

(2021) 01 DEL CK 0302

In the Delhi High Court

Case No : Civil Writ Petition No. 5716 Of 2020

Altius Sports & Leisure Pvt Ltd & Anr

APPELLANT

Vs

NPCC Limited

RESPONDENT

Date of Decision : 29-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 01 DEL CK 0302

Hon'ble Judges : Vipin Sanghi, J; Rekha Palli, J

Bench : Division Bench

Advocate : Vineet Malhotra, Paritosh Budhiraja

Final Decision : Dismissed

Judgement

,,,,

Vipin Sanghi, J",,,,,

CM APPL. 27101/2020,,,,

1. For the reasons stated in the application, the same is allowed. The counter-affidavit is taken on record.",,,,,

2. The application stands disposed of.,,,,,

W.P.(C) 5716/2020 and CM APPL. 20665/2020,,,,

3. We have heard Mr. Malhotra, learned counsel for the petitioners and Mr. Budhiraja, learned counsel for the respondent/ NPCC Limited.",,,,,

4. The petitioners have preferred the present writ petition to seek quashing of Corrigendum No.2 bearing Reference No. NPCC/NZO-YSS-AIBS/20-,,,,

21/Corr-2 dated 24.08.2020, to the tender issued on 11.08.2020 for laying of Synthetic Turf and Athletic Track in Srinagar, J&K. This corrigendum, the",,,,,

petitioners claim, has been wrongly, illegally, malafidely and fraudulently issued

by the respondent." , , , ,

5. The petitioners state that they are engaged in the business of providing sports infrastructure and primarily in supplying and installing artificial turf , , , ,

and synthetic athletic tracks. It is claimed that since the year 2010, the petitioners have installed more than 10 Lakhs sq.ft. artificial sports flooring in , , , ,

India and SAARC Region. They claim to have installed various FIH certified Hockey Fields, IAAF certified Synthetic Running Tracks, FIFA certified , , , ,

Football Fields, Hockey Fields, etc. for private companies and also for Government organizations such as PWD, CPWD, various State Governments , , , ,

such as Government of State of Punjab, State of Kerala, State of Jharkhand and other States. In para 5 of the petition, the petitioners have enlisted , , , ,

some of the installations made by them. , , , ,

6. On 11.08.2020, the respondent/ NPCC issued a Notice Inviting Tender (NIT) for Laying of Synthetic Turf and Athletic Track as per the , , , ,

International Association of Athletics Federation (IAAF) and Federation International de Football Association (FIFA) Standards at Bakshi Stadium , , , ,

Srinagar (J&K). The bids were required to be submitted by 5.00 pm on 17.08.2020. It is the petitioners' case that they submitted their bid in , , , ,

response to the said tender at about 04:30 p.m on 17.08.2020, i.e. before the close of the time for submission of the bid. However, the respondent on , , , ,

the same date, i.e., 17.08.2020, issued a corrigendum being Corrigendum No.1 extending the last date for submission of tender to 24.08.2020." , , , ,

7. The petitioners further state that after the issuance of the NIT, some of the bidders had made suggestions with regard to the terms & conditions of , , , ,

the tender and had raised queries, including a query in relation to the definition of the term "similar works". We may note that the definition of , , , ,

"similar works" has relevance to the past experience of the bidder, and we shall be referring to it a little later." , , , ,

8. The petitioners state that the respondent " after considering the queries and suggestions, on 21.08.2020 refused to change the definition of the , , , ,

expression "similar works" as stipulated in the tender. However, on 24.08.2020, the respondent suddenly issued fresh Corrigendum No.2 " , , , ,

which is impugned before us, wherein the definition of the expression "similar works" was changed by the respondent. It is the petitioners' case , , , ,

that this change was deliberately effected with a view to oust the petitioners and

limit the competition between a favoured few. Consequently, the",,,,

petitioners have assailed the said Corrigendum No.2 before us.,,,,

9. The NIT, as initially issued, set down the pre-qualification criteria, wherein the experience criteria was prescribed as follows:",,,,

â??2. Experience: Bidder should have the experience of completion of similar works during last 7 years ending last day of month previous,,,

to the one in which tenders are invited should be either of the following:,,,

(a) Three similar completed works each costing not less than the amount equal to 40% of the estimated cost, Certificate should be attached.",,,,

Or,,,

(b) Two similar completed works each costing not less than the amount equal to 60% of the estimated cost, Certificate should be attached.",,,,

Or,,,

(c) One similar completed work costing not less than the amount equal to 80% of the estimated cost. Certificate should be attached.â??,,,

10. The expression â??similar worksâ?? used in the experience criteria was then defined as follows:,,,

â??3. Similar works mean: I) ""Similar work"" refers to a work Involving laying of IAAF class-II certified synthetic Athletic Track and FIFA",,,,

approved Synthetic Football Turf as per International Standards and its allied civil works.,,,,

