

(2010) 07 DEL CK 0060

In the Delhi High Court

Case No : Writ Petition (C) No. 735 of 2010

Aggarwal Structural Consultants (P) Ltd. and Others

APPELLANT

Vs

Public Works Department Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 07 DEL CK 0060

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Party in Person through its authorized Representative, for the Appellant; Aruna Tikku, Additional Standing Counsel, for the Respondent

Judgement

S. Muralidhar, J.

W.P.(C) No. 735 of 2010 and CM Nos. 1543 and 1894 of 2010 (for stay)

1. The Petitioner company was awarded the contract for preparation of structural design including preparation of 8 sets of structural drawings as well as preparation of service drawings (civil works including water supply, sanitary and drainage) for the proposed Police Housing Complex at Mandoli, Delhi for a sum of Rs. 26,48,000. A separate bid of the Petitioner for the sum of Rs. 4.5 lakhs for the consultancy work for obtaining Environmental Impact Assessment ("EIA") clearance, was also accepted by the competent authority. The Petitioner submitted the bid for preparation of the structural drawings on 12th August 2006. After negotiations it agreed to a reduced lump sum fee of Rs. 23.5 lakhs plus service taxes by its letter dated 9th September 2006. The acceptance of the bid ended in the execution of the contract on 14th October 2006. Significantly, even according to the Petitioner, before awarding the work the Respondent Department i.e. the Public Works Department ("PWD") of the Government of National Capital Territory of Delhi ("GNCTD") reduced the scope of the building work by excluding all other structures of the buildings other than Type-III and Type-IV quarters.

2. It is claimed by the Petitioner that in terms of the agreement, the Petitioner prepared and submitted a structural design/drawings for Type-III and Type-IV quarters and got the same approved/checked from the Indian Institute of Technology ("IIT"), Delhi. The Petitioner states that he prepared and submitted the necessary service drawings. It also successfully completed the other part of the agreement by submitting the EIA Report and obtaining the Environment Clearance Certificate. It is stated in the petition that although bills were raised on 25th March 2009 for the work pertaining to the environment clearance and on 2nd July 2009 in relation to the completion of the primary work pertaining to the structural designs/drawings for Type-III and Type-IV quarters, both sets of bills remained unpaid. The Petitioner states that it has also issued to the Respondents on 13th November 2009 a structural stability certificate and an indemnity bond.

3. While making enquiry with the Respondent about the non-payment of its bills, the Petitioner learnt that the Respondent had invited an "expression of interest" for the purposes of engaging Consultant/ Architect for providing "architectural and structural consultancy for the construction of all buildings (except Type III quarters)" as well as "development and bulk services like water-supply, sewerage, drainage etc." Included in this work was the "structural consultancy work pertaining to Type IV quarters and water supply, sewerage, drainage etc." which according to the Petitioner was already covered in the Petitioner's scope of work and already completed by it. Further although the work pertaining to Type II quarters, was initially included in the Petitioner's contract and was later excluded on the pretext of a departmental decision to undertake the same in-house, the Petitioner found that even this work was being outsourced. A copy of the advertisement issued by the Respondent in the Delhi edition of the Hindustan Times dated 23rd November 2009 has been enclosed with the petition.

4. According to the Petitioner, the invitation of "expression of interest" for preparation of structural drawings and designs pertaining to Type IV quarters which was included in the Petitioner's scope of work was arbitrary and irrational, particularly since the Petitioner's contract in that regard was not terminated. Secondly, it was submitted that the Respondent took the decision unilaterally without ever informing the Petitioner that the Respondent is not going to use his structural designs and drawings already prepared by the Petitioner for the Type IV quarters. Therefore, it is submitted that the impugned action of the Respondent in inviting "expression of interest" from others in relation to the same work awarded already to the Petitioner and performed by them, without informing the Petitioner, is in violation of the principles of natural justice.

5. It is submitted by the Petitioner that the unreasonable conduct of the Respondent is compounded by the fact that the Petitioner's bills for the work already done by it remains unpaid. In the above circumstances, the present writ petition was filed seeking a writ to quash the action of the Respondent in inviting "expression of interest" by way of its advertisement dated 29th November 2009 for structural designs for the Type IV quarters of the Police Housing Complex.

The petition also seeks a writ of mandamus to the Respondent to clear the bills of the Petitioner and pay the amount together with interest @ 18% per annum, to impose penalty on the Respondent as well as award compensation to the Petitioner.

