
(2009) 04 DEL CK 0337

In the Delhi High Court

Case No : Writ Petition (Civil) No. 335 of 2009

G.R. Infraprojects Ltd.

APPELLANT

Vs

Airports Authority of India

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

National Highways Act, 1956 — Section 2

Citation : (2009) 04 DEL CK 0337

Hon'ble Judges : Siddharth Mridul, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Dinesh Agnani, for the Appellant; Parag P. Tripathi, ASG, Anjana Gosain and A. Nargolkar, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—On or about 23rd July, 2008 the Respondent issued a notice inviting applications for short-listing of contractors for the construction of a new apron with link taxiway, expansion of existing apron and associated electrical works at Raja Bhoj Airport in Bhopal.

2. The Petitioner is aggrieved by one of the eligibility criteria mentioned in the notice inviting applications. The grievance of the Petitioner is to the following criterion:

Should have satisfactorily completed (Phase/Part completion of the scope of work in a contract shall not be considered) three pavements works, each of Rs. 2184.00 lacs or two works, each of Rs. 2729.00 lacs or one work of Rs. 4367.00 lacs of Rigid Pavements or Rigid/Flexible combined pavements of Airfield Pavement or National Highways/Expressways (experience in State Highways/City roads/Town Roads etc could not be considered) during the last seven years ending on last day of month previous to the one in which applications are invited. Client certificate....

(underlining supplied)

3. A reading of the above criterion shows that for being eligible to participate in the bidding process, a contractor must fulfill two conditions. The first condition, and one that we are really concerned with, is that the bidder should have satisfactorily completed construction of, inter alia, a National Highway/Expressway. It is specifically noted (though parenthetically) that experience in State Highways/City roads/Town roads etc. is not to be considered as relevant for this purpose. There is, therefore, a clear distinction made out between a National Highway and a State Highway.

4. The view of the Petitioner is that technically there is no difference between the construction of a National Highway and the construction of a State Highway and since the Petitioner has successfully completed a project of the requisite value of a State Highway, it is entitled to be considered for the grant of a tender. However, since the Petitioner was not given the tender documents, it approached this Court for appropriate relief.

5. The sole question that has been urged for our consideration is whether, for the purposes of construction and technical specifications, there is a distinction between a State Highway and a National Highway. In our opinion, the answer must be in the affirmative.

6. Learned Counsel for the Petitioner submitted that his client had successfully completed a mega State Highway project and that by virtue of Section 2 of the National Highways Act, 1956, a State Highway could be converted into a National Highway by a notification and vice-versa. It was submitted, therefore, that having successfully completed a mega State Highway project the Petitioner should be considered as eligible for bidding for the tender, subject matter of this writ petition.

7. Learned Counsel for the Petitioner as well as the learned Additional Solicitor General have both accepted the fact that the Specifications for Road and Bridge Works (Fourth Revision) published by the Indian Road Congress under the auspices of the Ministry of Shipping, Road Transport and Highways is the most authentic work on road works. Section 902 of this book deals with the control of alignment, level of surface regularity of all works. Section 902.4 deals with Surface Regularity of Pavement Courses, and this reads as follows:

902.4. Surface Regularity of Pavement Course

The longitudinal profile shall be checked with a 3 metre long straight edge/moving straight-edge as desired by the Engineer at the middle of each traffic lane along a line parallel to the centre line of the road.

The maximum permitted number of surface irregularities shall be as per Table 900-2.

8. Table 900-2 gives the maximum permissible surface irregularities on a road surface. In the case of a National Highway for a length of 300 meters, a maximum of 20 irregularities of 4 mm each is permitted. For roads of a lower

category, 40 irregularities of 4 mm each is permitted. Ex-facie, there is a clear distinction between a National Highway/Expressway and roads of other categories which would include State Highways (since State Highways are not National Highways). Table 900-2 reads as follows:

Table 900-2. MAXIMUM PERMITTED NUMBER OF SURFACE IRRGULALRIIES

Surfaces of carriageways and		Surfaces of laybys, and paved shoulders				service areas		
all		bituminous				base courses		
Irregularity	4	mm	7	mm	4	mm	7	mm
(m)	300	75	300	75	300	75	300	75
National	20	0	2	1	40	18	4	2
Highways/	40	18	4	2	60	27	6	3
Expressways Roads of lower category*								

*Category of each section of road as described in the Contract.

9. There being a clear and apparent distinction between a National Highway and a State Highway, it is not correct on the part of learned Counsel for the Petitioner to contend that merely because his client has successfully completed a work with regard to a State Highway, he should ipso facto be deemed to have completed a work with regard to a National Highway. With respect, he overlooks the obvious, as also the tender document itself which specifically excludes the construction of a State Highway from consideration.

10. In this background, if we look at the prayer made in the writ petition, it is significant to note that the Petitioner has not actually challenged the eligibility criterion, as orally argued. All that the Petitioner has prayed for is that it should be issued the tender documents to enable it to bid for the contract at Bhopal Airport. Since there is no challenge to the tender condition as orally contended, strictly speaking the writ petition ought to be dismissed on this ground alone but we are not doing so. Even on merits, we do not find any substance in the contentions urged by learned Counsel for the Petitioner, as indicated above.

11. It is now well settled law, through a series of decisions rendered by the Supreme Court, that the conditions of a tender cannot be challenged by a prospective bidder unless the conditions are totally unreasonable or whimsical. See, for example, *Tata Cellular Vs. Union of India*, . This view has also been taken by this Court in *Nagarjuna Construction Company Ltd. Vs. Delhi Jal Board and Others*, .

12. In so far as the present case is concerned, nothing has been shown to us to suggest that the eligibility requirement in the tender document is unreasonable or arbitrary. What has been contended is simply this: there is no technical

distinction between a State Highway and a National Highway. As we have already discussed above, we do not agree with this contention of learned Counsel for the Petitioner - there is a clear distinction between a State Highway and a National Highway. Merely because the Petitioner has some experience of constructing a State Highway does not mean that it can match the requirements of constructing a road having the same technical specifications or qualities as a National Highway.

13. We have not been shown anything arbitrary or unreasonable or irrational in the condition imposed in the tender documents excluding the experience of construction of a State Highway from consideration.

14. There is no merit in the writ petition. It is dismissed with costs of Rs. 20,000/-. The Petitioner will deposit this amount by way of a demand draft in favour of the Registrar General of this Court within four weeks from today.

15. List for compliance on 20th May, 2009.