

(2018) 04 GAU CK 0017
In the Gauhati High Court
Case No : WP(C) 4340 of 2017

NIBEDITA BARUAH

APPELLANT

Vs

NUMALIGARH REFINERY LTD. and 7 ORS.

RESPONDENT

Date of Decision : 09-04-2018

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2018) 04 GAU CK 0017

Hon'ble Judges : PRASANTA KUMAR DEKA

Bench : Single Bench

Final Decision : Dismissed

Judgement

Past Experience,Amount

One similar work costing not less than,Rs. 25 Lakh

Two similar works costing not less than,Rs. 20 Lakh each

Three similar completed works costing,Rs. 15 Lakh each

It is further submitted that the Code also defined "patient" which is distinct with that of emergency patient. Type A, B and C road ambulances",

are designated for the transport of patient and on the other hand, Type D road ambulance is designated for the transport and treatment of emergency",

patients. The subject of the NIT dated 20.04.2017 falls within Type D road ambulance.,

12. The respondent authorities failed to differentiate its own requirement from the experience certificate submitted by the respondent No. 8 and,

equated the Tata Sumo ambulance 24 hours which is normally a patient transporter vehicle with the one with facilities of critical care. The emergency,

vehicle is to be understood as per the terms and definitions stipulated in the

National Ambulance Code, 2013 and that must be understood with",

reference to the requirement of the respondent No. 1. Further it is submitted that after coming into effect of the National Ambulance Code, 2013",

(hereinafter referred to as "Code"), the respondent authorities replaced the word "ambulance" by "emergency vehicle" in the past",

experience qualification clause. In fact, prior to June, 2013, the respondent authorities while calling for tender for hiring of critical care ambulance",

required experience in operation and maintaining similar ambulance. Thus, the respondent authorities had narrowed down the qualifying clause by",

stipulating only "emergency vehicle" instead of "ambulance" in general. Mr. Goswami, however, admits that "emergency vehicle" is",

equivalent to an "ambulance" but all ambulances are not an emergency vehicle. Introduction of the expression used in the bid qualification,

criteria for the past experience as emergency vehicle itself expresses the intention of the respondent authorities to delineate a certain category of,

persons who alone should be eligible to submit a tender. The respondent authorities cannot depart from the said intention and come up with the act of,

acceptance of the past experience certificate of the respondent No. 8 drawing equivalency of the experience of operating Tata Sumo Ambulance 24,

hours with the one with facilities of critical care.,

13. The learned counsel for the petitioner pointing to the tender document in original in respect of the work order dated 25.05.2010 issued in favour of,

the respondent No. 8 which forms the experience of the respondent No. 8 submits that in the said NIT dated 15.10.2009 resulting in the work order to,

the respondent No. 8 dated 25.05.2010, the respondent authorities invited application for the job of selection of hiring of 32 numbers of vehicles for",

NRL duties which includes amongst others the Sumo ambulance. The respondent No. 8 having the experience of providing Tata Sumo ambulance and,

not emergency vehicle, does not satisfy the essential conditions of the NIT and as such, the decision of the respondent authorities in qualifying the",

respondent No. 8 is totally unreasonable thereby violating the basic and essential conditions of the NIT. In support of the submission of Mr. Goswami,",

he relies on the cases of Ramana Dayaram Shetty v. The International Airport Authority of India and others reported in AIR 1979 SC 1628 and Tata,

Cellular v. Union of India reported in (1994) 6 SCC 651.,

14. Mr. Roy, appearing on behalf of the respondents No. 1 to 7, submits that the present petitioner is continuing with the Work Order dated 09.07.2013",

extended time to time. The contract commenced on 01.01.2014 and was valid till 31.12.2016. The said contract was for two shift operation only. As,

the earlier work order with the petitioner was about to expire, a fresh Tender No. OC27000017/PRA 30.09.2016 was floated for hiring of a critical",

care ambulance with two shift operation of the ambulance. The petitioner qualified and after opening of the price bid it was found that the price was,

Rs. 131.44 Lacs which is 32% above the in-house cost estimate of Rs. 99.75 Lacs. The petitioner was requested to lower the price which she did not,

agree and the same was extended till December, 2016 and thereafter extended till 30.09.2017. The respondent No. 1 decided to operate three shift",

operation of the ambulance service in order to operate the same round the clock. Considering the same, the earlier tender dated 30.09.2016 was",

cancelled. It is submitted that in the subsequent tender No. OC27000019/PRA dated 20.04.2017 in the qualifying criteria it was stipulated that the,

bidder should have the experience in successfully executing contract for providing emergency vehicle hiring services for a period of minimum 3 years.,

