

(2008) 04 DEL CK 0022

In the Delhi High Court

Case No : Writ Petition (C) 1133 of 2008

Actech Information Systems Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Citation : (2008) 04 DEL CK 0022

Hon'ble Judges : T.S. Thakur, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Sunil Kumar and Jitendra Kumar Jha, for the Appellant; Rajeeve Mehra and Divya Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—Judicial review of administrative decisions is limited to examining whether the decision making process is vitiated by any illegality, procedural irregularity or perversity. The Court does not sit in appeal over the decision so long as the process leading to the same is found to be satisfactory and free from anyone of the infirmities mentioned above. In cases where the decision making process involves technical expertise, the scope of review gets further reduced. That is because the courts are not equipped with the expertise necessary to sit in judgment over the decisions taken by experts. The process of review shows deference to the opinions of the experts. The legal position on the subject is settled by a long line of decisions rendered by the Supreme Court to which we shall presently refer, but before we do so, we need to briefly set out the facts in the backdrop whereof the petitioner challenges the rejection of the technical bid offered by it for a certain scientific equipment being purchased by the respondents. What is however significant and may be stated at the threshold is that the rejection of the petitioner's technical bid is based entirely on the opinion of the experts according to whom the equipment offered by the petitioner did not satisfy the technical requirements stipulated in the request for proposal (RFP for short). The petitioner however contends that the said rejection was unfair

inasmuch as while the Experts Committee had granted an opportunity to other bidders to make up the deficiencies in the equipment offered by them, no such opportunity was given to the petitioner. This, according to the petitioner, led to discrimination between parties that were similarly circumstanced and hence entitled to similar treatment. The respondents deny that allegation and urge that the evaluation of the technical bids submitted by the intending suppliers was undertaken by an Expert Committee which had adopted an objective standard that was applied uniformly to all the bidders. Inasmuch as the Committee had found that the petitioner's bid was not technically compliant on account of the "Data Logger" offered by it being not up to the required specifications, it committed no mistake leave alone an error bordering on perversity to warrant interference by this Court. It is also contended that the "Data Logger" offered by the petitioner was upon a proper evaluation, found to be unacceptable in terms of the requirements of the RFP which fact was admitted even by the petitioner in a communication dated 27th December, 2007 addressed after the technical evaluation of the bid whereby it had offered to remove the deficiencies in the machines it was selling. That belated offer was not however acceptable to the respondents who were proceeding under a time schedule for the supplies in question. In the circumstances, the rejection of the bid on the ground of non-compliance of the essential requirements of the RFP could not be described as illegal, irregular or in any way perverse. Time now to state a few facts.

2. Indian Meteorological Department (IMD for short) is operating a network of 125 Automatic Weather Stations (AWS for short) under what is described as Pseudo Random Burst Sequence (PRBS), technique of transmission through the Data Relay Transponder (DRT) of Kalpana-I satellite. These AWS are also compatible to INSAT series of satellites. In PRBS mode of transmission, satellite Data Relay Transponder (DRT) has a capacity to accommodate only 400 AWS in the present carrier slot of 402.75 Mhz. This carrier is, according to the Government, being utilized by various users like the Government of Andhra Pradesh, Central Water Commission (CWC), Snow and Avalanche Studies Establishment (SASE) including IMD is already saturated. No additional allocation is said to be possible to this system. In order however to accommodate more number of AWS, the respondents proposed to switch over to what is described as Time Division Multiple Access (TDMA) type of transmission technique. This switch over is possible in view of the current scientific and technical developments in the field of operational forecasting which most of the developed countries have adopted. The Government Therefore appears to have taken a decision to utilize this new technique for all future AWS to facilitate installation and data reception from more number of AWS. A modernization plan for commissioning of 550 AWS has accordingly been drawn up by the Government based on a feasibility report prepared by the IMD.

