
(1997) 11 DEL CK 0054

In the Delhi High Court

Case No : Civil Writ Petition No. 925 of 1997

Bengal Transport Co.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Citation : (1997) 6 AD 990 : (1997) 69 DLT 1038 : (1998) 45 DRJ 45

Hon'ble Judges : Arun Kumar, J

Bench : Single Bench

Advocate : Vikash Singh, Yunus Malik, Reena Sharma, B. Dutta, R.K. Joshi, R.P. Dave and M.I. Dutta, for the Appellant;

Judgement

Arun Kumar, J.

(1) Since a short point is involved, this writ petition is taken up for final disposal.

(2) Respondent No.2, the Container Corporation of India (for short CCI) issued an advertisement inviting tenders from experienced handling contractors for cargo handling operations at its Inland Container Depot (for short ICD), Tughlakabad, New Delhi. Tender papers were issued to various parties on 29th November, 1996. The tenders were opened on 10th December, 1996 and the rates quoted by the various tenderers became known on that date itself. According to the petitioner its tender was the lowest. The period for which the work was to be awarded under the tender is four years, i.e., from 1st February, 1997 to 31st January 2001. The grievance of the petitioner is that in spite of being the lowest tenderer, the work was not awarded to the petitioner. On the contrary the work has been awarded to respondent No.4 who, according to the petitioner, was not even the second lowest tenderer but was the third lowest tenderer. However, during the course of hearing, this was not disputed that the second lowest tenderer had withdrawn its tender and Therefore, respondent No. 4 became the second lowest tenderer to whom the work was ultimately awarded. It is also not disputed that respondent No. 4 had already been doing the same

work prior to the present tender being floated and in view of the fact that now the work under the present tender has been awarded to respondent No. 4, it is continuing to execute the contract.

(3) The petitioner's tender was the lowest. However, the stand of the respondents is that the petitioner failed to meet certain requirements of the tender and Therefore, the work was not awarded to it. In the counter affidavits filed on behalf of respondents 2 and 3 and respondent No. 4, it has been pointed out that the cargo handling operations at Icd, Tughlakabad are of great magnitude, it being the biggest in the country. Around ninety export and ninety import trains are handled per month at that site which accounts for over forty percent of total traffic and revenue of respondent No. 2. Apart from highlighting the magnitude of the work involved at Icd, Tughlakabad, the respondents have detailed the nature of work expected from the contractors in order to show that the work is of a highly specialised and technical nature and cannot be handled by everyone/anyone. The main work would be to stuff/destuff the export/import cargo arriving at the Icd by road on vehicles in large containers, store the same in nominated areas including covered warehouses, open packages for customs examination as per orders of the Customs Authorities, weigh the packages nominated, repack the opened packages and stuff/load export cargo/import cargo in empty containers. Keeping all these activities in view respondent No. 2 mentioned in the invitation to tender itself that Icd, Tughlakabad is the biggest Icd in the country and expects to handle 1,40,000 TEUs during 1996-97 involving stuffing/destuffing around 1,00,000 TEUs.

(4) The purpose behind showing the magnitude of the work involved and the nature of the work involved appears to be to emphasise that experience in handling such a work would be a very important factor to be kept in view while awarding the work. The respondent No. 2 did not dispute the fact that the petitioner was the lowest tenderer, however, it was stated that being the lowest tenderer was not sufficient to ensure that the work is awarded to the petitioner. It has been emphasised that the award of work really depends upon experience, capacity to work, sound financial condition, etc. of the tenderer. In this behalf my attention has been drawn to Clause 11 of the terms and conditions governing the contract which reads as under:

"11.Bonafide Offers:

11.1.The tenderer should be a bonafide cargo handling contractor/operator of sound financial standing and should have requisite number of equipment and adequate trained personnel to manage the handling work efficiently. The tenderer should be able to organise adequate specialised labour at Icd for handling the kind of cargos passing through ICD.

11.2.The tenderer should enclose documents and certificates in proof, to the satisfaction of Concor, of his previous experience in undertaking similar works and financial ability to undertake the work of the kind/magnitude tendered for."

(5) From the above clause it is to be noted that the tenderer should be : (a) a bonafide cargo handling contractor, (b) of second financial standing, (c) having requisite number of equipment, (d) having adequate trained personnel to manage the handling work efficiently, (e) should be able to organise adequate specialised labour at the Icd for handling the work.