6. In the counter affidavit, a preliminary objection was taken by the Respondent that all disputes arising out of the contract with the Petitioner were required to be referred to the arbitration and this Court, therefore, has no jurisdiction to entertain the present writ petition. It is submitted that the disputes relating to the reduction in the scope of work and the proportionate reduction in the amount payable to the Petitioner arise from the contract itself and, therefore, cannot be examined by this Court in a writ petition under Article 226 of the Constitution. While it is not denied that the Petitioner was awarded the contract of preparing the structural drawings and designs for the Type III and Type IV quarters of the Police Housing Complex and was also awarded a separate contract for obtaining environmental clearance, it is stated that on 11th November 2009, the client Department i.e. the Delhi Police had desired changes in the plans for the Type II and Type IV quarters so as to achieve greater Floor Area Ratio ("FAR"), and construct the maximum number of quarters as per the Master Plan for Delhi ("MPD") 2021. No change in the Type III quarters was desired since the construction work of the said quarters had already commenced. In order to meet the requirement of the Delhi Police, it was decided to go in for a revised layout plan, revised building plan, structural designing, bulk services etc. after approval of the Delhi Police as well as the local bodies like the Delhi Urban Arts Commission ("DUAC"), Municipal Corporation of Delhi ("MCD"). Since it was decided to have a relook at all the projections in view of increase in the FAR from 107 to 200 and the consequent escalation in the project cost of approximately Rs. 100 crores, the Respondent decided to reduce the scope of the work of the Petitioner, which they were entitled to do under the contract as per Clause (f). According to the Respondent, "all these developments were brought to the notice of the Petitioner". Consequently, the Petitioner was informed on 3rd February 2010 that the construction work of Type IV quarters and services were presently not being undertaken and that the Petitioner may not carry out the preparation of structural plans and service plans for the Type IV quarters. It is stated that since the revised project cost was to be around Rs. 100 crores, "expression of interest" for consultancy services was invited. It is maintained that there was nothing arbitrary or irrational in the action taken by the Respondent.

7. This Court has heard the submissions of Mr. Anil Aggarwal, who is the authorised representative of the Petitioners, and who argued the petition as "Petitioner in person". Ms. Aruna Tiku appeared on behalf of the Respondents.

8. The facts are by and large not in dispute. It is an admitted position that the Petitioner was awarded the work of preparation of structural designs and drawings for the Type III and Type IV quarters; that the Petitioner did complete that work and submit the drawings to the Respondent after obtaining approval

from the IIT, Delhi. Although, Learned Counsel for the Respondent stated that the service drawings were perhaps not complete, the Petitioner disputed this position and pointed out that in any event, this was never the complaint of the Respondent.

9. In the reply filed by the Respondent, since an assertion was made that the Petitioner was kept informed of the proposed revision in the project pertaining to Type IV quarters, the Court enquired of the Respondent what the precise sequence of events was. This was because the Petitioner maintained that it had never been informed prior to 3rd February 2010 that a decision had been taken to revise the project. In fact, the Petitioner filed CM No. 1894 of 2010 where he made this precise averment. In the above context, on 2nd July 2010, this Court passed the following order:

1. After hearing arguments for some time, this Court enquired of the Respondent the precise sequence of events that led to invitation of fresh bids for structural designs for the Type -IV quarters on the basis of the increased FAR from 107 to 200.

2. Ms. Tiku, Learned Counsel appearing for the PWD stated that apart from filing a reply to the CM Application No. 1894 of 2010 where the petitioner has averred that he was not kept in the loop about the increased FAR as well as about the advertisement inviting fresh bids. She further states that she will produce the entire records which will reflect deliberations that preceded the invitation of fresh bids for submitting of structural designs for Type-IV quarters.

3. List on 20th July 2010.

4. Interim order to continue.

10. In response to the above order, Ms. Tiku produced the records of the department and candidly stated that there was no written communication to the Petitioner prior to 3rd February 2010 about the decision taken by the Respondent to go in for a revision of the structural drawings for Type IV quarters.

11. Ms. Tiku pointed out that on 11th November 2009, a letter was received from the Commissioner of Police informing the Respondent that since the permissible FAR was increased to 200, a revision was needed for the building plans for both Type II and Type IV quarters. A request was made that a revised layout plan of the site be prepared as per the sample drawing of Police housing complex at Sector-I, Rohini.

12. Ms. Tiku did not deny that there was a lapse on the part of the Respondent in not keeping the Petitioner informed of the above communication received from the Commissioner of Police. The only letter written to the Petitioner was on 3rd February 2010 long after the "expression of interest" had been invited on 25th November 2009 from other architects. In fact, the letter dated 3rd February 2010 was also unhappily worded. The letter reads as under:

To,

Aggarwal Structural Consultants (p) Ltd.

518, KG-1, Vikas Puri,

New Delhi-18

Subject: C/o Police Housing Project at Mandoli,

Delhi-93 (SH: C/o 360 Nos. of Type III, qtrs. and its related development works)

Agmt. No. 45/EE/PWD-18/DS/2006-07.

Sir,

In the aforementioned subject and reference it is stated that the customer department has consented only for the constructions of Type-III quarters and presently Type-IV quarters are not to be constructed.

Therefore, you are requested not proceed to prepare design and services plan of Type-IV quarters.

You are also requested to attend a meeting in this respect on date 9-2-2010 at 11 O" clock in the office of the undersigned.

Sd/-

(Er. R.N. Aggarwal

Executive Engineer

Building Project Division, B-123

Kalyanvas, Delhi-91.