3. With the approval of the above project by the Government, a request for proposal (RFP) document was prepared and issued for procurement of the equipment for the automatic weather stations and one TDMA type data receiving

earth station. A global tender enquiry was accordingly floated in July, 2007 which stipulated 20th September, 2007 as the cut off date for submission of the bids. A pre-bid meeting was then conducted in IMD, New Delhi on 21st August, 2007 with the suppliers of AWS equipments to provide clarifications to their queries on the IMD Request For Proposal document. Information regarding the meeting was provided even in the IMD website. In response to the global tender enquiry, as many as 11 firms submitted their bids including the petitioner herein. These bids were then submitted to the Technical Evaluation Committee (TEC) drawn by the Director General of Meteorology comprising eminent scientists and experts mostly in the fields of atmospheric sciences and instrumentation from different organizations like Snow and Avalanche Studies and Establishment, Chandigarh, Ministry of defense, Indian Space Research Organization and IMD representative for evaluation of the bids. The Committee evaluated the technical bids received from the bidders and came to the conclusion that four of the bidders did not have the requisite certification from the IMD for data logger and transmitter for functional operation with INSAT/Kalpana series of satellite. The technical bids offered by the following firms were thus rejected:

- (i) Alpha Design Technologies, Bangalore
- (ii) Axys Technologies India, New Delhi.
- (iii) Bharat Electronics Ltd., Bangalore
- (iv) Electronics Corporation of India Ltd., Hyderabad.

4. Aggrieved by the rejection of its technical bid, the petitioner has filed the present writ petition challenging the rejection inter alia on the ground of its being arbitrary and unfair. The primary ground on which the petitioner has assailed the rejection of its technical bid is that the Technical Committee had adopted double standards inasmuch as some of the bids which were similarly found to be deficient by it were taken to the next stage of evaluation, giving to the bidders time to remove the deficiencies pointed out by the Committee. No such concession or opportunity was however given to the petitioner thereby exposing the petitioner to hostile treatment and rendering the decision to reject the bid arbitrary and discriminatory in nature.

5. The respondents have appeared to contest the writ petition and filed their counter affidavits in which the entire background leading to the issue of the RPF has been set out. The counter affidavit inter alia points out that the data logger offered by the petitioner was found to be technically non-compliant by the TEC. It is further stated that data logger is the heart of an Automatic Weather Station and that the technical experts had found that component offered by the petitioner to be non-compliant with the requirements of RFP. The petitioner thus failed to satisfy an essential RFP requirement which was sufficient to justify the rejection of the equipment offered by it. It is also alleged that the IMD or the Expert Committee had not granted any extension to any vendor beyond the scope of RFP which is an exhaustive document and contains essential mandatory

requirements apart from those that are minor condonable and non-critical in nature.

6. Appearing for the petitioner, Mr. Sunil Kumar, made a two-fold submission before us. Firstly, it was contended by him that the RFP did not contain any provision for the grant of time to any bidder whose technical bid did not comply with the requirements stipulated for the equipment. Even so, the Technical Committee had given to three different bidders, namely, M/s Jin Yang Industrial Company Ltd., M/s Instrumentation Ltd. and M/s PEC & AMSH, time to comply with the technical requirements stipulated for different components of the equipment offered by them. No such extension or concession was shown to the petitioner thereby rendering the entire process of evaluation illegal. Since the RFP binds the parties, the grant of time to the other three defaulting companies while denying the same treatment to the petitioner was, argued the learned Counsel, illegal. Secondly, it was contended by the learned Counsel that the RFP did not make any distinction between vital and non-vital components of the equipment. The attempt to classify the equipment into two categories was, Therefore, unjustified and aimed at somehow supporting and sustaining the action of the respondents which was otherwise untenable in law.

7. On behalf of the respondents, it was on the other hand contended by Mr. Mehra that the evaluation of the technical bids having been entrusted to a Committee of Experts, there was very little room for a writ court to interfere with the decision of the Technical Committee. It was further submitted that while the petitioner's bid was found to be non-compliant in respect of a very critical part of the equipment, the deficiencies noted in the equipment of other three bidders were not comparable to the deficiencies found in the petitioner's equipment. He drew our attention to the observations of TEC in this regard to buttress his argument that technical non-compliance qua essential equipment like data logger was totally different from incidental or minor deficiencies in regard to some other equipment which the TEC found to be remediable by the bidder without affecting the essence of the equipment and the underlying tender process.

