

(2011) 12 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Perlr No. 13 of 2011

Medisphere Marketing Ltd.

APPELLANT

Vs

All Jammu & Kashmir Hospital and Institutional Contractors
and Others

RESPONDENT

Date of Decision : 17-12-2011

Acts Referred:

Citation : AIR 2012 J&K 58 : (2012) 3 BC 710

Hon'ble Judges : Virender Singh, J;Hasnain Massodi, J

Bench : Division Bench

Advocate : M.K. Bhardwaj and Ajay Abrol, for the Appellant; Rameshwar Singh Jamwal, Dy. A.G. and A.K. Sawhney, for the Respondent

Final Decision : Dismissed

Judgement

Hasnain Massodi, J.

Caveat No. 615/2011

1. Discharged.

PERLP No. 13/2011

Having regard to the grounds urged and on no opposition from the other side, applicant is permitted to file Letter Patent Appeal against the Writ

Court Order dated 19-5-2011 passed in OWP No. 227/2011.

2. Disposed of.

LPA (W) No. 137/2011. CMP No. 1/2011

3. On consideration, the Letters Patent Appeal is admitted and at request taken up for final disposal at the initial stage.

4. The Chairman, ""Committee for finalising Technical Specifications of Critical Ambulances- (hereinafter ""Committee""") respondent-5 herein, on 3-

5-2010 floated a tender notice inviting offers from the original manufacturers of Critical Care Ambulances for supply of Critical Care Ambulance to

the Health Department of the State Government. The tender notice gave all necessary details including the mode and manner in which the technical

bid and financial bid, Was to be submitted. The State Government earlier vide Government Order No. 185-HME of 2010 dated 22-3-2010,

constituted a committee for finalizing technical specification for procurement of Critical Care Ambulances under NRHM comprising of following

officers :

1. Director, Health Services. : Chairman

Jammu

2. Prof. & Head Department : Member

of ENT

3. Director, Family Welfare, Member

Jammu

4. Administrator Associate Member

Hospitals. Jammu

5. Controller Drug & Food Member

Control Organisation,

Jammu (Represented by

Mrs. LotikaKhajuria DDC)

6. Director, Industries and Member

Commerce, Jammu

(Represented by Mr. Vijay

Raina)

7. Medical Superintendent Member

SMGS Hospital, Jammu

8. Accounts Officer, GMC, Member

Jammu

5. The committee convened its first meeting on 19-4-2010 at Jammu, and took a decision as regards technical specification for Critical Care

Ambulances after it received inputs from its members including the Director, State Motor Garages. The Chairman of the "Committee" who also happens to be the Chairman of the Purchase Committee-II, as stated issued the aforementioned tender notice on 3-5-2010. The last date of submission of tender was 4-6-2010. The Chairman held a pre-bid meeting on 11-6-2010 where number of representations received from intending tenders were examined. The Committee in its meeting held on 6-7-2010, in view of observations made by Financial Advisor and Chief Accounts Officer, Health and Medical Education Department, that the mandate of the committee was restricted to decide on technical specification of Critical Care Ambulances and making recommendations to the Administrative Department, decided to refer the matter as regards opening offenders to the Administrative Department. The communication No. DHS/J/10-11/CCA/ 4950 dated 22-7-2010 was responded by the Administrative Department vide No. HME/ Accts/70/2010 dated 23-9-2010, whereby the technical specification recommended by the Committee were finalized and permission was thereafter conveyed vide No. HME/ Accts/70/2010 dated 28-10-2010 to open the technical bid. The bids were accordingly opened by the Purchase Committee-II on 1-11-2010. The physical demonstration of fully loaded Critical Care Ambulance as per the approved specifications, of the qualifying tenders was organized in the Directorate of Health Services, Jammu on 19-2-2011 to 21-2-2011.

