(2018) 06 RAJ CK 0014

In the Rajasthan High Court

Case No : Special Appeal Writ No. 725 of 2018

M/s Celex Technologies Pvt. Ltd. @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 01-06-2018

Acts Referred:
Central Motor Vehicles Rules, 1989 — Rule 50

Citation : (2018) 06 RAJ CK 0014

Hon'ble Judges : K.S.JHAVERI, J;VIJAY KUMAR VYAS, J

Bench : Division Bench

Advocate : Suren Uppal, Sanjeev Menon, Biswajeet Mukherjee

Final Decision : Dismissed

Judgement

1. By way of this appeal, the appellant has assailed the judgment and order of the learned Single Judge whereby learned Single Judge has allowed the

writ petition filed by the petitionerrespondent no.3 to 5 herein and directed the State Government to consider the bid of the said petitioners-

respondents.

2. The facts of the case are that the respondent-State issued an NIT inviting bids for implementation of High Security Registration Plates

(â??HSRPâ?) Scheme introduced vide amendment made under Rule 50 of the Central Motor Vehicles Rules, 1989 and the HSRP Order of 2001

issued by the Central Government. The said HSRP Scheme contemplates that the present system of Archaic Number Plates are replaced with the

HSRP which have the Modern Security Features not available in the Archaic Number Plates, viz:-

(a) Hot stamped Chromium based Hologram. (b) Permanent consecutive identification number of minimum 7 digits. (c) â??INDâ?? in blue colour.

(d) Non-removable snap lock

(e) Third Registration Plate on the top left handcorner of the three/four wheeler widescreen. (f) Hot Stamping INDIA inscript Film.

2.1 The tender notice dated 30/05/2017 required the bidder toimplement the project by establishing necessary infrastructure for the issuance and fixing

of HSRP. The bid was required to be submitted on-line in electronic format consisting of technical and financial proposal. The provisions of the

Rajasthan Transparency in Public Procurement Act, 2012 (hereinafter referred as â??RTPP Actâ?) were made applicable for the procurement and

the Rules famed thereto were to prevail. The bidder could be an individual, firm, company, corporation, a joint venture or consortium with qualifications

both technical and financial as laid down in the bid document.

2.2 The respondent No.3-M/s. Real Mazon India Ltd. states thatearlier they had been awarded tender vide agreement dated 16/05/2012 for

implementation of the HSRP Scheme in compliance of the orders passed by the Supreme Court in Maninderjit Singh Bittaâ??s PIL i.e. Writ Petition

(C) No.510/2005. It is stated that they implemented the Scheme during its contractual period from May, 2012 to May, 2017 and were granted

extensions upto the award of fresh contract.

3. Petitioners-respondents had approached this Court allegingtailor made conditions in the subsequent corrigendum issued to the NIT on 30/06/2017

vide S.B. Civil Writ Petition No.10921/2017. During the pendency, the petitioners had

participated in the tender as a consortium and the prequalification bid had taken place and this Court has noted that the firm had not been disqualified.

The petitioner-firm had apprehended that it shall be ousted in the technical bid but as there was no such basis, the writ petition was disposed of by

passing following order on 18/08/2017:-

â??Thus, present writ petition is disposed of with liberty to the petitioner-firm to take remedy that if any adverse order is passed, however, the

respondents would also be expected to consider every bid as per the conditions given therein.â??

4. It is stated that immediately after disposal of the said writpetition, the respondents were declared disqualified on technical ground vide e-mail sent to

them on 18/08/2017. SB Civil Writ Petition No.14242/2017 challenging the rejection order dated 18/08/2017 was preferred and the bid was rejected pointing out several deficiencies and also on account of Clause 1.5.3.1 treating the respondents to be participating as a Joint Venture.

5. The learned Single Judge, after hearing, did not acceptcontention of the respondents and dismissed the same vide order dated 05/09/2017. DB

Special Appeal (Writ) No.1325/2017 was filed and the appellant - Celex Technologies Private Limited, which had been awarded the contract, was

directed to be impleaded as a party.

6. After hearing the parties, the Division Bench decided the appeal and passed following order vide order dated 02/11/2017:-

â??The submission made in reference to R.68 of the Rajasthan Transparency in Public Procurement Rules, 2013 or the CVC guidelines, the ld. Single

Judge at the stage observed that it was premature because the decision on the selection of single bidder was pending at that time when the judgment

was pronounced by the ld. Single Judge but as we have set aside the order or rejection 18/08/2017 and in the further process there being two bidders,

R. 68 of the Rules, 2013 may not have any application at this stage and it is always open for the State authorities to consider while reaching to the

finality of the present tender process and it is expected that the mandate of the Rajasthan Transparency in Public Procurement Act, 2012 and the

Rules, 2013 framed thereunder may be fulfilled in its true spirit. Consequently, the instant appeal succeeds and is hereby allowed. The impugned

rejection order dt.18/08/2017 and so also order of the ld. Single Judge dt.05/09/2017 are hereby quashed and set aside. The Government is at liberty to

complete the tender process keeping in view the conditions of the bid document within a period of four weeks and take further action in accordance

with law. No costs.â??

