 of 2007, whereby and whereunder the writ application filed by the appellant was dismissed holding that the appellant could not make out any ground for setting aside the decision taken by the evaluation committee dated 1.3.2007 awarding contract work to respondent No. 5 M/s Teledata Informatics Limited being the lowest bidder.

3. The Bihar State Electronics Development Corporation (hereinafter to be referred to as 'BSEDC') a State undertaking in furtherance of execution of its scheme to implement the computer education programme in Government Schools/Government Aided Schools decided to carry out the ICT School Project in 1000 of such schools in first phase. The entire financial requirement was to be made under the joint collaboration of Central Government and the State Government in ratio of 3:1 i.e. 75% cost to be incurred by the Central Government and 25% by the State Government.

4. To fulfill the requirements of the scheme the BSEDC came out with a tender notice on 1.2.2007, which was published in newspaper for supply of installation and maintenance of IT infrastructures of ICT education project in 1000 schools across rural and urban areas of the State of Bihar in efficient and effective manner on Lease, Maintenance and Transfer basis (LMT) for a duration of three years in accordance with various provisions of Request For Proposal Documents (RFP).

5. Pursuant to the tender notice the writ petitioner appellant and respondent No. 5, M/s Teledata Informatics Limited and others filed their respective tender papers. The evaluation committee considered the tender papers of the applicants and in its meeting dated 1.3.2007 the evaluation committee of BSEDC accepted the tender papers of respondent No. 5, M/s Teledata Informatics Limited, as it was the lowest bidder, and, accordingly, letter of intent was issued. The writ petitioner appellant challenged the decision of the evaluation committee dated 1.3.2007 in this Court in its writ jurisdiction in C.W.J.C. No. 4333 of 2007, which was dismissed giving rise to this appeal.

6. It would also be pertinent to notice here that during the pendency of the writ application an agreement was entered into in between BSEDC and respondent

No. 5, M/s Teledata Informatics Limited, and contract work, thus, finally commenced.

7. Learned Counsel for the appellant substantially argued that the writ petitioner appellant was the only tenderer, who was eligible in terms of the RFP and since respondent No. 5 had not fulfilled the eligibility criteria, as laid down in Clause 18(b) of the RFP, his tender paper could not have been accepted, as it lacked in experience as provided under Clause 18(b) of the RFP. According to him, Clause 18(b) of the RFP requires that the bidder should be a computer education training company with adequate experience of having executed similar projects of at least 200 schools with a single State Government. At the same time, respondent No. 5 also failed to meet the eligibility criteria as per Clause 18(e) of the RFP, which requires that the bidder must have successfully completed at least a project of ten crores or two projects of five crores or three projects of three crores in India. Learned Counsel, in this view of the matter, submitted that the commercial bid of respondent No. 5 was non-responsive to the scope of work defined in the RFP. It is further contended that according to own admission, as per the document supplied by respondent No. 5, it was not eligible in terms of Clauses 18(b) and 18(e) of the RFP, as it has no experience of having executed similar projects of 200 schools in a single State nor it had successfully completed at least a project of required amount as indicated in Clause 18(e) of the RFP. In the backgrounds of the submissions learned Counsel for the appellant submitted that the learned single Judge of this Court wholly erred in holding that respondent No. 5 had the requisite experience, as required under Clauses 18(b) and 18(e) of the RFP.

8. Learned Advocate General, appearing on behalf of the State of Bihar and its agency and learned Counsel for respondent No. 5, precisely stated that the tender papers of the appellant vis-a-vis respondent No. 5 were recognized and evaluated by the evaluation committee of the Corporation and finding respondent No. 5 as the lowest tenderer and fulfilling the requirements of the clauses of the RFP selected respondent No. 5 for the contractual work, and, accordingly, issued letter of intent and subsequently, agreement was entered into. Counsel for the respondents, therefore, submitted that the bid was to be finalized keeping in view the larger interest of the Corporation and the State of Bihar and, accordingly, the

