

(2022) 12 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition No. 16091 Of 2022, Civil Miscellaneous Application No. 50223 Of 2022

Manish Electricals

APPELLANT

Vs

Air Port Authority Of India And Anr

RESPONDENT

Date of Decision : 05-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 12 DEL CK 0018

Hon'ble Judges : Satish Chandra Sharma, CJ; Subramonium Prasad, J

Bench : Division Bench

Advocate : Vikas Upadhyay, Alok Tiwari, Nair, Digvijay Rai

Final Decision : Dismissed

Judgement

1. The instant Writ Petition has been filed by the Petitioner seeking setting aside of the reverse auction conducted by Airport Authority of India, i.e. Respondent No. 1, on 14.11.2022 and seeking a direction to conduct a fresh reverse auction for a tender for the "Upgradation of CAT-I lighting system to CAT-II lighting system at Swami Vivekanand International Airport, Raipur, ('Impugned Tender').

2. The relevant facts, in short, are as follows: -

3. On 30.08.2022, Respondent No.1 floated a NIT for "Upgradation of CAT-I lighting system to CAT-II lighting system at Swami Vivekanand International Airport, Raipur. The NIT envisaged a two-pronged process for bidding. In the first round, the NIT invited bids from all interested parties. Thereafter, after satisfying the technical criteria and qualifying requirements, the second round was the financial bid. In order to get a better deal, the NIT had also envisaged the process of reverse bidding. The L-1 bidder was to be announced after the Reverse Auction. During the reverse auction, the bidders were to submit a discounted amount after subtracting it from the original bid. Pertinently, Clause 5 of the NIT stated that the lowest quote evaluated shall be visible to all the

bidders during Reverse Auction.

4. In the first round, bids were received by the Respondent No. 2, Petitioner herein, and only one other participant.

5. After the first round, the lowest bid was received by the Petitioner. In accordance with clause 5 of the NIT, only the Petitioner and Respondent No.2 were cleared by Respondent No. 1. On the opening of the Bid, the Petitioner was declared as L-1 for his quote of Rs. 11,70,49,786/-

6. Thereafter, the reverse auction round was conducted. In this round, the Petitioner had sought to offer a discount of Rs. 10 Lacs out of this quoted price of Rs. 11,70,49,786/-. As per the petitioner, due to an inadvertent error, the Petitioner punched the discounted amount, i.e. 10 Lacs, instead of the discount subtracted from the original amount. Therefore, as the amount was too low and lesser than Rs.5,80,49,786/- which is the lower band, an error message was shown, and the amount was not accepted by the server of the Respondent No. 1.

7. Respondent No. 1 declared Respondent No. 2 as the lowest bidder and awarded the Impugned Tender to Respondent No. 2.

8. On 14.11.2022, the Petitioner addressed emails to Respondent No. 1 apprising it of the inadvertent error committed by it, and graciously asking for a revision of the reverse bidding process, however to no avail.

9. Aggrieved by the above, the Petitioner preferred the instant Writ Petition seeking a revision of the process.

10. It has been argued on behalf of the Petitioner that its bid in the first round was the lowest, and only due to an inadvertent mistake he was unable to participate effectively in the second round of the tender process. It is stated that the Petitioner promptly approached Respondent No. 1, apprising it of the Petitioner's mistake. It has also been argued that the acceptance of the bid of Respondent No. 2 would cause great loss to the public exchequer, as the Petitioner was willing to do the work for a sum of Rs. 10.70 crore, as opposed to Rs. 11.60 crores of amount, bid by the Respondent No. 2.

11. Heard Counsel for the Petitioner and the Respondents, and perused the material on record.

12. The short point before us is whether the Respondent No. 1 ought to conduct the reverse bidding process once again, due to the so called inadvertent error of the Petitioner, which disqualified the Petitioner from the bidding process and resultantly benefitted the Respondent No. 2.

13. At the outset, this Court finds it prudent to revisit the scope of interference accorded to this Court under Article 226 of the Constitution of India. The scope of this interference has been long settled, by a catena of judgments passed by this Court and also, the Hon'ble Supreme Court.

14. It is well settled that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. 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. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. [Refer to: Raunaq International Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492, Tata Cellular v. Union of India, (1994) 6 SCC 651, Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216, Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517].

15. Recently, the Supreme Court had the opportunity to reiterate the principles delineated above in Uflex Ltd. v. State of T.N., (2022) 1 SCC 165, in the following manner: -

"2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance. [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517]." (emphasis supplied)

16. A perusal of these cases indicates that the scope of interference of Courts in matters related to Tender disputes, is severely restricted. This Court ought only to examine the tendering process if it has been borne out that the process was mala fide, marred by arbitrariness or if the State or its Instrumentalities are seen to be favoring a particular party. Unless one of these conditions are satisfied, this Court does not sit with a magnifying glass to examine the decisions taken by the State while entering into a contractual relationship with a private party.

17. The facts in the instant case indicate that the Petitioner, due to its own inadvertent error punched the abysmally low amount of Rs. 10 Lacs during the reverse bidding round. The NIT itself stated that the bidders were to prepare well

in advance since the time for reverse bidding was very limited. The NIT also stated that absolute amount of minimum decrement shall be displayed on screen during Reverse Auction process.

18. A perusal of the material on record shows that the Reverse Auction was to be conducted between 12:00 PM to 1:00 PM on 14.11.2022, and the Petitioner bid Rs.10 Lacs and his bid was immediately rejected and a message that "your quoted price Rs.1000000, is below the Max Seal Price. Your price should be greater than or equal to Rs.58049786 and in multiples of Decrement Price" was received. The material on record also shows that during the time Respondent No.2 had reduced his bid by Rs.10 Lacs and had punched in Rs.11,60,49,786/-, which is Rs.10 Lacs less than 11,70,49,786/- and resultantly Respondent No.2 was selected. Other than mere ipse dixit of the Petitioner that he tried to punch in the figures again and his bid was not accepted, there is nothing on record to demonstrate this fact. The error cannot be said to be inadvertent. There is nothing which prevented the Petitioner from once again bidding at a lower price in the Reserve Auction which was scheduled between 12:00 PM to 1:00 PM on 14.11.2022. As the screen refreshed, the Respondent No. 2 could see the bid of the Petitioner, and astutely bid for a price lower than that. This is admittedly due to the error of the Petitioner alone. A perusal of the clauses indicate that the language was crystal clear as to the process to be followed by Respondent No. 1. There is no ambiguity in the text of the Clauses, as to the process.

19. In the instant case, the terms of the contract categorically envisaged a particular process. Simply because the Petitioner is aggrieved by the result of the process, due to its own inadvertence, does not imply that Respondent No. 1 does not follow through with its contractual obligation.

20. The instant case appears to be of a disgruntled bidder, and does not involve an element of public interest to warrant the interference of this Court.

21. This Court is not inclined to re-open a tendering process not only because of the narrow scope of review accorded to it under the tender jurisdiction but also because re-opening the tender would cause huge financial loss to the exchequer, not to mention, it would also lead to a delay in starting the work envisaged under the Tender.

22. Accordingly, the instant petition is dismissed, along with the pending applications, if any.