**(2001) 12 DEL CK 0074**

**In the Delhi High Court**

**Case No :** L.P.A. No. 571 of 2001

Integrated Fire Protection Pvt. Ltd. and Another APPELLANT

Vs

Director of Purchase, Air Hqrs. and Others RESPONDENT

**Date of Decision :** 20-12-2001

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2002) 2 AD 962

**Hon'ble Judges :** S.B. Sinha, C.J;A.K. Sikri, J

**Bench :** Division Bench

**Advocate :** Krishna Kumar and Roopali, for the Appellant; Maninder Singh, for the Respondent

**Final Decision :** Dismissed

## Judgement

A.K. Sikri, J.—This appeal is preferred by the appellants against the judgment and order dated 18th September, 2001 passed by the learned Single Judge in CWP No. 5064/2001 filed by the appellants herein. By means of the aforesaid writ petition, the appellants had challenged the award of contract to the respondent No. 5.

2. It may be mentioned that the respondent No. 1 had invited the tenders for supply of 1,01,200 ltrs. of Aqueous Film Forming Foam(AFFF). Amongst others, the appellants as well as the respondent No. 5 submitted their bids. Both these parties were eligible to bid. After the evaluation of the tenders submitted by the parties, bid of the respondent No. 5 was accepted and it was awarded the contract for supply of the aforesaid material. In the writ petition filed by the appellants herein challenging the same, the main contention of the appellants was that the bids were not properly evaluated and further that the price quoted by the appellants was less than the price at which the respondent No. 5 offered to supply the material.

3. It may be mentioned at this stage that in the bid documents there was a

 

column relating to ''custom duty exemption certificate''(CDE) and the query which was posed in the bid documents relating to this certificate was as to whether such a certificate is required or not. The appellants herein had answered this query in the affirmative and had also stated the custom duty payable as Rs. 6,85,134/- The FOR price quoted by the appellants for the quantity to be supplied was Rs. 40,63,900.54 paisa. In the tenders submitted by the respondent No. 5 it had quoted the price of Rs. 40,85,845.17 paisa and had further stated that the custom duty exemption certificate was not required. While evaluating the bids, in the bids submitted by the appellants the respondents added the figure of Rs. 6,85,134/- to the appellants'' bid of Rs. 40,63,900.54 paisa and in this manner treated the price quoted by the appellants as Rs. 47,49,034.54 paisa. On this reckoning the respondents treated the price quoted by the appellants as higher than that of the respondent No. 5 and awarded the contract in question to the respondent No. 5. The main contention of the appellants in the writ petition, as well as before us, was that the component of Rs. 6,85,134/- was wrongly included. If this is not included, the price quoted by the appellants would be lesser than the price quoted by the respondent No. 5.

4. The learned Single Judge while dismissing the writ petition filed by the appellants herein, considered the language of the clause relating to CDE in the tender documents and came to the conclusion that the appellants'' bid in response to the clause regarding CDE was not unambiguous and was clearly capable of two constructions. Therefore, the respondents could not be faulted with by adding the figure of Rs. 6,85,134/-. The learned Single Judge also stated that in these circumstances, the respondents were not unreasonable and the exercise done by them was not arbitrary or perverse so as to invite interference by the writ court under article 226 of the Constitution of India even if the matter were to proceed on the assumption that the view canvassed by the appellants was a possible one. Reliance was placed on the judgment of Tata Cellular Vs. Union of India, in support of the view taken by the learned Single Judge.

5. inspire of his best efforts, the learned counsel for the appellants could not shake the aforesaid reasoning given by the learned Single Judge and could not convince us about the two possible constructions which could be given to the aforesaid clause relating to CDE. In fact, as pointed out by Mr. Maninder Singh, learned counsel for the respondents, the appellants themselves understood the clause in the same manner as is clear from their own letter dated 30th May, 2001 wherein, referring to the aforesaid CDE clause in the bid documents and the price quoted by them also mentioning the excise duty, the appellants sought to wriggle out by stating as under:

"However, if Customs Duty Exemption Certificate cannot be provided by Air Headquarters there will be no change in our quoted price. So we have decided to forego Customs Duty Exemption Certificate and ours being the lowest bid, we look forward to receiving your valued order."

6. The aforesaid stand taken by the appellants in this letter clearly shows that

even the appellants were conscious of the fact that the amount of Rs. 6,85,134/- mentioned by them could be taken into consideration by adding the sum in the FOR price quoted by them and Therefore, as an afterthought it offered to forego CDE.

7. We do not find any substance in the argument of learned counsel for the appellants that the respondents had nothing to do with the aforesaid clause relating to CDE and it was only given by way of information and further that the exemption was to be given by the excise authorities. We accept the clarification given by the respondents in this respect that the appellants, on the strength of aforesaid information, could claim the excise duty exemption and once such a claim could be allowed, it was to be added to the price quoted by the appellants herein. In the matter of evaluation of the bids, the respondents are the best judge and once it is found that the criteria adopted by the respondents is not arbitrary or irrational judicial review thereof is impermissible. This court is not to substitute its own view or judgment for that of the competent authorities in this behalf.

8. In fact, learned counsel for the appellants was candid in submitting that the present appeal had become infructuous inasmuch as the respondent No. 5 had already supplied the material pursuant to the order placed upon it. His only apprehension was that the official respondents may not adopt the contrary approach in the ensuing tenders which had been floated. It was submitted that the official respondents have been adopting such differing stands from time to time. This was contradicted by learned counsel for the official respondents who also allayed the fears of the appellants herein by making a categorical statement at the Bar that the bids would be evaluated by the official respondents in the same manner in which these were evaluated in the present case by including the custom duty payable in the bid if custom duty exemption certificate was required. Thus the appellants can keep this factor in mind while submitting their bids in future.

9. This appeal, is Therefore, without any merit and is dismissed with costs.