

(2001) 11 DEL CK 0036

In the Delhi High Court

Case No : CM No. 11209 of 2001 in Civil Writ No. 6533 of 2001

P. Sharma Consultants Pvt. Ltd.

APPELLANT

Vs

Mahanagar Telephone Nigam Ltd.

RESPONDENT

Date of Decision : 23-11-2001

Acts Referred:

Citation : (2002) 4 AD 355 : (2002) 96 DLT 429 : (2002) 62 DRJ 42

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Pramod Gupta and Gaurav Kejriwal, for the Appellant; C.S. Vaidyanathan Sitiesh Mukherjee and Leena Tuteja, for the Respondent

Judgement

Mukul Mudgal, J.—This is an application for interim relief in a petition in which the petitioner has challenged the Notice Inviting offers (hereinafter referred to as NIT) dated 17th July 2000 which invited tenders for the supply of Cable Records Purification System (CRPS). The technical bids were opened on 25th August 2000 and the financial bids were opened on 4th January 2001. In this petition the petitioner has challenged the tender document pursuant to the NIT dated 17th July 2000 on the ground that there are glaring infirmities in the system of respondent No. 4 as it was not in conformity with the Tender Document. Learned counsel for the petitioner has submitted that the award to respondent No. 4 is clearly in violation of the NIT particularly when the configuration was different from what was tendered and on this ground alone the writ petition is liable to be admitted and the purchase order in favor of the respondent No. 4 liable to be cancelled.

2. Learned counsel for the respondent No. 4 has contended that the of the terms and conditions of the tender document were fully met by and none of the general and functional requirements alleged to have been violated by the petitioner have been violated. It was further submitted by the learned counsel for respondent No. 4 that it had offered a configuration more advanced than that ordered by respondent No. 1 and the system required only automatically scanning of 1200

termination at a time at MDF. He further contended that the goods offered in response by the respondent No. 4 were capable of terminating 2000 pairs, a quantity much larger than sought by respondent No. 1 by the tender. He further relied on the following data to contend that his system is far superior to that of the petitioner:

Petitioner's Respondent's System System up to 1200 lines up to 2000 lines upgradeable to 3600 lines

3. The respondent No. 4 further submitted that the bid of the respondent No. 4 was lower than that of the petitioner by 15 per cent and the petitioner was given an opportunity by the respondent No. 3 to supply the CRFS as per the configuration system offered by respondent No. 4 at respondent No. 4's rates which offer was declined by the respondent No. 1.

4. The learned counsel for the respondent No. 4 submitted that without prejudice to any of the other pleas of the respondent No. 4 the writ petition suffered from totally unexplained laches and in that view of the matter no interim order of any kind whatsoever was called for apart from the fact that the writ petition itself is not maintainable. In support of this plea learned counsel for the respondent No. 4 relied upon the following sequence of events:

- NIT was issued on 17th July 2000.
- On 25th August 2001 the technical bids were opened by the respondent No. 3 and on 4th January 2001 the functional bids were opened.
- On 31st July 2001 the order was passed in favor of respondent No. 4.
- On 14th August 2001 the bank guarantee was given and the letter of credit was thereafter opened
- The present writ petition was filed only on 18th October 2001
- He submitted that in this view of the matter no indulgence can be given to the petitioner in view of the laches of the petitioner which have remained totally unexplained in the writ petition as well as in the application for interim relief.

It was further submitted that mere making a representations on 13th August 2001 and 4th October 2001 was merely a ruse to get over the unexplained laches and accordingly the writ petition and the stay application warranted dismissal. He further relied upon the petitioner's representation dated 13th August 2001 which itself demonstrated that on 19th March 2001 the petitioner was fully aware of the alleged deficiencies in the respondent No. 4's tender and was not thus entitled to any interim order.

5. Without going into the merits of the writ petition, at this stage, I am satisfied that the sequence of events demonstrates that the technical bid was opened as far back as in August 2000 and the Financial Bids were opened on 4th January 2001. In any case the petitioner was aware on 19th March 2001 about the

alleged deficiencies of respondent No. 4's tender and even then the writ petition was not filed for a long period thereafter and a further representation was sought to be made on 13th August 2001 followed by a reminder. In the interregnum the respondent No. 4 has taken action pursuant to the award of tender by giving a bank guarantee as well as opened a letter of credit. There is no Explanation worth the name about the laches and any grant of interim relief would cause severe prejudice to the respondent No. 4 for no fault of its. Furthermore, the petitioner though given the offer to match the respondent No. 4's rate and items, declined to do so. Consequently the application for interim relief warrants dismissal.

6. I am satisfied that the interim order cannot be granted/continued in favor of the petitioner. Accordingly the order dated 19th October, 2001 stands vacated.

IA stands disposed of.

CW. 6533/2001

RULE.

Copy of the order be given dusty to the parties, subject to the payment of usual charges.