
(2009) 10 SC CK 0050

In the Supreme Court Of India

Case No : Civil Appeal No. 6978 of 2009 (Arising out of SLP (C) No. 5461 of 2009) and Civil Appeal No. 6979 of 2009 (Arising out of SLP (C) No. 9381 of 2009)

BECIL

APPELLANT

Vs

Arraycom India Ltd. and Others

RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 3 AWC 2328 Supp : (2009) 184 DLT 764 : (2009) 13 JT 331 : (2010) 157 PLR 398 : (2010) 1 SCC 139 : (2009) 15 SCR 277 : (2010) 29 VST 555

Hon'ble Judges : Markandey Katju, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Mohan Parasaran, G.E. Vahanvati, ASGs, T.S. Doabia, Neeraj Malhotra, T.V.S.R. Sreyan, Nikhil Nayyar, Manoj Goel, Shuvodeep Roy, Wajeesh Shafiq, Gopal Verma, Puja Jain, for Dua Associates, Ranjana Narayan and Rashmi Malhotra, for D.S. Mehra, for the Appellant;

Final Decision : Allowed

Judgement

Civil Appeal No. 6978 of 2009 @ SLP(C) 5461/2009

1. Leave granted.

2. This Appeal has been filed against the impugned judgment of the Division Bench of the High Court of Delhi dated 02nd February, 2009 passed in Writ Petition(C) No. 7865 of 2008.

3. The facts in brief are:

4. Respondent No. 2 (Prasar Bharti) issued a Notice Inviting Tender (NIT) on 20th October, 2006 for the supply of two transmitters of 1000 KW (or 1 MW) each. The bidding was a two-stage process involving a technical bid and a financial bid. There is no dispute that the respondent No. 1 (Arraycom) and the

appellant (BECIL) were both technically qualified.

5. In respect of the financial bid which was opened on 30th July, 2007, the quotation given by Arraycom was for sum of Rs. 51.57 crores and it was stated therein that:

1. Prices at INR including Custom Duty, Packaging, Forwarding, Freight & Insurance.

2. CST (Central Sales Tax) is inclusive in the above prices. AIR will have to give concessional forms C/D.

3. Billing will be done from our Noida office.

4. Validity of offer upto 120 days from the date of opening (I.e. up to 16.06.2007).

6. The quotation given by BECIL was for Rs. 47.35 crores and it was stated that:

1. Prices in INR. FOR destination, including Freight, Insurance & Customs Duty.

2. Sales Tax extra @ 4% against form C/D.

3. Sales Tax extra @ 12.5% in case form C/D is not provided.

4. Validity of offer upto 31.05.2007.

7. For the purposes of this decision, we are only concerned with the sales tax element in the price bid. We may note, as a matter of fact, that there is no dispute that Form C under the Central Sales Tax Act, 1956 is not relevant to the facts of the case and Form D under the Central Sales Tax Act, 1956 was abolished with effect from 1st April, 2007. There is also no dispute that the bids of Arraycom and BECIL were valid and subsisting at all material times.

8. Based on the quotations, quoted above, Prasara Bharti submitted the following chart of quoted prices before the High Court:

Arraycom

BECIL

Basic price (in Rs.)

49,58,65,385

47,37,48,792

With 4% sales tax (in Rs.)

51,57,00,000

49,24,90,743

With 12.5% sales tax (in Rs.)

55,78,00,000

53,66,00,000

9. In contracts to be given by Government authorities or statutory bodies or instrumentalities of the State, Article 14 of the Constitution applies. Hence, there should be transparency by holding an open public auction/tender because such contracts often involve huge amounts of public money. Ordinarily, the lowest bidder should be given the contract, although it is not an invariable rule in all cases. In the present case, the Prasar Bharti found that the appellant's bid was the lowest bid on the basis of the chart which we have quoted above.

10. Respondent No. 1 before us filed a writ petition in the High Court of Delhi which has been allowed by the impugned judgment and hence this appeal before us.

11. In our opinion, the whole controversy is about the interpretation of the second paragraph submitted by respondent No. 1 (Arraycom). According to the High Court, the bid of Rs. 51.57 crores was an inclusive bid and no amount of central sales tax could have been added to that amount. We regret we cannot agree.

12. It may be seen that paragraph 2 of the bid of Arraycom consists of two sentences. The first sentence, no doubt, states that the central sales tax is inclusive in the price of Rs. 51.57 crores. Had paragraph 2 stopped there, the submission of learned Counsel for Arraycom would have been correct. However, in paragraph 2, there is a second sentence to the effect that AIR (All India Radio) will have to give concessional forms C/D. Thereafter there is no third sentence in paragraph 2 of the bid that even if the concessional forms are not given, yet the bid of Rs. 51.57 crores is an inclusive bid and nothing can be added to the bid.

13. Thus, in our opinion, paragraph 2 of the bid of Arraycom is ambiguous and this is the fault of Arraycom itself by giving such an ambiguous proposal. Respondent No. 1 should have given a clear cut bid either by stopping after the first sentence, or by adding another sentence after the second sentence that even if the concessional forms C/D are not given the bid of Rs. 51.57 crores is an inclusive bid.

14. Thus, paragraph 2 of Arraycom's bid has two interpretations (i) it is an inclusive bid; and (ii) that sales tax can be added to that bid.

15. Prasar Bharti, who has to make the payment, has taken the second interpretation which, in our opinion, is a reasonable and possible interpretation.

16. In administrative matters, the scope of judicial review is limited and the judiciary must exercise judicial restraint in such matters, as held by this Court in *Tata Cellular Vs. Union of India*, . Moreover, the view of Prasar Bharti also appears reasonable because Prasar Bharti has to pay the amount inclusive of sales tax, since there is no concessional forms. If Prasar Bharti has taken up one

possible interpretation, the High Court should not have intervened. The scope of judicial review in administrative matters is limited.

17. For the reasons given above, this appeal is allowed and the impugned judgment of the High Court is set aside. No order as to costs.

Civil Appeal No. 6979 of 2009 @ SLP(C) No. 9381 of 2009

18. Leave granted.

19. This Appeal has been filed challenging the same impugned judgment dated 02nd February, 2009 passed by the High Court of Delhi.

20. Since, we have allowed the Civil Appeal No. 6978 of 2009 arising from S.L.P. (C) No. 5461 of 2009, this appeal is also allowed on the same terms. No order as to costs.