8. We have given our careful consideration to the submissions made at the bar and perused the record. It is common ground that the TEC comprised as many as seven technical experts on the subject. These experts have admittedly evaluated the equipment offered by the bidders and recorded specific reasons why the same has been found to be non-compliant wherever such non-compliance has been reported. The minutes of the TEC based on their technical evaluation of the equipment have been placed on record. In so far as the petitioner's bid is concerned, the TEC observed:

1. M/s Actech Information Systems Pvt. Ltd., New Delhi M/s Actech Information Systems Pvt. Ltd., is representing M/s Microcom Inc., Maryland, USA and has offered to provide a turn-key solution to IMD. The firm is found to be technically not acceptable and the following equipments quoted by the firm are not complied due to the reasons stated below:

Products quoted Reasons for non-acceptance Comments AWS: Unilog SEBA data logger, Transmitter: GTX 1.0 P/N DL 101

PCMCIA slot/SD RAM card slot has not been provided as required in Para 3.5 of RFP, Rs. 485 to USB port is provided but retrieval of data/transfer of set-up files through the USB port of the data logger was not demonstrated (5.1.6.3 of RFP)

Facility for manual transmission from the Unilog data logger was not present and not demonstrated. (3.11 of RFP doc)

In the Unilog data logger only one Rs. 232 port is present. Existing Rs.485 port is utilized as USB by conversion and hence not available for other utility (required as per 3.9 of RFP)

The number of analog/digital channels in Unilog data logger is not compatible to the requirement (5.1.3 of RFP).

Facility for configuration of sensors from the front panel display was not available (5.1.6.4)

Memory card slot is required for retrieval/ transfer of set-up files from and to the data logger. Alternatively, the USB port shown did not support the requirement of IMD in retrieval of data/set up files.

The other model with all features claimed to be complied was not brought for demonstration and hence not complied.

Manual transmission facility is required in field remote sites for testing and troubleshooting.

Two Rs. 232, 1 Rs. 485 and 1 USB port is required for programming through laptop, connecting telephone modem, interfacing remote display unit and transfer of set up files.

Using an SDI-12 port and attaching an external converter (SDI to analog channel) is not acceptable since the complexity of the system increases.

Essentially required as per IMD RFP document.

Transmitting Antenna: SAM - GOES ? 11

The SAM-GOES-11 antenna specifications provided support only RHCP polarization whereas the requirement is both LHCP and RHCP field switchable (5.2.2.1 of RFP). The axial ratio is not mentioned (5.2.2.7) 3 dB beam width of 400 (5.2.2.4) is also not mentioned. Facility is required for utilisation with any type of satellite Kalpana/INSAT series with either RHCP or LHCP polarizations. Axial ratio is to be stated clearly to ensure polarization compatibility. Beam width is required to be known proper transmission of data.

9. Learned Counsel for the petitioner did not make any attempt to question the correctness of the above reasons nor was it disputed that the deficiencies noted

by the TEC did actually exist in the equipment offered by it. As can be seen from a careful reading of the minutes extracted above, the TEC has even referred the relevant paragraphs in RFP while holding that the equipment offered by the petitioner does not satisfy the requirements stipulated therein. This position is made abundantly clear even by the letter dated 27th December, 2007 addressed by the petitioner to the Director General of Meteorology in which the petitioner has referred to certain modifications having been carried out in the data logger offered by it to make the same fully compliant with the requirements of RFP. The following paragraph from the said letter is in this regard relevant:

We are now pleased to confirm as promised by our team during presentation that the modifications are carried out and data logger (100% complaint) is now ready with our manufacturer and will be made available, if we get opportunity to supply the equipments.

