(2008) 03 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No. 152 of 2008

Cable (India) Corporation — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Citation : (2008) 03 BOM CK 0095

Hon'ble Judges : R.M.S. Khandeparkar, J;N.A. Britto, J

Bench : Division Bench

Advocate : Amey Kakodkar and Mr. R.G. Rivankar, for the Appellant; C.A. Fereira, Asst. Solicitor General and Mr. Joseph Vaz, Central Govt. Standing Counsel for the Respondents No. 1 and 2., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Advocate for the petitioners and the respondents No. 1 and 2. The petitioners, by this petition, seek to challenge the procedure and decision making process stated to have been adopted by the respondent No. 2 in selecting the person for providing Cable TV services and Internet service to the Naval area and granting the contract for providing Cable TV and Internet services to the respondent No. 3 and further seek a writ in the nature of mandamus and direction to the respondent No. 2 to cancel the purported selection of the respondent No. 3 for the grant of contract for providing the Cable TV and Internet services in Naval area and to set aside the contract, if granted, and to consider the grant of the contract to the petitioners and invite fresh tenders for the Internet services. It is the case of the petitioners that the petitioners had been providing the Cable TV connections to the residents of Naval Enclave at Vasco da Gama since January, 2002 under a contract, which according to them, had remained in force till 10th January, 2009. However, the agreement was sought to be terminated in July, 2006. Consequently, the petitioners filed a civil suit against the respondents No. 1 and 2 in July, 2006 for declaration that the petitioners are entitled to provide cable TV services in the Naval Enclave till

10.1.2009 and for permanent injunction to restrain the respondents from interfering with the said right of the petitioners. The trial Court, by its Order dated 8.8.06, directed maintenance of status quo till disposal of the application for temporary injunction. On 13.10.06, the trial Court confirmed the said order inasmuch as that it granted the temporary injunction application restraining the respondent No. 2 from interfering with the said alleged right of the petitioners. The said order was subjected to challenge before this Court. By consent, the order of the trial Court was set aside and the matter was remanded for fresh consideration, while directing maintenance of status quo. By Order dated 13.4.2007, the trial Court dismissed the application for temporary injunction, however, temporarily protected the petitioner till 9.5.2007. The petitioners preferred an appeal being Appeal from Order No. 51/2007 before this Court on 9.5.07, which came to be disposed of by a consent order dated 14.6.2007. The Order was to the effect that :

The respondents shall allow the appellant to participate in the fresh tender. They shall issue a tender form to the appellant whenever the tender for providing cable TV services is floated. Till a contractor is chosen, the appellant shall continue to provide cable TV services on the same terms he is doing today, without thereby claiming any equity in the matter of allotment of tender. Appeal disposed of.

Thereafter, a tender notice came to be published in "The Navhind Times" dated 21.11.2007, inviting tenders from reputed firms for the services at Defence Areas under the control of INS Hansa on an annual contact basis, with intimation that the interested parties were to contact the Administrative Office at Varunapuri, Mangor Hill, Vasco da Gama for detailed scope of work/services. The respondent No. 2 forwarded a set of tender documents to the petitioners which disclosed the same to be for Cable TV and Internet services. The petitioners, under letter dated 5.12.2007, informed the respondent No. 2 that as per Order dated 14.6.07, the tender ought to have been for Cable TV services only and requested to make necessary amends. The petitioners also pointed out certain anomalies and ambiguities in the NIT and raised certain queries. The petitioners vide letter dated 12.12.2007 asked the respondent No. 2 for necessary reply on the queries raised by the petitioners. On 15.12.07, the petitioners informed the respondent No. 2 that a Circular issued by TRAI conflicts with the NIT conditions and also clarified that Cable TV and Internet services are two separate identities and hence ought to be treated separately. On 17.12.2007, the petitioners submitted their bid for cable TV services only and brought the said fact to the notice of the respondent No. 2 under a letter enclosed therewith. Under letter dated 1.1.2008, the respondent No. 2 informed the petitioners that the commercial bids will be opened on 8.1.08 at 15.00 hours and an authorised representative of the firm should attend the same. On 14.1.08, the respondent No. 2 forwarded to the petitioners a draft agreement for cable and Internet services along with a Letter of Undertaking asking him to initial the draft agreement and send it along with the letter of undertaking to the respondent No.

2 by 21.1.08. On 21.1.08, the petitioners submitted a signed copy of the draft agreement along with letter of undertaking to the respondent No. 2. The petitioners, however, struck off "and Internet" from the draft agreement and clarified in the letter of undertaking that the petitioners would provide Cable TV services only and not Internet services. The petitioners were invited for opening the commercial bid and accordingly, altogether 5 persons participated in the tender and out of the 5 persons, only one person, namely the respondent No. 3 had submitted the bid for Internet services. On 3.3.08, the petitioners received the impugned letter dated 29.2.2008, whereby the petitioners were informed that after due process of selection as per the existing regulations, the contract for services had been awarded to a firm other than that of the petitioners and, therefore, the petitioners were requested to remove all their installations at their costs by 15.3.2008 from the concerned area.

