

(2007) 04 DEL CK 0156

In the Delhi High Court

Case No : Writ Petition (C) No. 2579 of 2007

C.A. Contractor and Suppliers Pvt. Ltd.

APPELLANT

Vs

C.P.W.D.

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : AIR 2007 Delhi 188

Hon'ble Judges : S.L. Bhayana, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Valmiki Mehta and Praveen Chauhan, for the Appellant; P.P. Malhotra, ASG and Sonia Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—The petitioner by this writ petition seeks writ or direction quashing the condition of the tender by which manufacturers alone have been allowed to participate in the tender for providing and laying Synthetic Athletic Track Surface in terms of NIT. Declaration is sought that the tender document is being violative of the fundamental rights enshrined under Article 14 and 19 of the Constitution of India.

2. The petitioner claims to be a supplier, who in the past has successfully completed the various projects as far as supply and laying of the synthetic track to full satisfaction of the respondents. Mr. Valmiki Mehta, learned Senior Counsel for the petitioner submitted that the products of the petitioner were duly approved by the International Hockey Federation which gave certificate to the effect that the petitioner has been participating in the various tenders as an agent/ dealer of C.A. Suppliers International Company Ltd. Hong Kong, which is in the business of laying Synthetic Track and fields. The projects successfully completed by the petitioner are listed in para 8 of the petition.

3. Petitioner is aggrieved by the issuance of the present notice inviting tender

which confines participation to manufacturers only in the tender process. Learned Counsel for the petitioner submits that there was no rational basis or justification for confining supplies to the manufacturers alone and excluding the suppliers such as petitioner to supply the products of their principals or others, Mr. Mehta submits that quality of the product in question is not an issue in as much as the quality is duly certified by the International Athletic Federation. The action of the respondent is described as arbitrary which would encourage and act to the detriment of healthy competition and unduly favors the foreign suppliers vis-a-vis Indian parties, who either acquire the product of others or are desirous of supplying the same. This would result in dealing with Foreign parties who may have a base in India. Learned Counsel, Therefore, submits that the respondent is adopting a policy of favoritism towards the foreign companies at the costs of Indian companies. The Indian parties have been subjected to hostile discrimination as they are prevented from participating in the bids.

4. We have heard learned Counsel for the petitioner at length and also perused the tender terms and conditions as also the grounds set out in the writ petition. It would be appropriate at this stage to notice that to determine the terms and conditions of a tender is in fact the prerogative of the State or the authority inviting tenders or to invite bids or tenders or bids setting out the terms thereof is in the domain of the Authority. The tender terms can be questioned only if they are found to be either vitiated by mala fides or terms and conditions set out are such as to offend the Wednesbury Principles of reasonableness.

5. We have considered the matter. Learned Additional Solicitor General Mr. P.P. Malhotra had sought time to take instructions as to the reasons and rationale behind the decision for a change in the tender condition whereby the bids have been confined to the manufacturers alone. Mr. Malhotra explained that the Union had experimented with the supply of product in the case of Synthetic Athletic Track Surface by confining it to manufacturers alone. The net result was that substantial savings were effected from the previous cost of the bid as received through dealers, suppliers, agents and manufacturers. The ostensible justification sought to be given is that apart from the benefits of expected reduced prices, the dealings are confined to one party, who is made responsible for the entire gamut of the transaction, namely, supply, installation and maintenance. The respondents find that it is more convenient to deal with manufacturers alone, who have the responsibility for the entire supply in question of the product. During the course of arguments, we find that the petitioner had averred in the petition that the supplies effected by him were of M/s. C.A. Supplies International Company Ltd. who is not even the manufacturer but happens to be only a supplier and the petitioner is really an agent or dealer who has now clarified that he acquired products from various manufacturers. In other words, it is not the situation that the petitioner is even agent of a particular manufacturer or supplier. Mr. Malhotra also points out that International Athletic Federation has not even recognized the product of C.A. Suppliers in the approved list of supplies of international manufacturers. Mr. Malhotra informs on

instructions from Mr. Deepak Thakur, S.E., Infra-Sports Authority of India that the apprehension of the petitioner that the present condition would be restrictive of competition stands belied in as many as 8 quotations have been received. In these circumstances, we think that no ground is made out for interference in the exercise of writ jurisdiction.

6. Dismissed.