6. It appears that before the tenders were opened on 15-1-2011, five out of the eight members of the Committee including its Vice Chairman, Prof, and Head Department of ENT, Administrator Associated Hospital, Jammu, Medical Superintendent. SMGS, Hospital, Jammu, Accounts Officer, Government Medical College, Jammu and Representative of the Industries and Commerce Department took a stand that unmindful of the earlier decision taken by the Committee to obtain specifications for Critical Care Ambulances from Apollo/AIIMS/PGI and other such institutions before the specifications were approved, tenders were floated and bids invited and thereafter correspondence as regards specifications initiated. Five of the eight members of the Committee took an exception to the mode and manner in which the specifications were fixed, on the ground that

what was required to be done before the tenders were floated, was embarked upon after the tenders were floated and that too without issuing any

supplementary tender notice. The dissenting members led by Vice Chairman of the Committee insisted that the issue deserves to be sorted out

before the committee proceeded to allot the contract. The dissenting group concluded its note as under:--

...When the fresh minutes of the said meeting have been brought for signatures, we, decided to record the synopsis of our dissent note over the

manner in which the purchase committee has now decided to proceed for allotting contract without first addressing the basic issue of the

specifications of ambulances as it involves huge State exchequer on the one side and the operational utility and efficacy of the ambulances for

patient care on the other side. However, our signatures appended on the minutes of the meeting are subject to his dissent note.

7. The Chairman, who as already indicated, also happens to be the Chairman of the Purchase Committee-II, ignoring the dissent, went ahead with

the process of allotment of contract and as indicated, got physical demonstration of fully loaded Critical Care Ambulances conducted on 19-2-

2011 to 25-2-2011.

8. In the meantime. All J&K Hospitals and institutional Contractors Alliance and others through its Chairman. Shri M.K. Dhar, filed writ petition

registered as OWP No. 227/2011 against amongst other, the Chairman of the ""Committee for technical specification for Critical Care

Ambulances."" The petitioners questioned the tender notice on the ground that it was tailored to benefit a particular business house/manufacturer,

otherwise ineligible to compete for allotment of the contract. The petitioners pleaded that post tender steps taken by the Chairman of the

Committee, were in conflict with the codal formalities and did not take into account the written dissent of majority of the members of the

Committee. The petitioners while identifying in para 27 of the petition manufacturers/suppliers who responded to the tender notice, insisted that

M/s. Medisphere Marketing Limited, New Delhi (present appellant), was debarred by the Assam Government from participating in the tender

process However, the petitioners ignored to array M/s. Medisphere as party respondent in the petition. It was prayed in the petition that the tender

notice and supply order, if any, made pursuant to tender notice, be quashed. The petitioners on the strength of names made in the petition, also

sought writ of mandamus, directing the Central Bureau of Investigation (CBI) to probe into the matter.

9. The respondents in their reply while admitting the constitution of the Committee vide order No. 185-HME of 2010 dated 22-3-2010, denied

that the tender notice was tailored to benefit a particular manufacturer/ supplier. The respondents pleaded that the tenders were opened and the

follow up action taken strictly in accordance with the rules and that no cause of action had accrued to the petitioners to maintain the writ petition or

seek relief prayed for in the petition. Though the respondents did not deal with averments as regards disagreement recorded by the majority of the

members of the Committee with procedure adopted for purchase of Critical Care Ambulances, yet the stand taken later appears to have been that

the Chairman was competent to overrule and ignore the dissent, if any, voiced by one or more members of the committee.

10. The Writ Court on going through the pleadings and the record placed on the file and after hearing learned counsel for the parties, vide

judgment dated 19-5-2011, allowed the writ petition and directed the respondents to initiate fresh exercise ""in accordance with rules in the matter"".

