
(2008) 03 DEL CK 0011
In the Delhi High Court
Case No : LPA No. 108 of 2008

B.S. Constructions Co.

APPELLANT

Vs

The Commissioner of MCD and Others

RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Citation : (2008) 1 CTLJ 257 : (2008) 102 DRJ 455

Hon'ble Judges : Dr. M.K. Sharma, C.J.;Reva Khetrapal, J

Bench : Division Bench

Advocate : Nitendra Sharma and J.P.Sengh, for the Appellant; Amita Gupta, Archana Vashisht and Aparna Saxena, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.

CM No. 3268/2008

1. By this application the appellant prays for condensation of delay in filing the appeal. There is a delay of two days in the filing the appeal. On going through the application we find that the appellant has been able to make out a case of sufficient cause for condensation of delay. Accordingly, we allow the application and the delay in filing the appeal is condoned. The appeal is taken on record.

The application stands disposed of.

LPA No. 108/2008

1. This order shall dispose of the appeal which is filed by the appellant challenging legality of the order dated 9th January, 2008 passed by the learned Single Judge dismissing the writ petition filed by the appellant.

2. The writ petition was filed by the appellant being aggrieved by the order of the respondents dated 13th August, 2007, whereby the appellant was restrained/debarred from participating in the tender process of the MCD for a period of two

years on account of non-execution of the work of de-silting, which was allotted to the appellant under work orders dated 13th June, 2007 and 14th June, 2007. The learned Single Judge heard the counsel for the parties and after going through the records found that the appellant was called upon to start work and to complete the same within 25 days, but that he did not do so on the pretext that he would need at least two months' time to complete the work. The learned Single Judge however did not accept the aforesaid plea taken up by the appellant and on perusal of the original records observed that the appellant was called upon to start work and complete the same within 25 days. Even a show cause notice dated 20th June, 2007 was issued and the appellant-contractor was also called for personal hearing, which was held on 29th June, 2007, at which stage the appellant-contractor was warned that the work in question is of urgent nature and work should be immediately started to avoid disciplinary action against the appellant-contractor. The learned Single Judge held that since the appellant-contractor did not start work, there was no merit in the writ petition, which was dismissed, giving an opportunity however to the appellant to invoke the arbitration clause in accordance with law.

3. Being aggrieved by the aforesaid findings recorded by the learned Single Judge, the present appeal is filed on which we have heard the learned Counsel appearing for the parties and have also gone through the records.

4. Our attention was drawn to the Short Tender Notice dated 30th May, 2007 wherein it was mentioned that the time for completion of the work was two months. The respondent has taken up a stand that in the meantime a corrigendum was issued on 1st June, 2007, wherein it was specifically stipulated that time for completion of the work under the Short Tender Notice dated 30th May, 2007 would be 25 days from the date of issue of the work order. The said corrigendum is reproduced below for reference:

Due to time bound work the time of completion of Short Notice NIT No. EE-XXX/TC/2007-08/4 dated 30.5.07 due on 04.06.07 shall be 25 days from the date of issue of work order.

5. The appellant on the other hand has taken up a plea that he was never intimated about the aforesaid corrigendum and was not made aware of any change in the stipulation in the Short Tender Notice before issuance of and receipt of separate work orders dated 13th June, 2007 and 14th June, 2007. In the said work orders which were issued to the appellant, it was specifically mentioned that the appellant was to complete the aforesaid work within 25 days. The plea which was taken up before the learned Single Judge was that the said work orders were contrary to the terms of the Short Tender Notice as the time for completion of work was unilaterally reduced by the MCD from two months to 25 days.

6. In the light of the aforesaid submissions of the learned Counsel for the parties, we have also perused the original records. In the Short Tender Notice which was

issued on 30th May, 2007 it was mentioned that the last date for receipt of tender was 4th June, 2007. However the stipulation of time for completion of the work in the said Short Tender Notice was two months. The respondent had in fact also issued a corrigendum on 1st June, 2007, i.e. before the tender closing date, with the stipulation that the time for completion of the work under the Short Tender Notice dated 30th May, 2007 would be 25 days from the date of issue of the work order. The said corrigendum is a part of the record and was issued pursuant to a decision recorded in the note sheet. In the noting of the Executive Engineer-XXX dated 7th June, 2007 also the time for completion of the entire work is mentioned as 25 days. It is also recorded in the said noting that negotiation was conducted with the appellant-contractor as the rates quoted by him were high. The said file was processed at different stages and by order dated 14th June, 2007 a decision was taken to award the contract in question in favor of the appellant.