13. The statement in the above letter that "you are requested not to proceed to prepare design and services plan of Type IV quarters" was contrary to the fact that by that date the structural designs and drawings prepared by the Petitioner, and approved by the IIT-Delhi for the Type IV quarters, had already been received by the Respondent.

14. According to Ms. Tiku, the action of the Respondent was justified in terms of the following clause in the contract:

In case any of the component is not desired by the department proportionate reduction shall be done from the lump sum fee on the basis of above percentage in 4(d) above.

15. It must be observed that while the contract permits the Respondent to reduce the scope of work, the question really is about its conduct in not keeping the Petitioner informed of such reduction in the scope of work. It is not possible to simplistically characterize the failure of the Respondent to inform the Petitioner of the reduction in scope of work as a "lapse" on its part. This is

particularly because the Petitioner had already completed the preparation of structural designs and drawings for the Type IV quarters and submitted it after approval by the IIT- Delhi, as required by the contract, to the Respondent. If indeed, this was already done prior to the letter dated 11th November 2009, then possibly it was incumbent on the Respondent to settle the bills of the Petitioner for the work already done apart from informing the Petitioner of the reduction in the scope of the work.

16. Relying on the Judgment of this Court in Pioneer Publicity Corporation Vs. Delhi Transport Corporation and Another, , Atlas Interactive (India) Pvt. Ltd. v. Bharat Sanchar Nigam Ltd. 126 (2006) DLT 504 and Ashish Gupta Vs. IBP Co. Ltd. and Another, , Mr. Aggarwal submitted that it was a waste of precious public revenue for the Respondent to go in for a fresh structural design for Type IV quarters. He submitted that the scope of the contract awarded to the Petitioner included revisions and alterations, which, if communicated to the Petitioner, could well have been done by the Petitioner itself. In other words, there was no need for another Architect to prepare the revised structural design. According to Mr. Aggarwal, the issue was of public interest and avoidance of wastage of precious public revenue. He also relied upon the decision in Suncity Projects Pvt. Ltd. v. Government of NCT of Delhi 2009 (V) AD (Delhi) 259 to emphasise that although in the matters of contract, the usual remedy is by way of arbitration but where the Respondent acts arbitrarily then the remedy under Article 226 of the Constitution is not precluded. He submitted that a mandamus could be issued to the Respondent in the facts and circumstances of the case to honour their part of the commitment under the contract entered into with the Petitioner on 14th October 2006 and require the Petitioner to submit the revised structural drawings and designs. He also submitted that for the severe prejudice caused to the Petitioner on account of the arbitrary action of the Respondent, the Petitioner should also be compensated.

17. It must be noticed at the outset that according to the Respondent, the bills submitted by the Petitioner so far have all been honoured. It is assured that as and when the Petitioner raises further bills for the work done by it in relation to the structural designs and drawings for the Type IV quarters work that would be promptly honoured by the Respondent in accordance with the terms of the contract. Therefore, as far as the present petition is concerned, this Court need not examine the dispute, if any, arising out of the non-payment of the any bill submitted by the Petitioner to the Respondent. Even as regards the question of any damage suffered by the Petitioner on account of any alleged breach of the contract by the Respondent, that would also be a matter for arbitration proceedings. In any event, it is not possible for this Court in exercise of its jurisdiction under Article 226 of the Constitution to determine and quantify the exact extent of damages purportedly suffered by the Petitioner.

18. It is also not possible to issue a mandamus to the Respondent that it should permit the Petitioner now to submit the revised structural drawings. It is entirely

up to the Respondent whether it wants to continue with the Petitioner even for the purposes of the revised structural drawings or to go in for a fresh bid for that purpose. This is not a matter with which the Court will interfere.

19. The question, therefore, is of the possible relief that can be granted to the Petitioner in this petition after the finding has been arrived at by this Court that the Respondent did not act reasonably or fairly in proceeding to invite "expression of interest" for structural drawings and designs for Type IV quarters without first informing the Petitioner. Given the circumstances of the case, where the dispute arises out of the contract, the determination of the loss, if any, suffered by the Petitioner on account of the breach of the contract would be the subject matter of arbitration or in a civil suit. It is not possible to accept the submission of the Petitioner in light of the decisions in Pioneer Publicity Corporation or Atlas Interactive (India) P. Ltd. and Ashish Gupta that the invitation by the Respondents of "expression of interest" for preparing structural drawings and designs for the Type IV quarters, as per the revised FAR norms, would result in huge loss of public revenue and, therefore, should be avoided. The decision of the Respondent based on the need expressed by its client i.e. the Delhi Police that a revised building plan should be prepared and consequently inviting "expression of interest" per se cannot be said to be unreasonable. The only extent to which it has been held to be unreasonable is that before doing so, the Petitioner was not kept informed.

20. This Court is, therefore, unable to grant any substantial relief to the Petitioner except awarding it costs of this petition which is quantified at Rs. 15,000/-. The writ petition and the applications are accordingly disposed of with the direction that the Respondent will pay to the Petitioner costs of Rs. 15,000/- within a period of two weeks from today.