The Writ Court while observing that the process initiated by the Chairman on the basis of minutes of the Committee meeting in which five of the

eight members had recorded a dissent, could not be allowed to stand, rejected the argument put forth by learned counsel for respondents that

Chairman was competent to take decision ignoring the dissent and that the Chairman had rightly proceeded with the process. Reliance by the

learned counsel for the respondents placed on the law laid down in Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, . AIR

1999 SC 393 : (1999 AIR SCW 53) and AIR 2005 SC 2623 was found by the Writ Court to be grossly misplaced. The Writ Court took note of

the fact that as per the admitted position, five of the eight members had ""virtually abstained from the process"" and declined to participate in the

proceedings, for the reasons recorded by them. The Writ Court after taking note of the afore stated development, held that ""the process, in the

circumstances, cannot proceed"".

11. The appellant aggrieved with the Writ Court order dated 19-5-2011, has come up with instant Letters Patent Appeal. The appellant questions the Writ Court judgment on the ground that as two of the three writ petitioners - respondents 1 and 2 in the appeal did not at all, respond to the tender notice in question, they lacked locus standi to maintain and prosecute the writ petition. The appellant while admitting that the writ petitioner - respondent No. 3 submitted his bid, insisted that the bid so submitted was rejected on technical ground and that the writ petitioner - respondent No. 3 after submitting bid and participating in the competition for allotment of the contract in question, was not competent to turn around and question the tender notice. It is pleaded that after the tender were opened and the Autocad Drawing of the Ambulances, submitted by the five tenders whose offers were gone through, the offers made by appellant and two other tenders were found to satisfy all requirements and that the appellant having quoted the lowest price, bagged the contract. The appellant explains the circumstances in which a similar contract was concluded by the appellant with the Assam Government. The appellant on the ground urged in the appeals, prays that the writ Court order dated 19-5-2011 be set aside and the writ petition dismissed.

12. We have gone through the memorandum of appeal as well as the Writ Court record and have heard learned counsel for the parties.

13. The Government of India under National Rural Health Mission to provide better health care facilities to the people residing in rural and far flung areas, has decided to set up Critical Care Ambulance/Medical Mobile Units in each district of the country. The funds for establishing Critical Care Ambulances /Medical Mobile Units are provided by Ministry of Health and Family Welfare, Government of India. The Ministry, like other States, allotted funds to the Health and Medical Education Department of the Jammu and Kashmir Government to procure and set up Medical Mobile Units in different district's of the State. The State Government in order to ensure that the contract for supply of Critical Care Ambulances/ Medical Mobile Units is allotted in a transparent manner, without compromise on quality/ specification and without any chance of corrupt practice, vide Government Order No. 185-HME of 2010 dated 22-3-2010, constituted a committee headed by Director Health, Services, Jammu as Chairman

and comprising of other senior officers of the State Government to finalize the technical specification for Critical Care Ambulances/Medical Mobile

Units. The Chairman of the Committee issued tender notice on 3-5-2010 inviting offers from original manufactures/firms with their specifications.

The matter was smooth, till the tenders were received. However, one of the members of the Committee i.e. Financial Advisor/ Chief Accounts

Officer of Health and Medical Education Department appears to have been of the view that the agenda of the Committee for ""finalization of

technical specifications"" constituted vide Government Order dated 22-3-2010 as the name would suggest was restricted to selection of technical

specification and to make recommendation to the Administrative Department accordingly. In other words, the stand taken by the Financial

Advisor/Chief Accounts Officer was that the committee had to do nothing with the allotment of the contract. The matter was referred to the

Administrative Department vide' order No. DHS/J/10-11/CCA/4950 dated 22-7-2010. The Administrative Department approved the technical

specification finalized by the ""Committee for, finalization of technical specifications"" and vide order No. HME/Accts/70/2010 dated 18-10-2010,

accorded permission to opening of technical bids by purchase committee-II on 1-11-2010. The committee for purchase of Critical Care

