
(2013) 11 DEL CK 0036

In the Delhi High Court

Case No : Writ Petition (C) 6907 of 2013

M/s. Elgin Electronics

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0036

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Chetan Sharma, Mr. Ram Krishna, Mr. Ratnesh Dev and Mr. Sandeep Bist, for the Appellant; Ravinder Agarwal, CGSC, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The petitioner before this Court is questioning dated 15.10.2013, passed by the Chief Engineer (E), CSQ, whereby he has reiterated his earlier order dated 19.07.2013, debarring the petitioner from participating in any tender in CPWD. A perusal of the OM dated 19.07.2013 would show that the petitioner had sought pre-qualification in a work of sound system in CPWD. It was claimed in the aforesaid OM dated 19.07.2013 that the petitioner had sought pre-qualification on the basis of false work experience certificates and, therefore, in terms of para 1.7 of Section II (Information and Instructions for Bidder) of CPWD Work Manual, the petitioner was liable to be debarred from tendering/taking up the work in CPWD. W.P. (C) No 4967/2013 was filed, questioning the aforesaid OM dated 19.07.2013. The writ petition was disposed of on 26.09.2013 with the following directions:

(i) The petitioner shall make a representation, placing its case before the Competent Authority against its blacklisting/debarring. The said representation shall be made on or before 3.10.2013.

(ii) The petitioner shall appear before Chief Engineer (Electrical), CSQ at 11 am on 7.10.2013 for the purpose of giving a personal hearing to him. The Chief

Engineer (E) shall then pass an appropriate order after taking into consideration the representation which the petitioner shall make in terms of this order and the submissions made by him at the time of personal hearing. Appropriate order/s shall be passed by the Chief Engineer (E) on or before 15.10.2013.

(iii) The impugned order dated 19.7.2013 shall remain in abeyance till a fresh order in terms of this order is passed by the Chief Engineer (E).

2. Pursuant to the aforesaid directions, the petitioner was given a hearing and impugned order dated 15.10.2013 came to be passed. The aforesaid order, to the extent it is relevant, reads as under:

It has been found that sufficient evidences exist to show that the work completion certificates submitted by M/s. Elgin Electronics which were issued under the signature of Executive Engineer Tawang PW Division, Tawang, Arunachal Pradesh & Engineer-In-Charge, Gas Authority of India Limited, Noida in connection with the pre qualification for the work of "Replacement of sound system in main Hall Vigyan Bhavan, New Delhi" in October, 2006 to Executive Engineer, Vigyan Bhavan Electrical Division, CPWD, New Delhi were questionable.

It is pertinent to note that work completion certificate purported to have been issued by Executive Engineer PW Division Tawang, did not bear any completion date as well as date of issue of the certificate. Further, on verification of the same by the Executive Engineer, Vigyan Bhavan, Electrical Division, CPWD, New Delhi vide his letter dated 15.05.2008, a different version, "that the sound system were purchased directly by the Buddha Mahotsava Celebration Committee and was supervised by the division" came out vide letter No. TWD/PA-IV/2008-09/230 dated 31/05/2008 of E.E. PW Division Tawang. In this light, the order No. TWD/DB-9/2006-07/255 dated 24.05.2006 amounting to Rs. 1,16,58,750 mentioned in the earlier certificate submitted by M/S. Elgin Electronics lost its sanctity. Besides, other anomalies also came to light like non availability of fund to Buddha Mahotsava Celebration to the extent so as to meet the amount mentioned in the work completion certificate etc. through replies to various RTI queries and available on record of the Department. Thus, genuineness of the certificate cannot be substantiated despite the contrary claims by M/S. Elgin Electronics. As regards the work certificate from M/S. GAIL for an amount of Rs. 10,967,102/-, it is seen that it does not bear the date of issue besides the vague designation of the person signing it. On verification of this certificate by the Executive Engineer, Vigyan Bhavan electrical Division, CPWD, New Delhi vide his letter dated 16/06/2008, the value of work and the order No. Have been changed to Rs. 120 lacs and GAIL/C-167/5600000189/HSB dated 28.11.2005 from Rs. 10,967,102/- and 5300000189 respectively. This, therefore, provides reasonable belief that authenticity of the certificate is questionable. Further, the report of the CPWD committee dated 16.11.2006 considering of Shri K.K. Peshin, SE(E) DCEC-VI, Shri V.K. Singhal, EE(E) VBED and Shri Sailesh, AEE(P) NDZ-I who had inspected the work of "Providing and installation of Audio Visual System for the GMA renovation at GAIL, NOIDA" was

also perused and it was found that the committee had very categorically stated that firm did not produce any documentation like detailed schedule of work/final bill of the work to verify the actual inventory provided by them for the work under inspection. The firm thus did not satisfy the committee members about the type of work as well as quantum of work. This is in addition to the other anomalies which came to light while going through the reply to various RTI queries on the issue and available on record of the Document.

