

(2018) 01 TP CK 0008
In the Tripura High Court
Case No : 1405 of 2017

M/s Tata Metaliks Limited

APPELLANT

Vs

State of Tripura & Ors.

RESPONDENT

Date of Decision : 08-01-2018

Acts Referred:

Citation : (2018) 01 TP CK 0008

Hon'ble Judges : S. Talapatra

Bench : Single Bench

Advocate : PK Biswas, P Majumdar, TD Majumdar

Judgement

1. Heard Mr. PK Biswas, learned senior counsel assisted by Mr. P Majumdar, learned counsel appearing for the petitioner as well as Mr. TD

Majumdar, learned GA appearing for the respondents.

2. Being aggrieved by the decision of the technical evaluation committee taken on 02.11.2017 by rejecting the technical bid of the petitioner as

non-responsive bidder, the petitioner has filed this writ petition. It has been urged by the petitioner that the respondents be directed to accept their

technical bid as valid.

3. The facts are mostly undisputed. The respondent No.4 floated the Notice Inviting Tender (for short NIT) for procurement of DI(K7) pipes of

different diameters for water supply schemes in Tripura for the year 2017-2018 according to the terms and conditions as mentioned under PNIE-T

No.05/EE/DWS/SD/AGT/2017-2018. In the list of documents to be uploaded the following documents, amongst others, were asked to be

uploaded:

(i) Valid registration of the tenderer as manufacturers of DI pipes.

(ii) Document in support of production capacity of the tenderer's DI pipe manufacturing unit.

(iii) Valid license to use BIS standard mark for stipulated times of DI(K7) pipes as per IS 8329:2000 (with latest amendments).

4. According to the petitioner, they filed all those documents. It has been contended that the documents were valid on original date of submission

of the tender. In clause 15 of the tender it has been provided that all the statements, documents, certificates etc. submitted online by the tenderers

will be securitized against specific criteria, parameters, terms & conditions etc. as stipulated in the tender document for necessary evaluation of the

technical bids. The clarifications, particulars, documentary proof relating to the Technical bids if any, required from the tenderers, will be obtained.

The tenderers shall agree in writing to furnish clarifications on the statements/documents submitted with the bids, particulars/documentary proof

relating to their bids etc., if & when called upon to do so within stipulated time. It has been further provided in clause 20 of the tender that the

tenders (both technical bid & price bid) shall be scrutinized in accordance with the specification/conditions stipulated in the tender document. In

case of any discrepancy of non-adherence to any condition, the Tender Accepting Authority shall communicate the same, which will be binding on

both the tender opening authority and the tenderer. In case of any ambiguity, the decision taken by the Tender Accepting Authority on tenders shall

be final & binding.

5. The petitioner submitted the tender on 06.09.2017 and the license issued by Bureau of Indian Standards (BIS) was also submitted with the

tender documents along with other documents and there is no dispute that the license was valid on the date of submission. However, the petitioner

has asserted that he had applied for renewal of his licenses and that was pending. The application for renewal was not rejected by the BIS and

accordingly they have issued the license on 05.10.2017 certifying that the license is renewed for a further period of two years from 27.09.2017 to

26.09.2019 and as such the petitioner's license was valid on the last date of submission of tender as mentioned in the NIT but the respondents

have rejected the technical bid, submitted by the petitioner on the ground that the petitioner did not submit a valid license according to the

conditions as mentioned in the NIT and the petitioner has been adjudged as a nonresponsive bidder. The said decision was taken by the technical evaluation committee of the Public Works Department (DWS) and on their recommendation the Chief Engineer, PWD (DWS), Tripura has accepted that recommendation giving seal on rejection of the technical bid of the petitioner.

6. Mr. PK Biswas, learned senior counsel appearing for the petitioner has submitted that the said decision is grossly arbitrary, illegal and completely unacceptable. He has referred also to the Note No. III below the list of documents in the tender documents and submitted that the said note provides that the registration, BIS license of product and other relevant documents submitted by the tenderers should be valid on the last date of submission of tender. In case, the last date of submission of tender is extended, the registration and other relevant documents of the tenderer should be valid on original last date of submission of tender.

7. According to Mr. Biswas, learned senior counsel the registration was valid on the date of submission inasmuch as from the endorsement certificate dated 17.01.2014 (Anenxure-7 to the writ petition) issued by the Bureau of Indian Standards, it appears that the said license was renewed on 23.09.2015 for a period of 2 years from 27.09.2015 to 26.09.2017. Further, it appears that by the endorsement No. 9 dated 05.10.2017, the said license under No. CM/L-5506259 was again renewed for a further period of two years from 27.09.2017 to 26.09.2019.

8. Mr. Biswas, learned senior counsel has submitted that without asking for any clarification or explanation the technical evaluation committee of PWD(DWS) in its meeting held on 02.11.2017 has declared the petitioner's technical bid as non-responsive. Out of four bidders, namely

(i)Rashmi Metaliks Limited, Kolkata, (ii)Electro Steel Casting Ltd. Kolkata, (iii)Jindal Saw Limited, New Delhi and the petitioner, the other three bidders were recommended for consideration of their price bids. For

rejection, the said technical evaluation committee has given the following reason:

Not submitted valid license to use BIS standard mark for stipulated items of DI(K7) pipes as per IS 8329:2000 (with latest amendments).