(6) The tenderers were required to enclose documents/certificates to establish the above requirements. It is the case of the respondents that the petitioner failed to meet the above requirements and Therefore, the work was not awarded to the petitioner inspire of the fact that it was the lowest tenderer. The respondents have referred to the various certificates annexed by the petitioner with the tender documents in support of his work experience. From those certificates the respondents have tried to show that the petitioner does not have the requisite experience to handle the enormous work involved under the tender. Further my attention has been drawn to the fact that most of the certificates have been issued to concerns which the petitioner claims to be its associates and not to the petitioner itself. My attention has also been drawn to certain clauses in the tender document which require indemnities from the tenderers in the event of failures in any of the works required to be executed by the contractor. It is submitted that when the petitioner relies on certificates issued in favor of its associates to show its work experience, who will be held responsible under the indemnities in the event of indemnities being required to be enforced. The alleged sister concerns/associates of the petitioner are independent legal entities, one of them being a joint stock Company. It is also pointed out that some of the certificates do not show that the petitioner has work experience of the type of the work involved at Icd, Tughlakabad for which the tender was floated. The petitioner at best is a transporter. The nature of work involved in Icd, Tughlakabad was more of handling cargo particularly stuffing, destuffing containers and moving the containers and the material from one place to another.

(7) I have carefully considered the certificates relied upon by the petitioner for purposes of establishing its work experience as well as the nature of work involved in the present case. I find that the nature of work is of specialised type and cannot be handled by anyone or everyone. It requires expertise. Coupled with this is the fact that the magnitude/enormity of the work is such that unless a person has adequate experience to handle it there will be utter chaos. In the background of these facts the decision of the respondent No. 2 in not awarding the work to the petitioner cannot be said to be arbitrary or lacking in bona fides. In the writ petition no specific allegation of mala fide has been made against any particular officer. The only thing stated in the petition on this aspect is- "upon hearing rumours that the respondents have developed vested interest in their existing contractor, the petitioner submitted a representation on 26th February, 1997...". This is hardly an allegation of mala fide worth taking note of.

(8) Another important requirement which emerges from Clause 11 of the tender

quoted above is about sound financial standing of the tenderer. In the present case the Income Tax clearance certificate submitted by the petitioner shows that right from the year 1990-91 up to 1994-95 the petitioner has been making losses which at times run into lacs. The petitioner has relied on a bank certificate showing its turnover. However this fact has not been disputed that the petitioner has been incurring losses all these years. When the petitioner is admittedly incurring losses year after year, I failed to understand how it can be said that the petitioner has a sound financial standing. For this reason also I am unable to find any fault with the decision of respondent No. 2 in not awarding the work to the petitioner in spite of the petitioner being the lowest tenderer. Another fact that cannot be lost sight of is that when the petitioner has been running into losses, how it will meet the indemnity requirements under the tender in the event of any of the indemnities becoming enforceable.

(9) The learned Counsel appearing for the respondents also tried to show that the petitioner was not in a position to satisfy the requirement of having requisite equipment. To illustrate this aspect it was stated that a tenderer was required to have atleast 15 forklifts of atleast 1995 vintage. According to respondents the petitioner did not have any forklifts much less forklifts of 1995 vintage. In view of the fact that I find nothing lacking so far as bona fides of the decision of respondent No. 2 is concerned inasmuch as it was found that the petitioner was unable to meet the requirements of experience and sound financial position, I need not go into the question as to whether the petitioner was unable to meet the other requirements of the tender as well.

(10) On the question of experience, the learned Counsel for petitioner relied on New Horizons Limited and Another Vs. Union of India (UOI) and Others, , to urge that the question of experience should be considered as a commercial decision and not literally as per the terms of contract. In the facts of the present case, I am of the view that the petitioner has failed to meet the condition of work experience and the said authority cannot help the petitioner. The learned Counsel appearing for respondent No. 4 submitted that respondent No. 4 not only has been previously handling the same work at the same site, it is doing the same work at Calcutta as well as at another center. Therefore, it is submitted that respondent No. 4 is fully experienced in the field and it meets all the other requirements as well.

(11) Keeping all these aspects in view I find no merit in this petition. The same is dismissed. No costs.