Ambulances, held meeting on 15-1-2011 and in the meeting five out of the eight members took view, different from the view of other three

members and insisted that before the contract was allotted, the basic issue of specification of ambulances was to be resolved. The dissenting

members emphasized resolution of the issue of ""specification of the ambulance"" before the contract was allotted as different opinion as it involved

huge State exchequer on the one side and operation utility efficacy of the benefit on the other side. In view of the stand taken by five of the eight

members of the Committee, the decision taken by the Committee was regarding finalization and approval of specification of Critical Care

Ambulances was only a minority decision. In other words, the majority of the members of the committee did not approve technical specification

that found approval of three members of the Committee. Five members of the committee led by its Vice Chairman, did not voice their disapproval

in vacuum, without detailing their reasons. The dissenting group was of the opinion that the specifications were to be finalized only after the inputs

were obtained from Apollo/ AIIMS/PGI, Chandigarh and that unmindful of said requirement, before such inputs were received and specifications conveyed by the aforementioned premier Health Care Institutions of the Country incorporated in the tender notice, the tender was floated and offers invited from the original manufacturers/ firms. The dissenting group was of the view that correspondence was entered into with Apollo/AIIMS/PGI, Chandigarh and other Health Care Hospitals of the country after the tenders were floated even after necessary specifications were received from these institutions, no supplementary tender notice was issued incorporating such specifications. The objections raised by the majority of the members of the Committee thus were valid and could not be brushed aside and over ruled by the Chairman of the committee in exercise of whatever powers he had in his capacity as Chairman of the committee. It may be stated at the cost of repetition that any view that concretized in the deliberations of the Committee held on 15-1-2011. deserved to be accepted, was that five of the eight members of the committee and that such view was one of disapproval of the specifications finalized without internalizing the inputs/opinion received from Apollo/AIIMS/PGI Chandigarh and other premier Health Care Institutions of the country.

14. It is pertinent to point out, that once the Government or for that matter any organization decides to constitute a multi-member Committee to finalize or allot the contract, the intention is to inculcate transparency, objectivity, fairness and above all, an element of collectiveness in the decision making process. In case, minority multi members Committee is held to have a final say in disregard of the opinion of majority of the members of the Committee, the very purpose of constitution of multi member Committee to finalize and allot contract, would get frustrated.

15. The Writ Court was thus, right in observing that once the majority of the members of the committee were not party to a decision, the process pursuant to such decision, was not to be allowed to proceed. It needs to be pointed out that the Writ Court restricted its observation to "the process initiated by the Chairman on the basis of committee, meeting in which five members put a dissent note". It follows that the threads are to be picked up from 15-1-2011 when the Committee met and five of eight members of the Committee disagreed with other three members of the

Committee including its Chairman. The Committee in light of the Writ Court order, is to meet and deliberate afresh on the agenda that was before the Committee on 15-1-2011 in the matter in accordance with rules. There is no merit in the contention that as the appellant on the strength of specification offered and price quoted was entitled to allotment of the contract in question, the Writ Court ought to have felt dissuaded from interfering in the matter. The ground urged in the appeal that the respondents lacked locus standi to invoke extra ordinary jurisdiction of the Court, is equally specious. The grounds assailing the Writ Court order, is urged obvious and unmindful of the fact that the issue related to the finalization of the specification and once the Committee arrived at the conclusion other than the decision of minority of its members, such conclusion is to have its fall out on bids made by all the tenders including the writ petitioners - respondents 1 to 3 herein. To elaborate, in case the Committee on internalizing the inputs received from Apollo/AIIMS/PGI, Chandigarh in its decision making, finalized the specification different from the specifications on the basis of which the appellant was able to make it to the last three of the tenders, the appellant may be out of the competition or any of the tenders who did not make it to the final list of three tenders may be short listed for final consideration. Against the said backdrop, the question of locus standi, as projected by the appellant pales into insignificance. So viewed, the appeal is without merit. The Writ Court order dated 19-5-2011 passed in OWP No. 227/2011, is in strict conformity with law. Resultantly, the appeal is dismissed.