tender of respondent No. 5, was accepted, and, thus, awarded the contract work to it. The action of the respondent authorities, thus, would not be arbitrary, unreasonable and contrary to the statutory provisions of law and [Constitution of India](#). They further submitted that while giving a contract work the State or its agency merely need not go on technicalities and it would be its prime duty to see that the largest interest of the public is subserved and the contract work is completed with all sincerity. Awarding of the contract work, in that view of the matter, cannot be said to be violative of the mandates of law nor it would be irrational or arbitrary. They farther submitted that since contract work has already been awarded to respondent No. 5 on the basis of the contract, the writ petitioner appellant would not be entitled to maintain this appeal, as the agreement entered into in between the parties is not under challenge.

9. The learned single Judge of this Court on appreciation of the facts and pleadings of the parties held that the decision of awarding contractual work to respondent No. 5 since was in the manner provided in the tender notice, the same cannot be held to be bad nor it would be appropriate to hold that the action of the authorities in giving contract work was in violation of the relevant Rules or unreasonable.

10. On appreciation of the argument of the parties and the reasons assigned by the learned single Judge of this Court, it appears to us that respondent No. 5 was considered to be a viable company to carry out the contractual work, as it had sufficient experience according to the documents supplied by it. We have no manners of doubt that respondent No. 5 had not at all fulfilled the eligibility criteria, as laid down in Clauses 18(b) and 18(e) of the RFP.

11. From the pleadings of the parties, it is manifest that respondent No. 5 was carrying out such contractual works in the north eastern States and much potential was found in it to complete the contractual work, and, thus, the decision taken by the authorities for awarding contractual works to it would not be arbitrary, unreasonable, discriminatory or violative of the principles of the Constitution. The claim of respondent No. 5, thus, could not have been defeated on mere technicalities, as argued by learned Counsel for the appellant.

12. Distribution of Government work or largesse should not be arbitrary and all persons must be considered. While doing so it should be kept in mind that individual interest can be sacrificed for larger public interest and public good.

13. In the instant case, all eligible tenderers were considered and, ultimately, respondent No. 5, M/s Teledata Informatics Limited, was selected for the contract work keeping in view the fact that it was the lowest tenderer and had wide experience in the field to subserve the purpose of the scheme.

14. The Apex Court in case of *Ramana Dayaram Shetty v. International Airport Authority of India* : (1979)11LLJ217SC held:

Whether the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norms in any particular case or cases, the action of the Government would be liable to be struck down unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory

15. In case of *Shri Sitaram Sugar Co. v. Union of India* : [1990]1SCR909 it is settled that the decision of the State Government or its choice may be disputed or condemned, but error, if any, committed by the Government is not subject to judicial review.

16. Again in case of *Krishna Kakkanth v. Government of Kerala* : AIR 1997 SC128 it was held that the Government policy is not subject to judicial review unless it is demonstrably arbitrary, capricious, irrational, discriminatory or violative of Constitutional mandates.

17. In *Air India Ltd. v. Cochin International Airport Ltd.* : [2000]1SCR505 it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction and even if when some defect is found in the decision making process, the Court must exercise its discretion under Article 226 with great caution, particularly in furtherance of public interest and not merely on the making out a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not.

18. From the facts, as enumerated above, and the legal propositions, as referred to above, we are satisfied that the decision taking committee had not acted in any manner in complete departure of the eligibility criteria for the purpose of the execution work and its action, at the same time, does not appear to be arbitrary, irrational, discriminatory or violative of the provisions of law.

19. The decision taken by the authorities, in that view of the matter, in our considered view, need not be subjected to judicial scrutiny, as larger public interest has been kept in mind while finalizing the tender in favour of respondent No. 5, M/s Teledata Informatics Limited.

20. In the background of the materials, as referred to above, the order passed by the learned single Judge of this Court cannot be said to be either bad in law or on facts, and, thus, it does not require interference from this end.

21. In the result, this appeal is dismissed, but without costs.

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