(2002) 03 MAD CK 0120

In the Madras High Court

Case No : Writ Petition No. 15222 of 2001 and W.P.M.P. No. 22580 of 2001

Mather and Platt (India) Ltd. APPELLANT

Vs

Neyveli Lignite Corporation Ltd. RESPONDENT

Date of Decision : 28-03-2002

Acts Referred:

Citation : (2002) 03 MAD CK 0120

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Krishna Srinivas, for Ramasubramaniam Assts, for the Appellant; N.A.K. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The petitioner has filed the above writ petition seeking to issue a writ of mandamus to direct the respondents to consider their tender dated 06.09.2000, on merits.

2. The case of the petitioner is briefly stated hereunder:

The petitioner is a Company incorporated under the Companies Act, 1956 and is engaged in the manufacture of industrial pumps. So far the petitioner has successfully tendered for various tenders issued for Government contracts. During 1999, the respondents had called for tenders with regard to supply and installation of fire protection system for the NLC Thermal 1 expansion (01 unit) and the petitioner had sent their quotation for the same. However, due to change in the market condition and in view of the non-viability of the project, the petitioner vide letter dated 18.09.2000, had withdrawn the tender and had recalled its quotation. Thereafter, the respondents called for tenders for the supply of 24 Nos. Horizontal Fix Casing Pumps in their tender dated 19.07.2000. The petitioner had given their quotation for supply of these pumps and had stated that they also furnished bank guarantee in terms of the tender conditions. The tender was submitted to the respondents under cover of the petitioner''s letter dated 06.09.2000, wherein the petitioner had offered the range of pumps for 3500 GPM at 165 meters head and 400 GPM at 150 meters head against the said tender. The tender was in two parts, comprising of the technical qualifications and the price factors. Only if a person qualifies for the technical qualification, he would be called for the price negotiation.

3. Thereafter, the petitioner made a representation seeking for details regarding price bid opening so as to enable it to attend the same. The petitioner requested the respondents for a meeting, which was also declined. The petitioner had sent several reminders, for which there has been no response from the respondents. Reliably now the petitioner was informed that the respondents have opened the price bids on 18.08.2001. The petitioner also reliably understood that the respondents failed to consider the offer of petitioner''s Company for extraneous reason rather than which is lawfully required. They intended to give the purchase order to a third party, hence the present writ petition.

4. On the side of the respondents, the second respondent - General Manager / Material Management, N.L.C. has filed a counter affidavit disputing various averments made in the affidavit. It is stated that the Corporation is one of the largest Public Sector Enterprise and its main activities are mining of lignite from its two open cast mines and generate electricity through its two Thermal Power Stations. To meet the increased captive demand of lignite of the Corporation in respect of its Thermal Power Stations, a new mine called as Mine-1A, is in process of establishment. Accordingly, a series of specialised mining equipments are being procured. The procurement of 24 Nos. Horizontal Split Centrifugal Pumps with Motor formed part of the overall Mine-1A Project. For this work, a notice inviting tenders, (NIT) was issued on 19.07.2000. The estimated value of the contract was about Rs.2.50 crores. The bid consisted of 3 parts, namely,

Part-I : Bid guarantee and pre-qualification requirement.

Part-II : Techno-Commercial offer

Part-III : Price bid.

In pursuance of the NIT, 8 parties obtained tender documents from the Corporation and out of them, 7 parties submitted their offers. Parts I and II of the tender were opened on 08.09.2000. The petitioner herein is one of the parties who purchased the tender documents and submitted its offer. The Corporation constituted a Tender Committee (TC) for scrutiny of the bids and making recommendations for finalising the tender. Out of the 7 parties, the Tender Committee recommended three parties for considering their Part II Techno Commercial offer. The Tender Committee recommended valid reasons for passing over the other four bidders. The recommendations of the Tender Committee were duly approved by the Director (Mines), Director (Finance) and finally by the Chairman-cum-Managing Director of the Corporation. Following this, the said 3 parties alone were called for Part II Techno Commercial discussions. The petitioner was not called for the Techno Commercial discussions.

After conclusion of the Techno Commercial discussions, after due notice, the Price Covers of these 3 parties, namely, M/s. Kirloskar Brothers Ltd., M/s. Beacon Weir Limited and M/s. WPIL Limited were opened on 18.08.2001. On evaluation, the Tender Committee on 28.08.2001 recommended the order on the L-1 Bidder, viz., M/s. Kirloskar Brothers Ltd., After due approvals at the highest level of the Corporation, the LOI has been issued to M/s. Kirloskar Brothers Ltd., in their reference dated 03.11.2001. The Corporation has also issued purchase orders in favour of M/s. Kirloskar Brothers Ltd., on the same date for all the 24 pumps. In view of their past conduct in withdrawal of their offer after 4 " months after submission of the price cover, the petitioner Company has no consideration for sanctity of contract. As a result, the Corporation had to suffer heavy monetary loss and the earlier project got delayed. Therefore, the decision in the present case not to consider the bid of the petitioner for the pumps contract is justified and has been done in the interest of the Corporation.

