

(2002) 01 GAU CK 0050

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1909 and 2709 of 2001

Bharat Bamboo and Timber Suppliers and Another	APPELLANT
Vs	
Hindustan Paper Corpn. Ltd. and Others	RESPONDENT

Date of Decision : 18-01-2002

Acts Referred:

Citation : (2002) 1 GLT 24

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : A.K. Bhattacharyya, G.N. Sahewalla and J. Sarma, in W.P. C No. 2709/2001 and A.K. Saraf, S.K. Agarwal and D. Baruah, In W.P. C No. 1909/2001, for the Appellant; S. itataki and J. Roy, in W.P. (C) No. 2709/2001 and M. Hazarika and G.N. Sahewalla, in W.P. (C) No. 1909/2001, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—By this judgment the WP(C) No. 1909/2001 and 2709/2001 are being disposed of as the subject matter in both the writ petitions involved similar question of law based on identical facts.

2. The Hindustan Paper Corporation Ltd., Respondent No. 1 in both the writ petitions, hereinafter referred to as the Corporation, issued a Notice Inviting Tender dated 14.12.2000 in the prescribed format from the financially sound and experienced suppliers of bamboo for supply of 50,000 MT of bamboo from lower Assam by Rail through rail point from and beyond Barpeta Road. The Corporation issued work order dated 14.3.2001 for the Respondent No. 4, M/s. Kalpataru Agro Forest Enterprises (P) Ltd. for 20,000 MT of bamboo. In WP(C) No. 1909/2001, the said work order dated 14.3.2001 has been challenged with prayer for quashing the aforesaid work order and to issue appropriate direction to the Corporation to issue work order in favour of the Petitioner M/s. Bharat Bamboo & Timber Suppliers.

3. In WP(C) No. 2709/2001, M/s. Savitri Enterprises (Pvt.) Ltd. prayed for setting aside the purchase orders dated 28.3.2001 issued in favour of private Respondent No. 5 M/s. Bhagawan Moth (Pvt.) Ltd. for sale of different varieties of paper in sheets and reels of various GSMS and sizes.

4. I have heard the learned Counsel for all the parties. The work order and purchase order have been challenged on the ground of illegality and arbitrariness on the part of the Respondents.

5. First I would like to deal with the contentious issues of WP(C) No. 1909/2001. The NIT dated 14.12.2000 is a two-bid systems as is evident from Clause-4 which provides for technical bid as well as financial bid. It was specifically indicated in the NIT that technical bid without documents mentioned in Clause-4 will be considered as incomplete and tenderers with such technical bids will be rejected. The Petitioner firm being eligible in all respects, submitted tender documents for 5000 MT of bamboos while the Respondent No. 4 applied for supply of 2000 MT of bamboo in its tender paper. Besides, the Respondent No. 4 and three other tenderers did not furnish the required documents/certificates. It could be gathered by the Petitioner that their tender documents were rejected. There was a negotiation on price and the ineligible tenderers were also invited for negotiation alongwith the eligible tenderers on 5.1.2000. The invitation was issued on 1.1.2001, but by a letter issued on 2.1.2001 it was deferred. Later on, the authorities negotiated the rate only with Respondent No. 4. In the meantime, the relaxation/departure from Clause-4 of the Tender Notice was challenged in WP(C)No. 522/2001 by Shri Jatin Kalita, who would have otherwise submitted tender documents. By an interim order passed on 25.1.2001, direction was given to the Respondent authority not to settle the supply work in contravention of the conditions of Clause-4. The Respondent Corporation appeared and in their affidavit (Annexure-F) submitted that three tenderers fulfilled all the conditions; one firm submitted documents required under Clause-4(1) and other tenderers though fulfilled the conditions under Clause-4 did not have the certificates required under Clause-4(i). It was further submitted that in order to explore the new loading point at Goalpara Railway Station and to generate better competition, the Corporation considered all the tenderers including Respondent No. 4 who did not fulfil the conditions of Clause-4 and also the Petitioner Shri Jatin Kalita of WP(C) No. 522/2001 did not have the required qualification. According to them, it was in the interest of the Corporation that the conditions of Clause-4(i) has been interpreted keeping public interest in mind and bringing the tenderers with substantial experience within the zone of consideration and thereby fixing the price with the lowest tenderer @ Rs. 1,4191- per MT. The said writ petition was disposed of by judgment and order dated 20.2.2001 with the following observation:

With the aforesaid observations and directions, the writ petition stands disposed of. Interim order passed by this Court on 25.1.2001 directing the Respondents No. 1, 2 and 3 not to settle the supply work with any person who does not fulfil

condition No. 4 mentioned in the tender notice dated 14.12.2000 is vacated. Considering however the entire facts and circumstances of the case, I leave the parties to bear their own costs.