7. SLP (C) No.33870 of 2017 filed by the State and SLP (C) No.33423/2017 by appellant against the said order and the same was dismissed after

hearing all the parties on 05/01/2018 with following order:-

â??The special leave petitions are dismissed. Pending application(s), if any, shall stand disposed of.â??

8. The respondents have again filed the present writ petition as the respondents vide order dated 15/02/2018 have reexamined their bidding document

on other technical parameters and rejected the technical bid submitted by the respondentâ??s Consortium.

9. Counsel for the appellant has relied upon the following observations made by the learned Single Judge while considering writ petition No.14142/2017

(M/s. Real Mazon India Ltd. & ors. vs. State of Raj. & anr.) decided on 5.9.2017 which reads as under:-

The short controversy involved in the present writ petition is in reference to certain clauses of the bid document and mainly regarding financial

capabilities of the bidders. After inviting the bids, prebid meeting was held for opening of technical bid. The petitioner company was disqualified in

technical evaluation and rejection of their bid was conveyed vide E-mail dated 18th August, 2017.

1.5.3.1 For the purpose of above evaluation, if the Bidder is a Joint Venture, the financial capabilities of its constituent entities shall be considered in

the ratio of their share holding in the JV.

The question for my consideration is as to whether clause 1.5.3.2 is in addition to the requirement given in clause 1.5.3.1 or is it in reference to clause

1.5.3.

According to the petitioner company, additional requirement given in clause 1.5.3.2 is in reference to clause 1.5.3, whereas, according to the

respondents, it is in reference to clause 1.5.3.1.

9.1 He further contended that the above writ petition was dismissed.

9.2 He has taken us to clause 1.5.3 of the tender document which reads as under:-

The clause 1.5.3 makes reference about financial capabilities i.e. what should be the worth of bidder and turnover apart from the requirement of

solvency certificate. It does not define the ratio of their share holding. The clause 1.5.3.1 starts from â??For the purpose of above evaluationâ? i.e.

regarding financial capabilities. If the bidder is a Joint Venture, the financial capabilities of its constituent entities shall be in the ratio of their share

holding. Clause 1.5.3.2 provides additional requirement for consortium.

9.3 However, against the said order, intra court appeal being DBSAW No.1325/2017 was preferred where the Division Bench vide judgment dt.

2.11.2017 has observed as under:-

In our considered view, the interpretation has to be harmonious and to be referred to in the context in which it has been indicated in the tender document and the words used u/cl.1.5.3.1 which open with the phrase â??for the purpose of above evaluationâ?? and the word â??ifâ?? which has

been given more emphasis by the ld. Single Judge are only in reference to two individual bidders who have to comply with their separate additional

conditions while their financial capabilities are being evaluated by the authorities in terms of the cl.1.5.3 and the bidder who is a Consortium was not

supposed to comply with the requirement of cl.1.5.3.1 which in our considered view is exclusively applicable for a bidder who is a Joint Venture and

not to any other entity of a bidder including Consortium and this in our considered view is an apparent misinterpretation of the clause referred to and

we are unable to subscribe the view expressed by the ld.Single Judge under its impugned judgment in making the conditions referred to u/cl.1.5.3.1

applicable in the case of a Consortium and any other interpretation of the bidding document, referred to by us will indeed rule out an apparent basic

distinction of two separate entities as a bidder referred to u/cl.1.1.5 and that appears to be the reason with which under the definition clause of the

bidding document â??Consortiumâ?? and â??Joint Ventureâ?? being two separate entities has been defined u/cl.1.1.6 & 1.1.16 and both the bidders

have to fulfill their additional financial worthiness as a bidder in fulfillment of the financial capabilities respectively being referred u/cl.1.5.3.1 & 1.5.3.2

read with cl.1.5.3 of the bidding document and any other interpretation to the contrary may tantamounts to rewriting the terms of bid document which

may not be permissible under the law.

The submission made in reference to R.68 of the Rajasthan Transparency in Public Procurement Rules, 2013 or the CVC guidelines, the ld.Single

Judge at the stage observed that it was premature because the decision on the selection of single bidder was pending at that time when the judgment

was pronounced by the ld.Single Judge but as we have set aside the order of rejection dt.18.08.2017 and in the further process there being two

bidders, R.68 of the Rules, 2013 may not have any application at this stage and it is always open for the State authorities to consider while reaching to

the finality of the present tender process and it is expected that the mandate of the Rajasthan Transparency in Public Procurement Act, 2012 and the

Rules, 2013 framed thereunder may be fulfilled in its true spirit.

Consequently, the instant appeal succeeds and is hereby allowed. The impugned rejection order dt.18.08.2017 and so also order of the ld.Single Judge

dt.05.09.2017 are hereby quashed and set aside. The Government is at liberty to complete the tender process keeping in view the conditions of the bid

document within a period of four weeks and take further action in accordance with law. No costs.

9.4 The contention of the appellant is that the board resolution and other financial bid were not fulfilled by the respondents no.3 to 5.

10. We have heard the parties in person.

11. In our considered opinion, the direction of the Division Bench which has been upheld in SLP (c) No.33870/2017 dt. 5.1.2018 was very clear that

the order dt. 18.8.2017 was quashed and set aside and therefore, the financial bid cannot be considered.