Nowhere the word "critical" has been used as a mandatory requirement in the criteria of past experience. The experience criteria was stipulated,

with an intention to promote local entrepreneurs and effective participation in the tender so that the respondent No. 1 obtained the best competitive,

price. The qualifying criteria and the specification of the requirement of the vehicle are two different aspects of the tender process which the writ,

petitioner has misconstrued. Refuting the submission of the petitioner that she could not be present during opening of the technical bid as she was not,

called by the respondent authorities, Mr. Roy submits that Clause 19(K) of the tender conditions is specific that one authorised representative of the",

contractor may remain present during the tender opening on the due date, time and venue. The tender was on online process and there was free",

accessibility to each and every bidder to avail the notice of the opening of the bid. The petitioner could have easily made her access to the information,

regarding the date and time of the opening of the bid and there is no point in blaming the respondent authorities. The price bid against the techno-,

commercial acceptable offers were opened on 08.06.2017 and the respondent No. 8 was found to be L-1 bidder at Rs. 1,44,39,038/- which is 4.17%",

lower than the cost estimate. The Price quoted by the L-2 bidder i.e. the petitioner was Rs. 1,47,38,858/-. Considering the price offered, the",
respondent authorities placed the Work Order on the L-1 bidder. The respondent No. 8 fulfilled the qualification criteria for past experience and as,
such, there is no dispute to that effect.",

15. Mr. Roy, opposing the submission of the learned counsel for the petitioner, specifically denied the contention of the petitioner that the respondent",

No. 8 does not fulfil the qualifying criteria. The special conditions of contract in respect to the tender for critical care ambulance have been,

incorporated to give an idea for the specific requirement of the vehicle. The selection of respondent No. 8 as L-1 bidder has been purely on the basis,

of the evaluation of technically qualified bidders keeping in mind the criteria for requisite qualification and not for any extraneous reasons. Referring to,

the qualifying criteria, Mr. Roy submits that the Tata Sumo vehicle cannot be compared with the Force Tempo Traveller as submitted by the writ",

petitioner and has no relevancy in the present context and as such, the contention of the writ petitioner that the decision making process holding the",

respondent No. 8 to be technically qualified in terms of his past service cannot be termed to be arbitrary and unconstitutional and contrary to the terms,

and conditions of the NIT. The requisite experience does not mention about requisite of the past experience in providing services of the ambulance,

facilities for critical care only. The job value as mentioned in the qualifying criteria are satisfied by the petitioner and the past work experience,

submitted by the L-1 bidder is found similar to the pre-bid qualification requirement and the same was accepted by the tender evaluation committee.,

The whole process was transparent and the respondent authorities adopted E-tender system of CPP Portal and the special tender was floated in the,

same portal which was open for all. The terms and conditions in the tender are framed as per the prevailing rules and approved policy of the,

corporation which was duly approved by the Board of Directors.,

16. Mr. Roy submits that the scope of judicial review of the decision making process is very limited under the writ jurisdiction. The petitioner is bound,

to discharge the burden to show that there is a clear and specific violation of the conditions stipulated in the tender. The qualifying criteria do not say,

that experience of operating emergency vehicle with critical care is required.

While challenging the decision making process, the petitioner cannot",
dictate the respondent authorities what to follow and what not. The question of
adherence to the National Ambulance Code, 2013 cannot be sole",
criteria inasmuch as it is needless to say that after coming into effect of the said
Code, 2013, each and every emergency vehicle/ ambulance must",
comply the stipulations made therein the Code. Judicial review of administrative
action is to prevent arbitrariness, irrationality etc. Evaluating tenders",
and awarding contracts are essentially commercial functions. If the decision
relating to awarding contract is bonafide, court cannot interfere in",
exercise of powers of judicial review. The respondent authorities while specifying
the criteria for qualification kept in mind which criteria would,
suffice for participation of the eligible bidders. The respondent No. 8 has the
experience as stipulated in the qualifying criteria and being satisfied and,
considering price bid of the respondent No. 8 to be L-1 awarded the said
contract. According to Mr. Roy, the similar work mentioned in the bid",
qualification criteria in the tender dated 20.04.2017 mentions the "similar
work" which the petitioner has wrongly linked with the requirement of,
the respondent authorities inasmuch as the same ought to be read with the
execution of contract for providing emergency vehicle hiring services but,
not for hiring of ambulance with facilities of critical care. Accordingly, Mr. Roy
submits that the writ petition has no merit. In order to buttress his",
submission, Mr. Roy relies on the case laws of Michigan Rubber (India) Limited v.
State of Karnataka and others reported in (2012) 8 SCC 216, Joshi",

Past Experience, Amount

One similar work costing not less than, Rs. 25 Lakh

Two similar works costing not less than, Rs. 20 Lakh each

Three similar completed works costing, Rs. 15 Lakh each

accordance with relevant law could have reached and,

(ii) Whether the public interest is affected? If the answers to the above questions
are in the negative, then there should be no interference under",

Article 226.,

20. In the case of Ramana Dayaram Shetty v. The International Airport Authority
of India and others (supra), a Notice Inviting Tender was put up by",

the International Airport Authority of India, a State instrumentality for putting up

and running a IInd Class Restaurant and two Snack Bars at the",
 International Airport at Bombay. The qualifying criteria mentioned therein for the tenderers are reproduced herein-below:-,