7. At the risk of repetition, it is necessary to reiterate at this stage that although as per approved/draft notice inviting tender, the time for completion was two months, due to urgency of the work, time for completion was re-stipulated as 25 days, for which a necessary corrigendum was issued under letter dated 1st June, 2007. Thereafter, it was found that the appellant was the only tenderer who had submitted tender. On opening of the tender submitted by the appellant it was found that the rates quoted were high and consequently, a letter was sent to the appellant requesting him to attend the office of the Superintending Engineer on 7th June, 2007 for negotiations for reduction of the quoted rates. The appellant attended the said meeting. Thereafter, the work was awarded to the appellant after taking a decision in that regard, under order dated 14th June, 2007, with the period of completion of the work as 25 days.

8. As the appellant-contractor did not start any work immediately after the issuance of the work order, a show cause notice was issued to the him under letter dated 20th June, 2007, directing him to submit reply within three days from the date of the issue of the said show cause notice. The appellant however did not submit any reply to the said show cause notice. It was Therefore concluded by the respondent that the appellant-contractor was not interested in the execution of the said contract and Therefore some action was required to be taken against the appellant-contractor for the default. A proposal was given to the concerned authority to forfeit the earnest money of the appellant-contractor and also not to accept any business from the appellant for a period of two years. Finally, order dated 13th August, 2007 was passed to the effect that the appellant-contractor is debarred from tendering in MCD for a period two years.

9. The pleas taken before us are that the appellant was not served with the corrigendum and that the order passed on 13th August, 2007 is not a speaking order. Both the aforesaid issues were also urged before the learned Single Judge who, after considering the same, passed a detailed speaking order and the said contentions were rejected by giving reasons for the same. Records placed before

us indicate that before taking action to debar the appellant from participating in the tender process for a period of two years as stated above, a show cause notice was issued to the appellant. Even thereafter, by letter dated 22nd June, 2007, an opportunity was granted to the appellant to start the work so as to enable him to avoid disciplinary action, to which no heed was paid by him and he expressed his inability to start the work, stating that the time of 25 days to complete the work is insufficient and that he should have been given two months' time as given in the notice inviting tender. The appellant was also given personal hearing on the aforesaid show cause notice and thereafter he was also informed that the case has been processed for disciplinary action against his firm for his failure to execute the work. Before issuing the order debarring the appellant from participating in the tender process, the respondent was satisfied from the records that the appellant has deliberately avoided the execution of the work, taking an unwarranted plea for the same. The competent authority having found that the plea taken by the appellant was unjustified, passed the aforesaid order after giving a reasonable opportunity to the appellant to rebut the contentions raised in the show cause notice issued to the appellant. Therefore, we are of the considered opinion that there is no violation of the principles of natural justice in the aforesaid action taken by the respondent after giving due notice and after giving full opportunity to the appellant to rebut the allegations made against him.

10. The contention that the appellant was not aware of the corrigendum stipulating that the work is to be completed within 25 days from the date of acceptance of the tender and issuance of work order also cannot be accepted, for, the appellant was the only tenderer and whatever correspondence was done was only with him. His matter was processed and even on the first date when his matter was processed, it was specifically mentioned in the note sheet that the work is to be completed within 25 days. Copies of the letters and the corrigendum were also sent to the appellant at the address provided by the appellant. Even the letter requesting him to attend the negotiations for reduction of the quoted rates was received by him at the same address. Subsequent work orders issued to him, which admittedly were received by him, were also sent at the same address and, Therefore, the plea that he did not know the revised stipulation that the completion time for the work was 25 days, cannot be accepted.

11. The appellant was given a detailed show cause notice and was granted personal hearing and, thereafter the order was passed for which reasons are also recorded in the records. Therefore, the contention that no speaking order was passed by the respondent to debar the appellant from participating in the tender process for a period of two years also cannot be accepted.

12. In view of the above discussion, we find no infirmity in the impugned judgment and order passed by the learned Single Judge. The appeal has no merit and is dismissed.