5. In the light of the above pleadings, I have heard the learned counsel for petitioner as well as respondents.

6. The only point for consideration in this writ petition is, whether the petitioner is entitled to the relief as claimed for?

7. In view of the information furnished by the respondents in their counter affidavit, that the tender of the petitioner was not accepted for the reasons stated therein, the writ petition is liable to be dismissed without further discussion. I am inclined to consider the case of both parties and dispose of the writ petition on merits. There is no dispute that in respect of tender relating to procurement of 24 numbers Horizontal Split Centrifugal Pumps with Motor formed part of the overall Mine-1A Project, the petitioner herein submitted its offer. It is seen from the counter affidavit of the respondents that, Neyveli Lignite Corporation constituted a Tender Committee consisting of General Manager / MM, General Manager (GWC) Mines and Deputy General manager (Finance) / Mines for scrutiny of the bids and making recommendations for finalising the tender. They scrutinised the offers of the 7 parties including the petitioner, which submitted its offers with respect to Part I, the bid guarantee and pre-qualifications requirement. It is further seen that, out of the 7 parties, the Tender Committee recommended the following three parties for considering the Part II Techno-Commercial offer.

" (i) M/s. Mirloskar Brothers

(ii) M/s. Beacon Weir Limited and

(iii) M/s. WPIL Limited. "

It is further seen that the Committee has not considered the other 4 bidders including the writ petitioner.

8. In this regard, the respondent - deponent of the affidavit has explained that in the previous occasion i.e., on 09.06.1999, the Corporation had issued a tender

for Fire Protection System for Thermal Station-I, in which the petitioner Company participated. The value of the contract was about 6.6 crores and the petitioner Company became a L-1 bidder and the L-2 was higher by about Rs.2 crores. After knowing this difference, the petitioner Company suddenly withdrew its offer after three weeks after opening of the price cover for no valid reason. It is the grievance of the respondent that in view of such withdrawal 4 " months after submission of price cover and after coming to know that the price bid of L-1 is far less, the petitioner Company has no consideration for sanctity of contract. It is also stated that as a result, the Corporation had to suffer heavy monetary loss and the project got delayed. Keeping in mind the immediate past conduct of the petitioner, the Tender Committee which is competent to decide, recommended to pass over petitioner''s offer at the initial stage itself. In such a situation, as rightly argued, the petitioner has no right to maintain the present writ petition alleging that the acts of the respondents to be discriminatory or irrational.

9. Learned counsel for the petitioner by relying on a case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , contended that the petitioner was not given any prior intimation or notice before black listing it. First of all, the petitioner was not at all black listed as claimed by it. In view of their past conduct relating to tender for fire protection system for Thermal Station - I expansion, the Tender Committee consisting of qualified persons passed over the offer of the petitioner. The decision referred to by the petitioner relates to the case of black listing, is not helpful to the petitioner''s case.

10. By relying on a case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , learned counsel for the petitioner, further contended that in the absence of notice or intimation, the action of the respondents cannot be sustained and this Court can set right their arbitrary action. For the reasons stated above and in the light of the decision of the Expert Committee, namely, Tender Committee for scrutiny of bids, I am of the view that the said decision is also not helpful to the petitioner''s case.

11. On the other hand, learned counsel for the respondent by relying on the decision of the Supreme Court in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, contended that, in the light of the past conduct of the petitioner and the decision was taken by the Tender Committee consisting of experts on the subject, interference by this Court exercising jurisdiction under Article 226 of the Constitution is very limited. In this regard, it is relevant to note the following conclusion of their Lordships.

" 16. It is also necessary to remember that price may not always be the sole criterion for awarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committee''s special knowledge plays a decisive role in deciding which is the best offer. Price offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work, can be legitimately paid in order to secure proper performance of the contract and good quality of work - which is as much in public interest as a low price. The Court should not substitute its own decision for the decision of an expert evaluation committee. "

They also held that,

" 19. A somewhat different approach may be required in the cases of award of a contract by the Government for the purchase of items for its use. Judicial review would be permissible only on the established grounds for such review including mala fides, arbitrariness or unreasonableness of the Wednesbury variety. ..... "

12. Therefore, it is clear from the above decision that, in the absence of mala fide, arbitrariness or unreasonableness in the selection and in view of the fact that the claim of the petitioner was considered by the Tender Committee consisting of experts in that field, and in the absence of any other material, I do not find any valid reason to issue direction as claimed by the petitioner. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected WPMP., is also dismissed.