Or,,,

ii) Completion Certificate of any International Standard Ground.â??,,,

11. Vide Corrigendum No.2 issued on 24.08.2020, the expression â??similar worksâ?? was re-defined to read as under:",,,,

â??Similar works mean: ""Similar work"" refers to a work involving Laying of IAAF class -II certified synthetic Athletic Track and FIFA",,,,

approved Synthetic Football Turf as per international standards and its allied civil works in India from Central / State Govt. Departments /,,,

Central PSUs/ State PSU/ Central Autonomous bodies/ State Autonomous bodies/ City Development Authority/ Municipal Corporation of,,,

City formed under any act by Central/State Government and published in Central/ State Gazette/ Public Limited Companies Listed in Stock,,,

Exchange duly supported with TDS Certificate in evidence of the value of work.

Submission of documentary Evidence of Public Limited,,,,,

Company Listed in Stock Exchange is the responsibility of bidder. The value of executed works shall be brought to current costing level by,,,,,

enhancing the actual value of work at simple rate of 5% per annum, calculated from the date of completion to last date of receipt of" ,,,,

applications for tenders. Certificate should be attached from Officer not less than the Rank of Executive Engineer,,,,,

and,,,,,

12","S imila r Works

Mean","""Similar work"" refers to a

work involving laying of

IAAF Class-II certifie

synthetic Athletic Track

and FIFA approved

Synthetic Football Turf as

per International Standards

and its allied civil works.

Or

ii) Completion Certificate

of any International

Standard Ground.", "Construction of IAAF Class-II Certifie

Synthetic Athletic Track and FIFA

dapproved Synthetic Football Field is a

different than the construction of any

International Standard Ground work.

Sir,

construction of IAAF Class-II Certifie

Synthetic Athletic Track and FIFA

approved Synthetic Football Field is highly

specialized and technical work and cannot

compare with any other International ground

work i.e.

Tennis, Hockey, Rugby Squash Court
Cricket ground etc. The bidders who do not
have any similar kind of work experience
cannot construct International Standard
synthetic track and football ground without
any past experience and specialized
equipments.

Hence we request you to kindly allow only
those bidders who have executed FIFA
Certified Football and IAAF Certified
Synthetic track Field work for this tender
and remove the para i.e.

Completion Certificate of any
International Standard Ground from this
tender. The bid provisions shall
prevail.

d

,

d

Pre-Revised, Post-Revised,,,

Similar works mean:

i) "Similar work" refers to a work
involving Laying of IAAF class-I
certified synthetic Athletic Track and
FIFA approved Synthetic Football
Turf as per International standards
and its allied civil works.

Or

ii) Completion Certificate of any

International standard ground.", "Similar works mean:

Similar work"" refers to a work involving Laying of IAAF class-II certified Synthetic Athletic Track and FIFA approved Synthetic Football Turf as per International standards and its allied civil works in India from Central / State Govt. Departments / Central PSUs/ State PSU/ Central Autonomous bodies/ State Autonomous bodies/ City Development Authority/ Municipal Corporation of City formed under any act by Central/State Government and published in Central/State Gazette/ Public Limited Companies Listed in Stock Exchange duly supported with TDS Certificate in evidence of the value of work. Submission of documentary Evidence of Public Limited Company Listed in Stock Exchange is the responsibility of bidder. The value of executed works shall be brought to current costing level by enhancing the actual value of work at simple rate of 5% per annum, calculated from the date of completion to last date of receipt of applications for tenders. Certificate should be attached from Officer not less than the Rank of Executive Engineer.

And

ii) Completion certificate of any International standard ground in India.",,,

the submission of Mr. Budhiraja, that since the petitioners' Technical Bid had not been opened when the corrigendum was issued, there was no way",,,,

for the respondent to know, or imagine, that the petitioners would not meet the amended definition of "similar works". The respondent having",,,

realized that the expression "similar works" had not been defined in an appropriate manner in the initial NIT, which definition left several aspects",,,

unanswered, in our view, they were completely justified in amending the said definition in the manner they saw fit. In fact, since the tender in question",,,

is for construction of IAAF Class II Synthetic Turf and Athletic Track, the amendment introduced by the impugned corrigendum reinforces the",,,

requirement of past experience in carrying out similar works. In any event, it is not as if the amended definition is such that no bidder is capable of",,,

meeting it as, even according to the petitioners, there are four bidders who meet this definition, as amended. Merely because the petitioners are unable",,,

to meet the criteria stipulated in the amended definition, is not a ground for us to quash the Corrigendum No.2, vide which the amendment was brought",,,,
in.,,,,

23. For the aforesaid reasons, we find no merit in this petition, which is accordingly dismissed, leaving the parties to bear their respective costs.",,,,

24. The interim orders stand vacated. It will be open to the respondent to proceed with the tender process in question.,,,,