

Sachdeva Industries and anr. Vs. Union of India and ors.

Sachdeva Industries and anr. Vs. Union of India and ors.

SooperKanoon Citation : sooperkanoon.com/697906

Court : Delhi

Decided On : Nov-13-1997

Reported in : 1997VIAD(Delhi)995; 69(1997)DLT988

Judge : Arun Kumar, J.

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

Appeal No. : Civil Writ Petition No. 3296 of 1997

Appellant : Sachdeva Industries and anr.

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Rudra Kehlon,; Rakesh Tikku,; K.K. Bhatia,;

Judgement :

Arun Kumar, J.

(1) Since a short point is involved, this writ petition is taken up for final disposal with the consent of the Counsel for the parties.

THE Railway Electrification Directorate of the Railway Board floated a global tender for fabrication and supply of cadmium copper catenary wire in February, 1997. The last date for submission of the tenders was 11th March, 1997 up to 14.30 hours. The tender was with respect to the requirement for Railway

electrification project during the year 1997-98 for a quantity of 1,072 kms. The tenders were to be opened at 15.00 hours on the same day. The petitioner submitted a tender only for a part of the quantity involved. Same was the case with respondent No. 6. Respondents No.8 and 9 submitted tenders for the full quantity of work.

(2) According to the respondents since the petitioner and respondent No. 6 did not fall in the category of approved established suppliers, such suppliers were at best entitled to 20% of the work and in fact 20% of the total work was awarded to the petitioner and respondent No. 6, i.e., 100 kms. each. It is further the case of the respondents that since the petitioner had not bid for the entire work, there was no question for its being considered for the entire quantity of work and respondents 1 to 3 had to in any event fall back on the tenderers who had bid for the entire work. As a matter of fact respondent No. 9 was awarded a contract for quantity of 650 kms. whereas respondent No. 5 was awarded contract for 200 kms. at the rates quoted by respondent No. 9.

(3) It is not disputed that amongst the tenderers who quoted for the entire work, the rates of respondent No. 9 were the lowest and that is why respondent No. 5 was also awarded the work at the rates offered by respondent No. 9. The petitioner was considered only for development order to the extent of 20% of the work along with respondent No. 6 because the petitioner was not on the approved list of regular suppliers maintained by the Research, Designs and Standards Organisation (for short RDSO). The petitioner claims that the rate? offered by it were the lowest and, therefore, it is not satisfied with the 10% work awarded to it. It is submitted on behalf of the petitioner that the grounds for which the petitioner was not considered as an approved/established supplier were extraneous and, therefore, the action of the respondents was wrong and liable to be set aside.

(4) The learned Counsel appearing for the petitioner was unable to satisfy me on the question as to how the entire work or major portion of the work could be awarded to the petitioner when it did not bid for the entire work. The petitioner's bid was only at best for 400 kms. Respondents 1 to 3 could not award the work to the petitioner of a quantity more than that in any event.

(5) So far as the question of treating the petitioner as not an established supplier is concerned, respondents 1 to 3 have relied on Clause 7.1.3 of tender document:

'7.1.3. Prior to giving a call to the Purchaser/Director General (Traction Installations)/Research, Designs & Standards Organisation, Manak Nagar, Lucknow-226011 for inspection and testing of the prototype, the manufacturer shall submit a detailed test schedule consisting of schematic circuit diagrams for each of the tests and the number of days required to complete all the tests at one stretch. Once the schedule is approved, the tests shall invariably be done accordingly. However, during the process of type testing or even later, the purchaser reserves the right to conduct any additional test(s) besides those specified herein, on conductor/wire so as to test the conductor/wire to his satisfaction or for gaining additional information and knowledge. In case any dispute or disagreement arises between the manufacturer and representative of the purchaser/Director General (Traction Installations), Research, Designs & Standards Organisation, Lucknow during the process of testing as regards the procedure for type tests and/or the interpretation and acceptability of the results of type test, it shall be brought to the notice of the Director General (Traction Installations), RDSO/Lucknow as the case may be, whose decision shall be final and binding. It is submitted that the decision of the RdsO is final in these matters. A copy of the confidential report dated 2nd May, 1997 of the RdsO about the various tenderers was placed before the Court during the course of hearing. In the said report the RdsO has stated against the name of the petitioner that the firm is not approved. About the past experience of the petitioner, it is stated in the said report that recently the firm supplied 100 kms. of cadmium copper catenary wire to Core whose performance on field is yet not established. Further the RdsO recommended 'In view of the above, the firm may be considered for placement of a trial order subject to the condition that the manufacturing process and testing/quality assurance regime is in exact accordance with RDSO's stipulations which includes provision of an emission type spectrometer. This has to be ensured before production of prototype'.