2. The petitioners have filed the present petition, seeking reliefs as stated hereinabove, essentially on the ground that the respondent No. 2 could not have issued the NIT for the Cable TV as well as Internet services and the tenders as regards the two services ought to have been invited separately in view of the order dated 14.6.07 passed in Appeal from Order No. 51/07. It is further the contention on behalf of the petitioners that the petitioners are lowest bidder for Cable TV services and, therefore, there was no justification for acceptance of the higher bid without even disclosing the reasons for rejection of the petitioners'' tender. It is also the contention of behalf of the petitioners that the NIT did not disclose that the tenders were invited for Cable TV services as well as Internet services and the said notice related only to the Cable TV services. It is also sought to be contended that the petitioners'' contract would come to an end on 10.1.2009 and the alleged termination is bad in law and that the civil suit in that respect is pending before the trial Court and, therefore, the respondents could not have directed removal of the installations of the petitioners by 15.3.2008.

3. As regards the first ground of challenge, merely because under the order dated 14.6.07 the petitioners were allowed to participate in the tender to be invited for cable TV services, it cannot be said that the concerned Authorities'' right to issue the NIT inviting the joint tender for cable TV services along with the Internet services was curtailed, in any manner, or any restriction was imposed on such right. Undisputedly, the order dated 14.6.07 arose from an order passed by the trial Court in the suit filed by the petitioners, subject-matter of which was only the Cable TV services. In those circumstances, there was no occasion for this Court to consider about the need for Internet services in the area. If, in the wisdom of the concerned Authorities they have found it appropriate to invite joint tenders for cable TV services as well as the Internet services for the benefit of the residents of the concerned locality, the Authorities cannot be found fault with, nor it would, in any manner, amount to violation of the order dated 14.6.07, nor it can be said that by the said order the petitioners were assured that irrespective of any such decision of the concerned Authorities, the petitioners would be entitled to submit their tender independently and only

for the cable TV services, ignoring the conditions of the tender as specified by the concerned Authorities or that the Authorities were duty bound to consider the offer of the Petitioners for the cable TV services, ignoring the fact that they had not submitted tender for the Internet services. It is entirely in the discretion of the concerned Authorities to decide whether the contract for cable TV services should be awarded independently of the Internet services or jointly for the Internet services and since that they have decided it in their wisdom to grant such a tender to only one firm, they cannot be found fault with. No such decision, in any way, runs counter to the Order dated 14.6.07 in Appeal from Order No. 51/07.

4. The contention that the petitioners offer was the lowest offer is also devoid of any substance. Admittedly, the petitioners had not submitted his bid in terms of the tender conditions prescribed by the concerned Authorities. Admittedly, the tender conditions required the bid to be jointly for cable TV services as well as the Internet services. It is pertinent to note that even though the tender conditions required the tenderers to offer their bid jointly for cable TV services as well as Internet services, the petitioners on their own chose to submit the bid only in relation to the cable TV services and not for the Internet services. The challenge before this Court is that the tender conditions were in contravention of the Order dated 14.6.07. However, till the date of decision by the concerned Authorities, the petitioners participated in the tender proceedings, without challenging those proceedings at the appropriate time. Though it has been contended that the petitioners'' was a lowest bid, it was admittedly an incomplete bid.

5. Though it has been alleged in the petition that the tender has been awarded to the respondent No. 3, while contending that their bid was higher than that of the petitioners. Apart from the letter dated 29.2.08, the petitioners have not been able to produce anything on record which could reveal that the tender of the respondent No. 3 has been accepted. The letter of 29.2.08, on the face of it, nowhere discloses that tender of the respondent No. 3 has been accepted. On the contrary, it specifically states that the contract for the services has been awarded to a firm other than that of the petitioners. It is a mere speculation on the part of the petitioners that the tender of the respondent No. 3 has been accepted. There is no material placed on record in support of the contention that in fact the tender of the respondent No. 3 has been accepted. In any case, undisputed y, the tender of the respondent No. 3 was complete in relation to the bid for cable TV services as well as Internet services, whereas that of the petitioners did not include the bid for Internet services.

6. As regards the contention that the Authorities could not have asked the petitioners to remove the installations prior to 10.1.09, in terms of the earlier contract, it is pertinent to note that by order dated 14.6.07 passed in Appeal from Order No. 51/07, the parties by consent agreed to allow the petitioners to submit their tender. Undisputedly, the petitioners had filed the suit challenging

termination of the earlier contract. The trial Court had rejected the application for temporary injunction. While obtaining the consent order dated 14.6.07, the parties consciously agreed to allow the petitioners to continue to provide the cable TV services till the acceptance of the said tender. In that regard, the letter dated 29.2.08 clearly discloses that the concerned Authorities have already taken decision to allot the tender for providing services by a third party other than the petitioners. Obviously, therefore, the petitioners are bound to remove their installations from the premises. In that regard, the petitioners have been granted 12 days time and the said letter was received by the petitioners on 3.3.08. Being so, we do not find any justification to interfere in the said direction. However, on an oral request made by the learned Counsel for the petitioners, and after hearing the Advocate for the respondents No. 1 and 2, we are inclined to extend the period upto 10th April, 2008, subject to the petitioners assuring the Court that continuation of such installations shall not cause any obstruction for installation of the machinery of the contractor to whom the contract has been awarded for providing the necessary services in the locality. For the reasons stated above, therefore, we do not find any case being made for interference and hence, the petition is dismissed with costs.