12. Even the learned Single Judge while considering the matter has gone through the detailed orders, which we are not

reproducing in order to maintain brevity.

13. However, counsel for the appellant has relied upon the observations of the learned Single Judge made in the order impugned dt. 21.5.2018 which

reads as under:-

12. In the fresh order, which has been passed and is under challenge in the present writ petition dated 15/02/2018, the respondentdepartment has again

reexamined the same technical parameters and on the basis of Clause 1.5.3 has rejected the bid on following grounds:-

(i) No certificate for validation of Net-worthcountersigned by a Chartered Accountant which is a requirement as per Clause 1.5.3

(ii) Defective Bank Solvency Certificate ofrespondent no.2.

(iii) Defective Power of Attorney executed infavour of the lead member of the consortium as the same was not accompanied with

I. Board Resolution/Shareholder Resolution,

II. Power of Attorney in favour of personsigning the power of attorney for delegation of power and

III. Not legalized by the Indian Embassy nordid it carry an Appostille certifiate which is necessary for a Foreign Company i.e. respondent no.2 to

possess

(iv) Defective Power of Attorney executed in favour of lead member of the consortium as the same as not accompanied with

I. Board Resolution/Shareholder Resolution,

II. Power of Attorney in favour of personsigning the power of attorney for delegation of power and

III Not legalized by the Indian Embassy nor did it carry an Appostille certificate which is necessary for a Foreign Company i.e. respondent no.2 to

possess.

(v) Failed to provide the complete list ofdirectorship of the respondent no.2 as per the MCA site, as contrarily the Trade Register Office indicates that

there are two Directors.

(vi) Non-disclosure of copy of IT return, PAN,TIN, GST registration etc.

Hence it is apparent that the consortium did not comply with clause 1.5.3.2 (d) of NIT which reads â??The Application should contain all information

as required in this bid document for each member of the consortium.â? Therefore, the petitioner no.2 has rightfully rejected the bid submitted by the

consortium led by M/s Real Mazon, by the Order dated 18.08.2017, as the same was non-responsive.â??

14. Further, the observations made by the learned Single Judge while considering the matter reads as under:-

25. In the aforesaid background, a look at the first round of litigation shows that bid of the petitioners was rejected on 18/08/2017 by imposing Clause

1.5.3.1 which was only applicable to the bidder

participating as joint venture whereas the petitioners had participated as consortium. The Clause 1.5.3.1 reads as under:-

â??For the purpose of above evaluation, if the Bidder is a Joint Venture, the financial capabilities of its constituent entities shall be considered in the

ratio of their share holding in the JV.

36. Thus in all the aforesaid cases, theSupreme Court has been consistently observing that a second writ petition on the same grounds on which the

first writ petition has been rejected would not lie. The same would apply to the grounds taken by the non-petitioner. Once the grounds have been taken

to support and order which is impugned and the Court examines the order and quashes the same, it has to be presumed that the Court has considered

all the grounds although it would be necessary to have incorporated all the grounds in the part of the judgment.

37. At best, if a party is aggrieved by anyground not having been examined in the body of the judgment, it can file a review petition to submit that a

finding must be given with regard to the ground taken in the pleadings. However, to allow a second round of litigation on the premise that the earlier

judgment did not refer to a particular ground of rejection and therefore, the same would be available to the party against whom the order has been

passed to raise the same in order to oust the party in whose favour the earlier judgment has been rendered, would amount to gross abuse. If such a

course is allowed, it wold be an unending process and the Courts would be stuck with a single case coming up for more than once before it as one or

the other grounds may not find place in the judgment pronounced by it. Such action would also defeat finality of a judgment.

47. Thus, this Court finds that the respondents have taken all steps to oust the petitioners from competition in financial bidding. The action smacks of

malice in law as well as on facts and is strongly deprecated. The concerned officers who have been instrumental in starting this second round of

litigation and denying petitioner to participate

should be subjected to disciplinary proceedings and the State may examine role of the concerned officers in this regard. There was no occasion to

reexamine the technical bid on individual basis after the Division Bench of this Court had already held the bid filed by the petitioners as that of a

Consortium. Thus, the decision making process adopted by the respondents is defective as noted above and the order impugned deserves to be

quashed & set aside on that count also. Similar view has been taken by this Court in the case of Johnson Johnson Private Limited Vs. State of Raj. &

ors. (SB Civil Writ Petition No.8281/2017), decided on 17/05/2018.

15. In our considered opinion, the Division Bench has set aside the earlier order and given direction to open the financial tender meaning thereby, the

financial bid technically was accepted of the original petitioner and only financial bid is to be considered. If the interpretation of the present appellant is

taken into consideration, it will be amount to permitting the Government to sit over appeal of the earlier division bench judgment which is not permitted.

16. We deprecate such practice and we are in complete agreement with the view taken by the learned Single Judge.

17. We are of the opinion that the cost imposed upon the erring Government Officer is just and proper and it could have been increased, if the

Government had come in appeal.

18. The appeal stands dismissed.