10. In the light of the above, there is no gainsaying that the equipment offered by the petitioner was technically non-compliant and was Therefore liable to be rejected by the TEC who was perfectly within its powers to insist that the equipment should strictly comply with the standards stipulated for the same. The question however is whether grant of time to the other three bidders, namely, M/s Jin Yang, M/s Instrumentation Ltd. and M/s PEC & AMSH to remove certain deficiencies in IDMA earth station transmission which is another component of the equipment would render the process illegal or irregular. There are two reasons why the decision making process is not, in our view, vitiated on that account in the instant case. Firstly because in so far as the data logger is concerned, none of the three companies mentioned above were found to be non-compliant as was the position with the petitioner, nor has any time been granted to them to comply with the requirements of the RFP in regard to that equipment. It is not Therefore a case where the decision making authority or an expert/agency assessing the same adopts two different standards while dealing with the same subject matter qua parties that are similarly situate. M/s Jin Yang, M/s Instrumentation and M/s PEC & AMSH were all found to be compliant in so far as the data logger was concerned. It was only the petitioner whose equipment was found to be non-compliant. Grant of time to some while denying the same to the petitioner would have made material difference if it related to data logger. It is not however the petitioner's case that any time was granted to any one of the three other bidders to remove the deficiencies in data logger. There was in fact no occasion for any one to do so as the Data Logger offered by the three bidders mentioned above were fully compliant.

11. Secondly, because the deficiencies noticed by the TEC in relation to the earth station were not of such a critical nature as to render the equipment offered for the earth station transmission to be wholly unacceptable. The TEC has tabulated the position of the bidders in the following words:

Major

Systems

Actech

Astra

Jin Yang

Instrumentation

PEC & AMSH

Sutron

Telvent

Data Logger

Not Complied

Complied

Complied

Complied

Complied

Complied

Not Complied

Transmitter

Complied

Complied

Complied

Complied

Complied

Complied

Complied

Sensors

Complied

Complied

Complied

Complied

Complied

Complied

Not Complied

TDMA Earth Station Transmission

Complied

Downconverter details provided to the TEC on 1 Nov 2007. Receiver will be of Microcom DAMS-NT make.

Complied

Acquisition time of (0.5 sec for 9.6 kbps, BPSK) is not agreeable as per IMD RFP, Firm has provided an undertaking to customize the demodulator as per IMD specifications (within 6 months) Demodulator details not provided. Had committed in the bid and during the discussions on 1 Nov 2007 that it will be implemented within six months, through partnership with signal engineering, USA. Firm was asked to provide details of the demodulator to the TEC. But they have not responded till the completion of the TEC meeting.

Technical bid contains information about Lyman Bros., USA who will be the firm responsible for implementation of the Receiving Earth Station in association with Ilex Engg. USA. Sufficient details not provided in the bid but during the discussions on 2 Nov 2007 the firm confirmed that integrated system will be provided within six months

Complied

Not Complied

Processing software

Yet to develop for IMD requirement

Develop-ment in progress

In progress

Develop-ment within the time frame of delivery of equipments

Develop-ment within the time frame of delivery of equipments

Develop-ment in progress 8 to 12 weeks for full customization

Not complied

Installation & commissioning

Complied

Complied

Complied

Complied

Complied

Complied

Complied

12. What is evident from the above is that in so far as data logger is concerned, while the petitioner was found to be non-compliant, M/s Jin Yang, M/s Instrumentation and M/s PEC & AMSH were found to be compliant. It is also evident that deficiencies mentioned by the TEC related to another equipment viz; "earth station transmission" in the bids offered by the other three companies referred to above and not data logger. Whether or not the deficiencies noticed in the TDMA earth station transmission equipment were of critical nature is however a matter which the experts evaluating the equipment were better qualified to judge and decide. Inasmuch as the experts took the view that the deficiencies were not of a kind that would justify the rejection of the equipment in toto, the said decision cannot be readily found fault with. In situations involving judicial review of decisions that are founded on technical evaluation by experts, the courts are extremely slow in interfering. Reference may in this regard be made to the decisions of the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., , Union Public Service Commission v. Jagannath Mishra, (2003) 9 SCC 237 and U.P. Public Services Commission Vs. Subhash Chandra Dixit and Others, . Respectfully following the above authoritative pronouncements, we see no reason to interfere with the decision taken by the Expert Committee rejecting the bid offered by the petitioner. That is particularly so when the view taken by the experts does not appear to us to be erroneous much less so outrageously perverse as to call for any interference in exercise of our writ jurisdiction.

13. In the result, this writ petition fails and is hereby dismissed but in the circumstances without any order as to costs.