

(2005) 09 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7871 of 2002

Mukati Transformers Ltd.

APPELLANT

Vs

Jaipur Vidyut Vitran Nigam Ltd. and Another

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 1 BC 455 : (2005) 4 RLW 3061 : (2005) 4 WLC 528

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : Alok Sharma, for the Appellant; R.K. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—Brief facts of the case are that the respondents JVVNL invited tenders for various equipment including power distribution transformers from those qualified as per the parameters detailed in the notice inviting tenders.

2. Pursuant to the tender notice, the petitioner submitted its bid on 26.3.2001 and also submitted a bid security by way of bank guarantee under the condition of tender bids which were opened on 27.3.2001.

3. Vide letter dated 8.6.2001, the petitioner was asked to extend the validity of the bid. The petitioner time and again extended the validity of the bid and last extension was made upto 31.3.2002 by the petitioner vide letter dated 22.11.2001. The letter of intent dated 22.11.2001 and purchase order dated 4.12.2001 were issued to the petitioner and the petitioner was required to execute and signed the contract form and simultaneously furnish the amount of performance security. The petitioner furnished the contract form duly executed and signed the same on 18.12.2001, but failed to furnish the performance security.

4. The controversy arise when the respondents forfeited the bid security of Rs. 13,97,100/- in terms of Clause 15, therefore, the present writ petition is filed

seeking following reliefs:

1. This Hon''ble Court may kindly issue a declaration that the petitioner company in the facts obtaining on record is not liable to make any supplies on the basis of rates quoted in March 2001 in October 2002 and thereafter.

2. This Hon''ble Court may kindly be pleased to issue a writ of certio-rari or any other appropriate writ, order or direction of similar nature calling for the records pertaining to the supply of 3450 Nos. distribution transformers of 25 KVA and after perusal of the same this Hon''ble Court may kindly quash and set aside the letter dated 10.10.2002.

3. This Hon''ble Court may further kindly issue a writ of mandamus or any other appropriate writ, order or direction of similar nature forbearing the respondent Nigam from coercing the petitioner company into making supplies at a belated stage of 3450 distribution transformers contrary to the plain terms and conditions and intendment of the bidding documents for the supply of third lot of package No. RJ-WB-PSR/TR-079.

Or alternatively this Hon''ble Court may kindly direct the respondent Nigam to place a modified order on the petitioner company in terms of Clause 16.3 of the Bid Data sheet and the general principle enunciated therein in respect of the period 26.6.2001 to 22.11.2001 on the one hand and 19.12.2001 till the placing of the modified order.

5. Learned Counsel for the petitioner referred Clause 16 which deals with the period of validity and more particularly Clause 16.3, which is reproduced hereunder:

16.3 In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial bid validity, the contract price will be increased by a factor specified in the request for extension.

6. Learned Counsel for the petitioner placed reliance on the judgment in case of Mohammed Gazi v. State of M.P. and Ors. reported in 2000 WLC 330 wherein Hon''ble Supreme Court has observed that whether a person can be penalised for no fault of his merely by resorting to equity clause in favour of the respondent-State particularly when such person is found to have not been benefited or the State deprived of the benefits on account of stay order issued by the Court. The Hon''ble Supreme Court further observed that calling upon the petitioner to execute the purchase agreement as per condition of tender notice with the Conservator of Forest after depositing the balance security as shown in the letter dated 1.9.1996. Consequently, the appellant deposited a sum of Rs. 2,68,217.72/- as security amount. It was further observed that the other maxim is, *lex non cogit ad impossibilia*-the law does not compel a man to do which he cannot possibly perform.

7. So far as forfeiture of security is concerned, I have carefully perused the relevant provisions of the Instructions to Bidders. As per Clause 35.1, the

successful bidder shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form within 30 days of receipt of notification of award from the purchaser. As per Clause 35.2, failure of the successful bidder to comply with the requirement of ITB Clause 34.2. or ITB Clause 35.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.

8. It is not disputed that the agreement form was sent to the petitioner alongwith the purchase order dated 4.12.2001, which was required to be executed and signed by the petitioner within 21 days. The agreement form was duly signed and executed by the petitioner and sent back to the Nigam on 18.12.2001. Immediately after executing the contract agreement, as per Clause 35.1 of Instructions to Bidders, the petitioner was require to furnish the performance security in the sum of 5% of the contract value by way of bank guarantee or bankers cheque within 21 days of the notification of the award of work. Since the petitioner failed to comply with the requirement of Clause 35.1, therefore, the bid security was rightly forfeited as the petitioner has committed breach of contract.

9. So far as order of status quo passed in the writ petition of M/s Vijay Electricals on 9.1.2002 is concerned, it is not disputed that the writ petition was dismissed on 18.9.2002 and special appeal against the said order was dismissed on 25.9.2002. The petitioner had extended the validity of its offer upto 31.3.2002 without any challenge to the terms and conditions mentioned in the contract form. Thus, the petitioner cannot claim any right on account of enhanced rates when it extended the validity of its offer with clear understanding that other terms and conditions are accepted by him. Pursuant to purchase order dated 4.12.2001, the agreement was executed and signed by the petitioner on 18.12.2001.

10. In the considered view of this Court and Hon''ble Supreme Court in such matters where several disputed questions are involved specially in the contract matters, normally while exercising power under Article 226 of the Constitution of India, this Court should not interfere in the matter. The ratio decided by Hon''ble Supreme Court in case of Mohd. Gazi (supra), is not applicable to the facts and circumstances of the present case. I find not merit in the writ petition and no relief can be extended in favour of the petitioner. The writ petition fails and herewith dismissed.