So far as respondent No. 9 is concerned it enjoys RdsO approval. Same is the position about respondent No. 5. This report of the RdsO read with Clause 7.1.3

quoted above concludes the matter against the petitioner in my view. The decision of the Rdso is stipulated as final and, therefore, the petitioner cannot challenge the same nor can ask this Court to go behind the same. Even otherwise on such technical matters the recommendations of the experts have to be respected specially keeping in view the fact that the Court is ill-equipped to form an opinion in such matters. The plea raised on behalf of the petitioner that it is an established supplier, therefore, cannot be entertained.

(6) The petitioner has got what it could at best get in relation to this global tender. It is not even eligible for quantity more than what it has been awarded. The petitioner was considered for development order as per the recommendations of the RDSO. The petitioner cannot be permitted to go beyond its own offer. From this it also follows that when the Government has to consider the award of the entire contract, it cannot go by the rates quoted by the petitioner. The Government had to consider the best offer from amongst the parties which quoted for the full contract. The petitioner cannot raise any grievance that the rates quoted by it should have been applied to respondents 5 and 9.

(7) The other aspect raised in this petition by the petitioner is that the bid of respondents 8 and 9 was received late, i.e., after the scheduled time of closure of bids. On the factual matrix it is admitted by respondents 2 and 3 that as per the office clock the bids of respondents 8 and 9 were submitted at 2.33 p.m. on 11th March, 1997. However, the time was recorded as 2.37 p.m. because the petitioner raised an argument about delay in submission of the bids of respondents 8 and 9 and a few minutes were spent on account of said argument. Respondents 2 and 3 have explained that the term rejection of bid relates to an action -to be taken after examination of the bids and the issue has to be considered with reference to relevant instructions on the subject. It is stated in the counter affidavit of respondents 2 and 3 that the bids in this case could not be termed as late bids because the term 'late bid' applies to bids received after opening of the bids, which in this case would be after 3.00 p.m. The present case has been explained by the respondents 2 and 3 as a case of delay in submission of the bids by a few minutes which was well before the process of examination/opening the bids commenced. The respondents have referred to another clause in the tender, i.e., clause No.1.2

which reads as under:

'ALL offers in the prescribed form at Annexures I and 2 as applicable, should be submitted before the date and time fixed for the receipt of offers as set forth in the tender papers. Offers received after the stipulated date and time are liable to be rejected.'

The respondents have relied on the words 'liable to be rejected' to say that it does not mean that they were bound to be rejected.

(8) Keeping the above facts in view I am unable to find any fault with the decision of respondents in entertaining the bids of respondents 8 and 9. I am unable to accept the argument raised on behalf of the petitioner that there is a violation of tender conditions in entertaining the bids of respondents 8 and 9 by the said respondents.

(9) The respondents have further stated that the bids were evaluated by a high level Committee and the final decision was taken at the highest level. The authorities after taking everything into account decided to consider the bids of respondents 8 and 9 even though they were delayed by 3 minutes as noted above. I am unable to see any such gross violation of tender condition in this as may render the entire process invalid.

(10) The allegation of malafide against respondent No. 3 is without any merit or substance. Respondent No. 3 was neither alone in taking the final decision nor having regard to the facts of the case it can be said that he was responsible in tilling the decision in favor of any party in any manner. Looking at the whole thing from another angle, one cannot help observing that even if the bids of respondents Sand 9 were to be excluded, no benefit could flow to the petitioner. The petitioner was eligible only to the extent of 20% of the total work on account of its offer being for part of the work and it being treated as a supplier for trial order in view of the report of the RDSO. I find no merit in this petition and, therefore, the same is dismissed. No order as to costs.