6. It would appear that the Petitioner of the instant writ petition was also impleaded in the aforesaid writ petition as Respondent No. 9 on their prayer. Therefore, the aforesaid judgment is binding on the writ Petitioner and the same issue cannot be agitated in the instant writ petition. It was observed in para-6 of the aforesaid judgment that the relaxation of Clause-4(1) has been done by the authorities in the public interest with the view to obtain a better competitive rate. The learned Single Judge was further pleased to observe that the prejudice caused to the parties, such as the Petitioner, who have been kept out of the tender process can be rectified either by inviting fresh tender or by issuing a corrigendum. Accordingly, before the impugned works order was issued, the authority issued corrigendum dated 5.3.2001. By the order dated 2.3.2001 passed in Misc. Case No. 278/2001, the learned Single Judge further clarified the issue with the following observation:

In the judgment and order dated 23.2.2001 all that has been taken note of is the rate of Rs. 1,1191- PMT already been negotiated by the parties. The said rate negotiated by the parties is said to be Rs. 1,117.00 PMT. But in the said judgment and order nothing has been stated with regard to the quantity to be allotted to different tenderers for supply of bamboo. It will be, therefore, open for the Hindustan Paper Corporation to allot or re-allot quantities of bamboo at the rate of Rs. 1,417.00 PMT to be supplied by different tenderers including those who will submit their tenders in response to the corrigendum to the tender notice.

7. According to the Petitioner, in the corrigendum issued, it was stated that the rate of supply of bamboo has been fixed at Rs. 1,417.00 per MT and the pre-condition of experience of Rail as per Clause-4(1) has been relaxed. In the said corrigendum, it was further stated that parties having sufficient experience of supply of bamboo by road or otherwise minimum 5000 MT in the preceding two years may submit their tenders in the prescribed format. Petitioner's grievance is that they having experience in the line of business had quoted for work order for supply of 50000 MT of bamboos while Respondent No. 4 applied for 20000 MT. But the Petitioner has been allotted with supply order for 4000 MT as against 20000 MT given to the Respondent No. 4. According to the learned Counsel for the Petitioner, no reason has been cited for allotment of the entire quantity quoted by the Respondent No. 4 and for reducing the quantity quoted by the Petitioner. This has been highlighted as an instance of discrimination.

8. According to Respondent No. 4, the rate of Rs. 1,4191- quoted by the Petitioner was the lowest and, as such as per guidelines issued by the Central Vigilance Commission, negotiation was made with Respondent No. 4 to lower down the price. Accordingly, the rate was fixed at Rs. 1,417/- per MT with Respondent No. 4 and the works order was issued. The writ Petitioner having

quoted higher price could not be offered with the works order for 50000 MT for obvious reasons.

9. A careful consideration of the materials on record as described above with reference to the documents made available clearly show that the Corporation had acted in pursuance of the judgment delivered in WP(C) No. 522/2000 and the clarification given by the Court. The works order has been issued to different tenderers including the writ Petitioner and the Respondent No. 4 for supply of different quantities considering various aspects with utmost importance to the experience in this line. The quantity allotted widely differed and the first look suggested discrimination, yet it cannot be interfered within exercise of writ jurisdiction as this Court is not in a position to embark upon a meticulous scrutiny of the affairs of the Corporation in order to fix the quantity to be supplied by each of the selected suppliers. This has to be left at the discretion of the authority concerned who are the best judge to determine the capacity of individual supplier.

10. Mrs Hazarika, the learned Counsel for the Corporation in support of the distribution of quantity submitted that the Corporation is a profit oriented institution and it is obliged to act in public interest only. The decision taken by the authorities is in furtherance of the business interest of the Corporation, and this Court cannot ensure reallocation in a different form conducive to such interest. On consideration of the above submission of Mrs Hazarika, this Court declines to interfere with the allotment given by the Corporation. However, it is made clear that, in the event the Corporation is required to place orders for supply of additional quantity for any reason whatsoever including surrender of quantity by any of the parties, the Petitioner's case shall be duly considered alongwith other similarly situated suppliers, if any, for proportionate allotment. The issues raised in WP(C) No. 1909/2001 are answered accordingly.

11. The Petitioner in WP(C) No. 2709/2001 is a stockist of the Corporation and they submitted tender papers in pursuance of Notice Inviting Tender issued for sale of different varieties of papers in sheets and reels produced on or before 31.3.98. These papers could not be sold through stockists as these not being a regular sale through stockist is governed by the terms and conditions of the NIT. The NIT issued did not provide for the third party bidding which is allowed in case of stockist. Clause-7 of the NIT stipulates that 100% payment has to be made in advance and Clause-8 stipulates that successful bidder shall make his own arrangement for lifting of papers from the mills. In clause-10, it has been specifically mentioned that tenderers are not eligible for this discount as applicable in case of sale through stockists. The Petitioner submitted tender with condition that third party bidding system should be allowed. This was not acceptable to the Corporation and by the letter dated 28.2.2001 the Corporation requested the Petitioner to comply with the terms and conditions of the Tender Notice. The writ Petitioner, in reply, by the letter dated 1st of March, 2001 (Annexure-V) specifically made it clear that in the event of refusing to allow third

party bidding system they will not be able to lift the materials. On this ground the Corporation ignored the offer of the writ Petitioner and accepted the tender of the Respondent No. 5.

