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(2013) 04 P&H CK 0172

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5687 of 2013

M/s. Union Builders and Contractors APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Citation : (2013) 172 PLR 91

Hon'ble Judges : G.S. Sandhwalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Tribhawan Singla, for the Appellant; Amit Singh Sethi, Additional Advocate General, Punjab for State and Mr. Inder Mohan, for the Respondent

Judgement

Ajay Kumar Mittal, J.—The petitioner who had submitted a technical bid for connectivity from NH-1 to Borlaug Institute for South Asia (BISA) at Ludhiana (Ladowal Seed Farm), Length 7.30 Kms in District Ludhiana having remained unsuccessful as his technical bid was not opened being unqualified has approached this Court under Articles 226/227 of the Constitution of India. Briefly stated, the facts necessary for adjudication of the present writ petition as narrated therein are that on 28.12.2012, State of Punjab through respondent No. 2 invited bids for the project/work for connectivity from NH-1 to Borlaug Institute for South Asia (BISA) at Ludhiana (Ladowal Seed Farm), Length 7.30 Kms in District Ludhiana at the approximate value of the work as per their bidding documents was Rs. 7 crores. The last date for submission of bids online was 1.2.2013 upto 1300 hours and the date and time of the opening of the technical bid was 4.2.2013 at 1530 hours. In pursuance thereof, the petitioner submitted his bid online within the specified time. After the opening of the bid on 4.2.2013, respondent No. 4 forwarded the case of the petitioner along with others to respondent No. 3 on 11.2.2013 who vide letter dated 12.2.2013 (Annexure P-2) forwarded the same to respondent No. 2 mentioning therein that the technical bids were opened on 4.2.2013 in which the petitioner along with three others was found to be responsive and all the technical bids along with technical evaluation statements submitted to the respondent No. 2 were recommended to open the financial bids of all the bidders. On 73.2013 the financial bids were opened and uploaded on the website between 1.56 PM to 3.13 PM. However, the technical bid of the petitioner was shown to be not admitted. The name of the petitioner was shown to be non-responsive in the technical bid on the ground that his average annual turnover was not Rs. 14.00 crores. The financial bid was opened at 4.20 PM on 7.3.2013 and the estimated rates quoted by respondent No. 5-Daljit Singh were found to be lowest. Thereafter, the petitioner made a representation dated 12.3.2013 (Annexure P-5) against the rejection of its technical bid but no action was taken thereon. Hence, the present writ petition.

2. Learned counsel for the petitioner submitted that the notice inviting tenders had provided for various conditions, relevant of which read thus:-

4.5.3 General Experience:

The applicant shall meet the following minimum criteria: (a) Average Annual Turnover

Annual Turnover in any one of the last 5 years (five years) equal to Rs. 3500 Lacs OR

Annual turnover in each of the last 3 years (three years) equal to Rs. 1400.00 Lacs.

3. According to the learned counsel, the average annual turnover for last three years was required to be Rs. 1400.00 lacs. It was urged that once the expression "average" was prefixed to annual turn over in the head note, the respondents could not have changed the meaning and taken that the annual turnover which was specified for three years was to be individually Rs. 1400.00 lacs in each year. It was also submitted that in case there was any contradiction or ambiguity then the petitioner could not have been denied of his right of consideration of technical bid as on facts the petitioner was having average annual turn over of Rs. 14.00 crores each in the last three years. Elaborating on facts, it was submitted that the turn over of the petitioner for the year 2009-10 was Rs. 16.43 crores, Rs. 11.69 crores in 2010-11 whereas in 2011-12, it was Rs. 21.17 crores and, therefore, the average of last three years came to Rs. 16.43 crores which was more than Rs. 14.00 crores as required in the notice inviting tender.

4. Controverting the aforesaid submissions, learned counsel for the respondents submitted that though the word "average" has been used therein but the clause specified that the bidder was required to have Rs. 14.00 crores sales in each of three years preceding the date of submission of the tender. On facts, it was submitted that the petitioner had turnover of Rs. 11.69 crores in 2010-11 which did not fulfill the eligibility criteria of having annual turnover of Rs. 14.00 crores in each of last three years. Reference was made to the following averments made in para 13 of the written statement which read thus:-

13. That in reply to para No. 13 of the petition it is submitted that the petitioner

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himself has specifically stated the condition No. 4.5.3. and it is again reproduced below:-

4.5.3 General Experience:

The applicant shall meet the following minimum criteria:

(a) Average Annual Turnover Annual Turnover in any one of the last 5 years (five years) equal to Rs. 3500 Lacs

OR

Annual turnover in each of the last 3 years (three years) equal to Rs. 1400.00 Lacs.

It is submitted that the petitioner has submitted the turnover for the last five years in his bid document as under:-

which clearly shows that the petitioner does not fulfill the requisite criteria for annual turnover in any of the last 5 years equal to Rs. 3500/- Lacs nor annual turnover in each of the last three years equal to Rs. 14.00 Lacs. Considering Escalation Factor as 1.21 for the year 2009-2010, 1.10 for the year 2010-2011 and 1.00 for the year 2011-2012 as per Appendix to ITB (Attached as Annexure R-9), the annual turnover for the petitioner for each of the last three years works out as under:-

(Provisional) which clearly shows that annual turnover for the year 2010-2011 is 1169.61 lacs, which is obviously less than the required Rs. 1400 Lacs.

5. Having given our thoughtful consideration to the respective submissions of the learned counsel for the parties, we do not find any merit in the writ petition.

6. The marginal heading of the condition could not control the interpretation of the words therein particularly when there was no ambiguity in its language. In other words, where the condition was clear, marginal heading could not be taken to be providing key to its construction. In Chandroji Rao Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur, , the Hon''ble Apex Court had held that the marginal heading cannot control the interpretation of the words of the section particularly when the language of the section is clear and unambiguous.

7. This Court in Sowaran Singh Vs. Municipal Committee, Pathankot and Another, while dealing with the rule of interpretation of statutes relating to effect of headings prefixed to section noticed as under:-

I am not unmindful of the rule of construction that the headings prefixed to section or sets of sections in statutes cannot control the plain words of statutes but t(sic)y can certainly explain in ambiguity in words if it exists. As stated in Maxwell on Interpretation of Statutes (1962 edition) at page 49, while the Court is entitled to look at the headings in an Act of Parliament to resolve any doubt may have as to ambiguous words, the law is quite clear that you cannot use such headings to give a different effect to clear words in the section, where there

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cannot be any doubt as to their ordinary meaning.

8. Similar interpretation was placed by the Delhi High Court in Mistcold Sales and Services Pvt. Ltd. Vs. Mayer Health Resort Ltd. as under:-

It is settled law that where clause itself is quite clear, its meaning cannot be derived from the marginal heading or from title. It is only when there is an ambiguity in the clause that help can be taken from the title in interpretation of the clause.

9. Adverting to the factual matrix involved herein, no doubt, in condition No. 4.5.3. the heading of the condition uses the expression "average annual turnover" but the substantive requirement enumerated therein clearly spelt out that the annual turnover in each of the last three years was required to be Rs. 14.00 crores. In other words, unless the bidder had annual turnover exceeding Rs. 14.00 crores in each of three years preceding the year of submitting the bid, he could not have been considered to be eligible. The expression "average" used in the heading would not advance the case of the petitioner as there existed no ambiguity in the substantive condition in the main clause. It was not disputed that in each of the last three years, the petitioner did not have the annual turnover of Rs. 14.00 crores. In such circumstances, the respondents were justified in not opening the technical bid of the petitioner. In view of the above, there is no merit in the writ petition and the same is hereby dismissed.

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