

(1995) 03 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition No. 712 of 1995 and Civil Miscellaneous No's. 1301 and 1302 of 1995

D.C.M. Data System

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-03-1995

Acts Referred:

Citation : (1995) 58 DLT 226

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Vinay Bhasin and V.K. Shall, for the Appellant;

Judgement

M.K. Sharma, J.

(1) This writ petition filed by the petitioner is directed against the award of contract to the respondent No. 2 for supply of 40 Pc Ats 386DX with Ink Jet Printer to Modi Olivetti; also the contract awarded to respondent No. 3, Hcl for the supply of 140 Pc Ats 386 Dx with Dmp, and also contract awarded to respondent No. 4, Cmp for the supply of 150 Pc Ats 386SX with Dmp, a further prayer for issuance of a direction in the nature of mandamus directing the respondents to award the contract to the petitioner on the quoted prices .

(2) Briefly stated the facts of the present writ petition are that the petitioner computer systems exclusively deals with manufacturing and marketing of various range of computer systems from Micro Computers to Mini Computers. The petitioners have been recently awarded ISO 9002 Certification which is International Standard Quality Certification .The respondent No. 1 issued an invitation to the petitioner to participate in the tender by their letter dated 6.10.1994 asking the petitioners to submit their quotations complete in all respects. The said letter dated 6.10.1994 further contained a clause that the quotations should also contain broad details of items as listed in Appendix "A" Along with price, all taxes, freight, insurance, installation ,warranty, maintenance

and annual maintenance charges after warranty expires. According to the petitioner, the requisite forms duly and fully filled in were submitted. Thereafter the respondent No. 1 held interview individually of all the invitees including the petitioner. However, respondent No. 1 by letter dated 24.2.1995 awarded contracts to the respondents No. 2 & 4 in spite of the fact that the petitioner was the lowest in the tender.

(3) By our order dated 2.3.1995 passed in the aforesaid writ petition we directed the respondent No. 1 to produce the relevant file before us and on production of the same before this Court we directed the respondents to file an affidavit explaining the contents of the record. The respondent No. 1 has filed the reply affidavit.

(4) We have carefully perused and considered the records of the case placed before us by the respondent No. 1. Mr. Bhasin, learned Counsel for the petitioner submitted before us that the petitioner is the lowest in his bid and accordingly he should have been awarded the contract in preference to the respondents No. 2 & 4. He further submitted that the decision of the respondent No. 1 in awarding the contracts to respondents No. 2 & 4 is irrational and unreasonable and according to him conditions have been brought in by the respondents with the sole idea of ousting him from getting the contracts.

(5) We have also heard Mr. Shali, the learned Counsel appearing for the respondent on the issues raised before us by the petitioner.

(6) On perusal of the records we find that the Price Negotiation Committee submitted a report on the negotiations held on 18th and 19/01/1995. The said Committee "after detailed discussion and after considering prevailing market trend as well as the annual maintenance charge awarded during the last few years of maintenance of personal computers in its report has recorded that the offer of the petitioner of an extended warranty followed by a rather low Amc rate appeared to be a bidding strategy and that no credence ought to be given to the same. It is further recorded in the said report that the quote of M/s. Hcl - Hp was lowest for 386DX with Dmp and for 386 Dx with IJP. The Committee had decided to recommend M/s. Modi Olivetti in view of the Super Vga Monitor (SVGA), higher hard disc capacity offered and the higher file transfer speed. It may however, be mentioned herein that one of the Committee members namely -the Finance Representative in the said Committee gave a dissenting note thereto stating therein that though the quotes of M/s. Hcl -HP were the lowest for Pc At 386 Dx with DMP without Amc being taken into consideration, however, once Amc for 5 years is taken into account then the petitioner becomes the lowest and the difference between M/s. HCL-HP vis-a-vis the petitioner works out to Rs-8.08 lacs, which is a very substantial amount. Similarly, according to him there would be a difference of Rs. 2.78 lacs in the case of the bid of M/s. Modi Olivetti vis-a-vis the petitioner and about Rs. 3.01 lacs for Pc At 386 Dx with Ijp with Amc being taken into consideration. The records further disclosed that the aforesaid dissenting note of the Finance Representative was circulated amongst the other

members of the Price Negotiation Committee, who considered the same dissenting note Along with their earlier decision and on careful consideration of the same came to a definite conclusion that the petitioner using a 3 years free guarantee followed by 3.5% AMC for 3 years is a clever bid to bag the contract at a higher price. It further held that the track record of Dcm on maintenance of PCs is not something which inspires confidence .The Committee further recorded that the fact that out of 138 PCs purchased from them in December, 1993,16 developed major problems including hard-disk drive failure within one year of installation. Considering all the aforesaid aspects the Committee, except the Finance Representative came to the conclusion that they see no reason to re-consider the decision arrived at on 18th/1 9/01/1995.

(7) In *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, the Apex Court observed as follows:-"Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the be awarded over all situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the Courts, such decisions are upheld on the principle laid down by Justice Holmes, that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to executive".

(8) Again in *Union of India and others Vs. Hindustan Development Corpn. and others*, , the Apex Court held thus "the Government had the right to either except or reject the lowest offer, but that of course is done on a policy &should be on some rational or reasonable grounds."

(9) In *Tata Cellular Vs. Union of India*, , it has been held that "the Court does not sit as a Court of appeal to merely review the manner in which the decision was made". It has further been held "the Court does not have the expertise to correct the administrative decision and that if a review of the administrative decision is permitted it will be substituting its own decision without the necessary expertise, which itself may be fallible."

(10) Based on the aforesaid legal principles when we examine the facts of the present case and the contents of the records produced before us, we find that the decision/recommendations of the Price Negotiation Committee on the basis of which the impugned contracts have been issued by the respondent No. 1 are based on reasons. It is neither our duty nor our intention to substitute our opinion to that of the experts in view of the law laid down by the Apex Court in relation to the scope of judicial review referred herein above. The Court is hardly equipped to meticulously Judge and examine the feasibility and correctness of the decision/recommendations of the Expert Committee and come to a contrary finding. In our opinion ,such a course is neither permissible nor desirable. The aforesaid reasons recorded in the decision/recommendations by the Expert Committee cannot be said to be, on the face of it, in any way irrational or

unreasonable nor could it be said to be in any manner arbitrary. Further, it has been stated in the counter affidavit filed by the respondents that the orders have already been placed with respondents Nos. 2 to 4 on 24.2.1995 and that the entire contract is at very advanced stage of implementation and that the said purchases have to be effected during the present financial year which is expiring on 31.3.1995. In view of the aforesaid facts stated in the affidavit, interfering with the order awarding contracts to the respondents 2 & 4 may involve heavy administrative burden and lead to delay and possible financial complications in a vital field like defense.

(11) In view of the aforesaid findings, we hold that this writ petition has no merit and is accordingly dismissed in limine. We however, make no order as to costs.