12. There is no condition in the NIT that third party bidding system will be allowed in the instant case. Clause-8 provides for lifting of papers from the mills by the successful bidder on his own arrangement. This clause cannot be interpreted to have included within its fold the third party bidding system. Therefore, the tender documents of the writ Petitioner cannot be said to have been ignored for unjust reasons. The letter dated 28.2.2001 written by the Corporation reads as follows:

This has reference to your office No. nil dated 9.2.2001 against our above mentioned tender opened on 22.2.2001 at our Calcutta office. It has been observed that you have not complied with the following conditions of our tender. You are therefore requested to comply with the tender norms and submit your acceptance before 3 p.m. on 5th March, 2001 failing which the tender will be finalised ignoring your offer:

1. Third party sale or sale against E-I Form is not acceptable. Please confirm categorically that the material will be lifted by you directly.
2. The entire quantity of paper has to be lifted within 45 days from the date of award or contract period beyond 45 days is not acceptable.
3. Duly signed tender documents were not furnished alongwith your offer. The same may please be furnished within the time stipulated above.

Yours faithfully, for Hindustan Paper Corpn. Ltd. Sd/- Illegible. Manager (CSC).

13. In reply there to the writ Petitioner by the letter dated 1st of March, 2001 made it clear that in the event of refusal of third party bidding system they will not be in a position to lift the tender materials. The letter of the writ Petitioner is quoted below:

We acknowledge receipt of your above referred letter and have to state as follows:-1) With regards your objection on third party sale, i.e. against Form VII as per the rules framed under Assam General Sales Tax, 1933, we would like to state that it is the normal practice of this trade and nothing new. Even at present all the regular purchases made by us from you are on third party sale system.

To set at rest any doubts, on your part, we may be asked to submit Form VII of the third party along with the payment to be made by us.

We would further like to state here that Smt. Kanckan Devi Dhanuka, who is a Director of our Company, is also the Proprietor of M/s. Rhino (Assam) Paper Industry, SSI unit eligible to purchase material against Form VII.

Hence, all the purchases made by us shall be made in the name of one of our group concern only and not in the name of any other person.

In light of above stated fact, we would request you to allow us to lift the material on third party sale basis.

We would further like to clarify that in the event of your refusing, to allow us to sale materials on the above manner third party sale basis, we will not be in a position to lift the tendered materials.

2) We shall lift the material within 45 days from the date of award of contract.

3) Due to oversight the duly signed tender documents were not sent by us along with our offer. The same is being sent herewith for your ready reference and record.

We hope your goodself will find the above in order and favour us by accepting our Tender in full. However, your reply in acknowledgment of this letter towards accepting to above mentioned three points will be very much appreciated.

14. It is clear from above that the writ Petitioner sought to impose a condition beyond the terms and conditions set in the NIT. The Corporation was, therefore, justified to select the next tenderer i.e. Respondent No. 5 for the purpose. I do not find anything wrong in the action of the Corporation. Had there been any confusion in the NIT about third party bidding system, the matter could have been dealt with from a different angle. To allow third party bidding system beyond the terms and conditions of the NIT at this stage would mean deprivation of other probable bidders who had restrained themselves from bidding. The papers proposed to be sold by inviting tender were produced before 31.3.98 and these papers being slow moving in the market were proposed to be sold out by the NIT in departure of the regular sale through stockists. This is a policy decision of the Corporation and the NIT has not been challenged in the writ petition. That means the decision of the Corporation to go for direct sale of the papers in stock is not under review in this writ petition. The terms and conditions incorporated in the NIT have been formulated by the Corporation in their prudence to protect the commercial interest of the Corporation. It would, therefore, be impermissible for this Court to question the validity of such terms and conditions. As stated earlier, nothing new can be added to the aforesaid terms and conditions at this stage. The Petitioner being made aware of this by the Corporation even after opening of the tender ought to have expressed their willingness to act in terms of the tender notice and not otherwise. That not having been done, the decision of the Corporation to place the work order with the Respondent No. 5 cannot be disturbed. This petition being devoid of merit deserves dismissal.

15. In the result, the writ petition No. 1909/2001 is disposed of with the directions in para-10 above and the writ petition No/2709/2001, for the reasons quoted above, is dismissed.