3. It would thus be seen that the order debarring the petitioner from further tendering is based on the allegations that two work experience certificates, one purporting to be issued by the Executive Engineer, Tawang, PW Division, Tawang and the other purporting to be issued by Gas Authority of India Limited were not genuine documents. The letter dated 31.05.2008, written by the Executive Engineer, Tawang, PW Division to the Executive Engineer (E), Vigyan Bhawan, Electrical Division, CPWD, to the extent it is relevant, reads as under:-

With reference to your letter No. Cited above, it is to inform you that the materials (Sound system) were purchased directly by the Buddha Mahotsava Celebration Committee, Tawang from M/s. Elgin Electronics, Delhi. The firm was also installed the Sound system at Tawang under the supervision of this division as per the request made by the Buddha Mahotsava Celebration Committee, Tawang. After completion of the work, the completion certificate was issued by this office. The sound system is working in good.

It would thus be seen that genuineness of the certificate, issued earlier was verified by the Executive Engineer, Tawang, PW Division. The only clarification given by him was that the sound system was purchased directly by Buddha Mahotsava Celebration Committee and not by the concerned PW Division of Tawang. It was, however, certified that the sound system was working in good and it was on completion of the work that the completion certificate was issued to the vendor. Vide letter dated 13.06.2008, addressed to the Executive Engineer (Electrical), Vigyan Bhawan, the Government of Arunachal Pradesh through its Joint Secretary/PIO (PWD), informed that the reply to his earlier order dated 15.04.2008 had already been sent by the concerned Executive Engineer vide his letter dated 31.05.2005. Thus, the Joint Secretary/PIO of the Government of Arunachal Pradesh also affirmed the verification certificate dated 31.05.2008, issued by the concerned Executive Engineer.

4. The certificate, purporting to be issued by Gas Authority of India Limited, is placed on page 42 of the paper book. Vide letter dated 25.06.2008, addressed to Executive Engineer, Electrical, Vigyan Bhawan, Gas India Limited intimated as under:

With reference to your letter as above, it is being clarified that the certificate attached by your good self is genuine and issued by GAIL. This was against our work order No. GAIL/C-167/5600000189/HSB/dated 28.11.2005 which was inadvertently written earlier as work order no. 5300000189. Another corrected

certificates was also issued to M/s. Elgin Electronics, 1683/2, J.H. Building, Delhi-06 on 28th June, 2007.

It would be seen that the Gas Authority of India Limited also verified the genuineness of the certificate placed on page 42 of the paper book, the only qualification being that the work order number which was incorrectly recorded in the previous certificate was correctly stated in the said communication and copy of the character certificate issued to the petitioner on 28.06.2007 was also enclosed.

5. It would thus be seen that both the work experience certificates, which are the basis of debarring the petitioner from further tendering in CPWD, have been confirmed and verified by the authorities by whom they were issued. In the light of the Executive Engineer, Tawang and Gas Authority of India Limited, having verified and confirmed the genuineness of their respective certificates, the Chief Engineer (E), CSQ, has no material before him which would justify debarring of the petitioner from further tendering in CPWD at this stage. The learned counsel for the respondent submits that the whole verification process is under a cloud and the matter is being investigated by Delhi Police. If any material becomes available with the respondent, which, despite above-referred verification letters, issued by Executive Engineer, Taiwan and Gas Authority Limited, justifies debarring the petitioner from further tendering in CPWD, it would also be open for the respondent to initiate a fresh process in this regard, but at this stage, in the absence of some material, which would show that the certificates, issued by the Gas Authority of India Limited and Executive Engineer, Taiwan to be false certificate, no ground for debarring the petitioner from further tendering in CPWD solely on the allegations that the aforesaid documents were not genuine documents, is made. For the reasons stated hereinabove, the impugned orders dated 19.07.2013 and 15.10.2013 are quashed. It is, however, made clear that if the respondent receives any other material in future, which would justify debarring of the petitioner from further tendering in CPWD, this order will not come in the way of the respondent initiating a fresh process in this regard and passing an appropriate order in accordance with law.

The writ petition stands disposed of. There shall be no order as to costs.