(2018) 06 CAL CK 0198

In the Calcutta High Court

Case No : F.M.A. 1416 of 2017, CAN 6546 of 2017

Berhampore Construction Syndicate Private Limited And Another — APPELLANT

Vs

State Of West Bengal And Others — RESPONDENT

Date of Decision : 22-06-2018

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2018) 06 CAL CK 0198

Hon'ble Judges : SANJIB BANERJEE, J;ABHIJIT GANGOPADHYAY, J

Bench : Division Bench

Advocate : Saptangshu Basu, Subhabrata Das, Jahar Lal De, Shamim ul Bari

Final Decision : Disposed Of

Judgement

The appeal is directed against a rather articulate and wellconsidered judgment pertaining to the extent of interference in a matter pertaining to a tender

by a Court in exercise of its authority under Article 226 of the Constitution. The Single Bench has appropriately held that the Court will be slow to

interfere unless it finds a case of illegality or crass arbitrariness. The appellants herein responded to an electronic notice inviting tender issued some

time in the year 2014 for the widening and strengthening of an 8.75 km stretch of a State Highway between Motijhil and Panditbagh More Road in the

district of Murshidabad.

It is not in dispute that the estimated amount indicated in the tender documents was Rs.6,18,26,809.35. Upon the notice inviting tender being published

it appears that not too many bidders were interested, whereupon certain terms were sought to be relaxed by the authorities for bidders to be attracted

to apply thereunder. At the second stage, the appellants herein and another bidder were in the fray and even the other bidder was found not to be

technically qualified. Thus, the writ petitioner-appellants were the only one in the field and, pursuant to negotiations with the authorities, the original

rate quoted by the writ petitioners was revised to Rs. 7,08,16,427.03. Thus, the amount quoted by the writ petitioner-appellants was Rs.89,89,617.68 or

about 14.54 per cent above the estimated amount.

The appellants refer to the PWD Code and an amendment thereto of July 11, 2013 in Rule 216 (3) thereof. The sub-rule pertains to the calling of

competitive tenders and provides what steps are to be taken by the PWD personnel in case no offers are received or an inadequate number of offers

is received. The relevant part of sub-rule is set out:

â??Even if, after taking appropriate steps, the response to such re-tender is less than 3, that tender may be accepted with reference to the Finance

Department; Provided that the rates do not exceed the estimated or schedule rates 3% in case of works estimate and reasonable prevailing market

price for goods and services in other cases. Otherwise, such cases should be referred to the Finance Department for decision.â??

To complete the narration before coming to the disputes that have arisen between the parties, upon the other bidder in the fray in the second round

being found not to be qualified, the writ petitionersâ?? bid was the only one available for consideration. The writ petitionersâ?? lowered bid found

favour with the Superintending Engineer, who, in an internal memo issued to the chairman of the tender committee, opined that the rate quoted by the

appellants herein appeared to be reasonable as it was 14.54% â??aboveâ?¦ BOQ of the workâ?¦â? However, the chairman of the tender committee

did not immediately act on the recommendation of the Superintending Engineer or communicate the acceptance of the appellantsâ?? tender to the

appellants.

Instead, the appellants received a terse e-mail to the effect that, for administrative reasons, the tender process stood cancelled. According to the case

carried by the appellants to the writ court, it was arbitrary on the part of the respondents to cancel the tender process without assigning any reasons

therefor. According to the appellants, â??administrative reasonsâ? cannot be a panacea for all the evil that the PWD authorities are known to indulge

in, in matters pertaining to tenders. The appellants also maintain that it is only the reasons furnished at the relevant point of time for the cancellation of

the tender process that can be looked into by the Court and any subsequent reasons that may be found in the affidavit used in court by the respondent

authorities would of no avail.

According to the appellants, the calculation that is required to be done to ascertain whether the quoted rate is above 3% of the estimated rate in terms

of the relevant paragraph of Rule 216 (3) of the PWD Code is somewhat complex and which is why the Superintending Engineer, upon being satisfied

that the bid was within the parameters as envisaged in the relevant sub-rule, had recommended the appellantsâ?? bid to be accepted by the tender

committee. The appellants seek to make out that it is not merely the estimate put to tender that would determine whether the rate quoted was 3% over

such figure, the estimates put to tender had to be standardised against the price increase and the like and seen as on the date of consideration of the

matter for it to be ascertained whether the price quoted exceeded the 3% limit as indicated in the relevant paragraph of the sub-rule.

It was on such submission and upon noticing that the Superintending Engineer had recommended the appellantsâ?? bid to be accepted that the

respondents were required, in course of the present appeal, to disclose the basis for calculating the figure in terms of the quoted paragraph of Rule 216

(3) of the PWD Code. According to the respondents, the relevant calculation should be on the basis of what the sub-rule says in its clear and

unequivocal language and no further meaning should be attached to the words than may be evident therefrom. In any event, the respondents contend

that it was never the writ petitionersâ?? case in the petition that the rate bid by them was within the permissible limit for the tender committee to

approve the same and issue a work order in their favour. However, notwithstanding such submission of the respondents, it is plain to see that the

tender process was cancelled without any or meaningful reason being furnished therefor. It also appears that a subsequent tender process was

initiated and that has also been cancelled. However, since the subsequent process is not the subject-matter of the present proceedings, such aspect of

the matter need not be gone into.

What is relevant for the present purpose is that the relevant sub-rule in the PWD Code does not imply that if there were a single bidder at a tender process, particularly in case of retender, the bid had per force to be rejected for want of company. On a plain reading of the last paragraph of Rule

216 (3) of the PWD Code, it is evident that two sets of contracts are envisaged therein: one pertaining to works and another pertaining to the supply of

goods and materials. For contracts pertaining to works, if even a single bidder participates in a re-tender and the bid of the single bidder does not

exceed 3% estimated value of works, it would be open to the department to accept the bid without reference to any other. However, if the value of

the bid of the most successful or even a single bidder in a re-tender exceeds 3% of the estimated value of works, the bid cannot be accepted without

reference to the Finance Department and without the concurrence of the Finance Department.

In the light of the above, particularly since the act of cancellation of the tender process by the department cannot be accepted since no reasons were

furnished therefor, the petitionersâ?? bid is revived for the department to take cognisance thereof and act accordingly. In other words, the

petitionersâ?? bid of 14.54% higher than the estimated value of work put to tender will now be considered by the tender committee. If the tender

committee perceives such bid to be worthy of acceptance, in accordance with the PWD Code without reference to any other authority, the tender

committee will take appropriate steps.

If the tender committee is of the opinion that in view of Rule 216 (3) of the PWD Code the appellantsâ?? bid requires to be forwarded to the Finance

Department for concurrence before the acceptance, the tender committee will take steps in such regard. At any rate, a final decision on the matter

should be communicated by the respondents to the appellant-writ petitioners within four weeks from date. Since the appellants have partially

succeeded here, the award of costs by the order impugned stands set aside. The judgment and order impugned stands modified to the extent indicated

above and FMA 1416 of 2017 is allowed in part. In view of the aforesaid, CAN 6546 of 2017 is disposed of. There will be no order as to costs.