â??sealed tenderers in the prescribed form are hereby invited from registered IInd Class Hoteliers having at least 5 yearsâ?? experience for putting,
 up and running a IInd Class Restaurant and two Snack Bars at this Airport for a period of 3 yearsâ??,

Therein the Honâ??ble Apex Court had to examine whether the 4 th respondents were eligible to submit a tender. The contention of respondent No.,
 4 was that different grades were given by the Bombay City Municipal Corporation to hotels and restaurants and though there may be IInd Class Hotel,
 but no such grades were given to persons running hotels and restaurants and hence it would be inappropriate to speak of a person as a registered IInd,
 Class hotelier. Whether for the said reason it would be proper to reject the expression â??registered IInd Class hotelierâ?. The Honâ??ble Apex,
 Court held as follows:-,

â??7. We do not think such a view would be justified by any canon of construction. It is a well settled rule of interpretation applicable alike to,
 documents as to statutes that, save for compelling necessity, the court should not be prompt to ascribe superfluity to the language of a document",
 â??and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use. To reject words as insensible,
 should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to",
 be acted upon by the others should be presumed to use words without a meaning. The court must, as far as possible, avoid a construction which would",
 render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether,
 inapplicable. Now, here the expression used in paragraph (1) of the notice was â??registered IInd Class hotelierâ? and there can be no doubt that by",
 using this expression the Ist respondent intended to delineate a certain category of persons who alone should be eligible to submit a tender. The Ist,
 respondent was not acting aimlessly or insensibly in insisting upon this requirement nor was it indulging in a meaningless and futile exercise. It had a,
 definite purpose in view when it laid down this condition of eligibility in paragraph

(1) of the notice. It is true that the phraseology used by the 1st, respondent to express its intention was rather inapt but it is obvious from the context that the expression "registered IInd Class hotelier" was, loosely used to denote a person conducting or running a IInd Class hotel or restaurant. It may be ungrammatical but it does not offend common sense, to describe a person running a registered IInd Grade hotel as a registered IInd grade hotelier. This meaning is quite reasonable and does not do any, violence to the language and makes sense of the provision contained in paragraph (1) of the notice. We must, in the circumstances, hold that, on a", proper construction, what paragraph (1) of the notice required was that only a person running a registered IInd Class hotel or restaurant and having at", least 5 years' experience as such should be eligible to submit a tender. This was a condition of eligibility and it is difficult to see how this condition, could be said to be satisfied by any person who did not have five years' experience of running a IInd Class hotel or restaurant. The test of, eligibility laid down was an objective test and not a subjective one.",

21. Mr. Goswami wants to submit that the expression "emergency vehicle" in the qualifying criteria must be understood in terms of the Code,

2013. As held by the Hon'ble Apex Court the respondent No. 1 herein had introduced the said word "emergency vehicle" in order to classify,

a particular group of persons making them eligible for participation in the tender process. The object of the respondent No. 1 herein is to operate an,

emergency vehicle with critical care facility which is subjective in nature and objective of the NIT is to operate an emergency vehicle and the group of,

persons eligible to participate must have experience in operating any emergency vehicle. Keeping in view the aforesaid ratio in Ramana Dayaram,

Shetty (supra), construction of the said term "emergency vehicle" must be in such a way that it does not become meaningless and redundant. It",

must therefore be given a plain and simple interpretation of the said term which transpires from the qualification criteria that the emergency vehicle,

mentioned therein is an ambulance and the bidder must fulfil the criteria of rendering services of an ambulance in the PSU/ Private Organisation,

within 10 years from the last day of the ending month preceding the month which the bids are invited. Mr. Goswami had admitted that emergency,

vehicle includes ambulance but his only submission is that all ambulances are not

emergency vehicles as per the Code of 2013.,

22. Now referring to Michigan Rubber (India) Limited v. State of Karnataka and others (supra), whether the process adopted or the decision made by",

the authority is mala-fide and whether the decision is such that no responsible authority acting reasonably in accordance with the relevant law could,

have reached and whether by the said decision making process of the respondent authorities, the public interest is affected or not. In my considered",

opinion, the respondent authorities without keeping a restricted interpretation, has given a wide meaning to the qualification criteria as apparent from",

the explanation of the learned counsel for respondents. Moreover, if the view so submitted by Mr. Goswami is accepted, then it would have an impact",

on the public interest inasmuch the Code came into existence only in the year 2013 and without there being any change made in the qualifying criteria,

so far the length of the experience is concerned, the same would amount to unreasonableness on the part of the respondent authorities in giving a",

restrictive meaning and accordingly, I hold that the decision making process of the respondent No. 1 in accepting the qualification criteria of the",

respondent No. 8 is just, fair and not arbitrary. I find no merit in this writ petition and the same is dismissed. Interim order, passed earlier, shall stand",

vacated.,