9. The respondents have filed their reply on 16.11.2017 and categorically stated that having valid license on the last date of submission of tender is

a precondition to succeed in the technical bid. But Mr. TD Majumdar, learned GA appearing for the respondents has fairly submitted that on the date of filing i.e. 26.09.2017 the petitioner's BIS license was valid and in force but on the last date of tender the said license was not valid and the petitioner did not make any further communication in this regard. Mr. Dutta Majumdar, learned GA has submitted the tender documents manually filed by the petitioner for record.

10. There is no dispute on any other aspect. The only question that falls for consideration is that whether the document which was waiting renewal can be treated as the valid document when the renewal was granted retrospectively before the technical evaluation committee rejected the technical bid of the petitioner.

11. What Mr. Biswas, learned senior counsel has submitted is that the respondents have taken a pedantic approach in rejecting the technical bid of the petitioner. They should have asked the petitioner in terms of clause 15 of the tender which reads as under:

15) All the statements, documents, certificates etc. submitted online by the tenderers will be securitized against specific criteria, parameters, terms

& conditions etc. as stipulated in the tender document for necessary evaluation of the technical bids. The clarifications, particulars, documentary

proof relating to the Technical bids if any, required from the tenderers, will be obtained by addressing the tenderers. The tenderers shall agree in

writing to furnish clarifications on the statements/documents submitted with the bids, particulars/documentary proof relating to their bids etc., if &

when called upon to do so within stipulated time without any reservations.

Mr. Biswas, learned senior counsel has passionately submitted that the respondents have taken a highly technical approach and unreasonably

abstained from seeking clarification in this regard. They should have asked the petitioner whether the BIS license had been renewed meanwhile or not.

12. Mr. Biswas, learned senior counsel has further asserted that the technical evaluation committee took that decision on 02.11.2017 but on

05.10.2017 itself the BIS license of the petitioner was renewed for another two years covering the entire period. Thus, there was no cessation.

The last time and date of filing the tender was 3 pm on 07.10.2017. There

cannot be any amount of doubt that on 07.10.2017 the said license was valid in terms of the endorsement No.9 dated 05.10.2017 (Anenxure-9 to the writ petition) but the petitioner, as it appears, had no avenue to communicate the said endorsement inasmuch as he had filed the valid license on 26.09.2017 which expired technically from 27.09.2017. But it was later on declared valid from the same day i.e. 27.09.2017.

13. Mr. TD Majumdar, learned GA having relied on *Tata Cellular Vs. Union of India*, reported in (1994) 6 SCC 651 has contended that it is not for the court to determine whether a particular policy or particular decision taken in fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly varies from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review are as follows:

1. Illegality;
2. Irrationality; and
3. Procedural impropriety.

According to Mr. Dutta Majumdar, learned GA no such ground has been made out by the petitioner.

14. Mr. Dutta Majumdar, learned GA has also relied on *Poddar Steel Corporation Vs. Ganesh Engineering Works and Ors.*, reported in (1991)3

SCC 273 where it has been held that as a matter of general proposition it can be held that an authority inviting tenders is bound to give effect to

every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The

requirements in a tender notice can be classified into two categories - those which lay down the essential conditions of eligibility and the others

which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may

be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal

compliance of the condition in appropriate cases.

15. Mr. PK Biswas, learned senior counsel has argued fundamentally on the proposition of law which have been reiterated in *Tata Cellular (supra)*

and *Poddar Steel Corporation (supra)*. According to him, the respondents have

made a strict literal compliance of the condition without taking into consideration the incidence of renewal by obtaining clarification.

16. Mr. Biswas, learned senior counsel has contended that from the endorsement No. 09 dated 05.10.2017 (Annexure-9 to the writ petition) it

clearly surfaces that without any cessation, the BIS license was renewed and that such renewal had taken place before the last date and time of

submission. In terms of clause 15, the respondents ought to have sought for the clarification from the petitioner but they have not done this. In

haste, they have rejected the technical bid of the petitioner by grossly limiting the competition which is again against the public interest.

17. Having appreciated the submission made by the learned counsel for the parties, this Court would like to refer the following passages of Tata

Cellular (supra):

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to

prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review.

Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or

any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while

accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best

quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose

the exercise of that power will be struck down.

71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether

contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an

unfairness is set right by judicial review.

18. This Court is of the view that the respondents ought to have obtained clarification from the petitioner whether the BIS license was renewed,

before they had taken the decision in order to keep the principle of expansive consideration aloft in the government tenders so as to avoid the

narrowing down of the zone of competition to have the best product with the reasonable price. But at the same time, when the license was

renewed the petitioner ought to have placed the said document to the respondent No.4 taking the incidence of renewal of such license to the notice

of the respondent No.4 but the petitioner has also not done so. This Court by the order dated 10.11.2017 had observed as under:

..... In the meanwhile, further action of the tender under PNIE-T No.05/EE/DWS/SD/AGT/2017-2018 dated 05.09.2017 and

DNIe-T No.13/CE/PWD(DWS)/2017-2018 dated 05.09.2017 shall not be taken by the respondents No.1 to 4.

19. Thus, it is obvious that no final action has been taken on the basis of the price bid filed by the other tenderers. Keeping this in view, the

respondents are directed to consider the price bid of the petitioner on accepting the technical bid as the petitioner's BIS license was on the last

date valid by way of its renewal and the respondents are within their competence not to insist upon the strict literal compliance in this matter. [See

Poddar Steel Corporation (supra)]. The entire exercise shall be completed within a period of 7 (seven) days from the date when a copy of this

order shall be available with the respondents, particularly, to the respondent No.4.

20. In terms of the above, this writ petition stands allowed. There shall be no order as to costs.

21. The original tender bid of the petitioner as submitted by Mr. TD Majumdar, learned GA is returned.