(2016) 10 DEL CK 0004

In the Delhi High Court

Case No : Writ Petition (C) 7681 of 2016

Pink Housing Keeping APPELLANT

Vs

Centre for Development of Telematics RESPONDENT

Date of Decision : 25-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 ADDelhi 140 : (2016) 10 ADDelhi 97 : (2017) 1 BC 20 : (2016) 235 DLT 2

Hon'ble Judges : Badar Durrez Ahmed and Ashutosh Kumar, JJ.

Bench : Division Bench

Advocate : Mr. Balapara Maheshwari K., Advocate, for the Respondent No. 2; Mr. J.C. Seth with Mr. Udit Sethi, Advocates, for the Respondent No. 1; Mr. Shaad Anwar with Ms Shabnam, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Ashutosh Kumar, J. - The petitioner, M/s Pink House Keeping, a contractor of manpower supply, housekeeping, sanitation, horticulture etc, had participated in the tender issued by Centre for Development of Telematics (hereinafter referred to as ''C-DOT'' or respondent No. 1), a registered scientific society set up by Government of India to carry out research and development works in the field of telecommunication, for biennial contract for house keeping and pest control services at C-DOT campus in Mehrauli, but was not successful as it was adjudged L-2 whereas the contract was awarded to respondent No. 2 namely M/s Top Servers, another participant in the tender.

2. The main grievance of the petitioner is that in the financial bid tabled by the respondent No. 2, "bonus" in accordance with Payment of Bonus Act, 1965 and Rules was not included and therefore the bid of respondent No. 2 was not responsive and if at all, the statutory bonus would have been included in the financial bid of respondent No. 2, only the petitioner and not respondent No. 2 would have been adjudged L-1 and would have been successful in bagging the

contract.

3. The respondent No. 1 (C-DOT), had invited tenders on 11.03.2016 for housekeeping and pest control services at its office complex situated at Mandi House Mehrauli, New Delhi. A pre-bid meeting was held on 22.03.2016, wherein the issue of payment of bonus was clarified and the participants were made to understand that bonus as per law was required to be included in the price bids.

4. The technical bids of the participants were opened on 07.04.2016 wherein the petitioner and the respondent No. 2 along with certain others qualified where after their financial bids were opened on the same day. The financial bid of the petitioner was evaluated and adjudged as L-2 whereas the respondent No. 2 was adjudged as L-1.

5. The respondent No. 2, though, had indicated about payment of bonus in its technical bid, but the amount of bonus was not shown in the financial bid. The respondent No. 1, therefore, sought clarification from respondent No. 2 regarding payment of bonus. Respondent No. 2 communicated vide letter dated 15.07.2016 that the rates quoted in the financial bid was inclusive of all expenses including bonus and that no extra cost would be charged from respondent No. 1. The aforesaid clarification seems to have satisfied respondent No. 1 and thereupon, the contract was awarded to respondent No. 2 on 16.08.2016.

6. The contention of the petitioner is that the financial bid of the respondent No. 2, in the first instance, was non-responsive and secondly, if bonus would have been added in the financial bid by respondent No. 2, only the petitioner and not respondent No. 2 would have been adjudged the lowest bidder. The petitioner is also aggrieved by the calculation put forth by the respondent in as much as the calculation has been made on the basis of 2.5% service charges quoted by the petitioner over the entire salary, inclusive of statutory payments whereas the petitioner had made it clear in its commercial bid that the service charges would be on wages simpliciter.

7. In response to the aforesaid contention of the petitioner, a comparative chart of the financial bids of the two bidders namely the petitioner and the respondent No. 2 was furnished by respondent No. 1 which is as follows:

Sl. No.

Manpower/Consumable Detail

No.

Top Server

Pink Housekeeping

1.

Housekeeping Manager

1

16236.25 14924.01

2.

Housekeeping Supervisor (2)

2

26347.96

27514.16

3.

Housekeeping Men/ladies unskilled

50

542006.50

631500.00

4.

Plumber

1

13173.98

13757.08

5.

Carpenter

1

13173.98

13757.08

6.

Manpower Total I(without service charges)

610938.67

641113.83

7.

Rate of Service Charges(%)

1.25

2.50

Service Charges

7636.73

16027.85

Manpower cost inclusive of service charges) p.m

618575.40

657141.68

Sub-Total A (inclusive of service charges) P.A.

7422904.84

7885700.11

8.

Rodent Control Services

26

23400.00

7800.00

9.

Disinfectation Services Campus

52

15600.00

14400.00

10.

Fumigating Canteen Stores

12

12000.00

3600.00

11.

Eradication of Bats

1

700.00

100.00

12.

Catching of Snakes

1

500.00

500.00

13.

Beehive Removal

1

500.00

500.00

Sub Total B (per annum cost)

52700.00

26900.00

14.

Consumable (Sub-Total C) per annum cost incl. of taxes

12

842052.00

800880.00

Gross Total (A+B+C)

8317656.84

8713480.11

Note:

Sub Total A (Manpower cost) = inclusive of service charges but exclusive of service tax Sub Total B (service cost) = exclusive of service tax (SI. No. 8, 9, 10 are on per annum basis and SI. No. 11, 12, 13 are on requirement basis) Sub Total C (Consumables) = inclusive of taxes (VAT etc.)

8. From a perusal of the chart referred to above, it would appear that with respect to both the bidders i.e. the petitioner and respondent No. 2, the calculation was made after adding 2.5% and 1.25% respectively as service charges on the complete wages which is inclusive of the statutory payments and not merely wages. In that view of the matter no prejudice appears to have been caused to the petitioner even though there was a specific stipulation in the bid of the petitioner that the service charges at the rate of 2.5% were to be calculated on wages and not other components namely statutory payments. It was

submitted on behalf of the respondents, in unison, that the bid of respondent No. 2 was not at all unresponsive as a clarification had already been sought to which there was a specific reply of respondent No. 2 that the bid included all payments and in any event, no extra money would be charged by respondent No. 1.

It was further submitted by the respondents that the Supreme Court in Raunaq International Ltd. v. I.V.R. Construction Ltd. & Ors. (1999) 1 SCC 492 has reiterated that a Court of law is not required to examine the bid document clause by clause and would interfere only if the action of the State is arbitrary or capricious and if any malafide could be shown in the decision making process.

9. The only plausible grievance of the petitioner, therefore, could be that if in its financial bid, the respondent No. 2 would have had included ''bonus'' according to the law in that regard, respondent No. 2 would not have been adjudged the lowest bidder and the petitioner would have been the only choice for awarding of contract.

10. In order to test the correctness of the aforesaid argument of the petitioner, we asked the counsel appearing for respondent No. 1 to provide a comparative chart of the financial bids of the petitioner and respondent No. 2 after notional loading of bonus in the bid of respondent No. 2. The chart made after notionally loading the bonus in the commercial bid of respondent No. 2 is as hereunder:

Top Server Rs.

Pink House Keeping Rs.

Establishment cost including service charge as evaluated

74,22,904.84

78,85,700.11

Cost of Consumables as evaluated

8,42,052.00

8,00,8800.00

Pest Control Cost as evaluated

52,700.00

26,900.00

Total Price as per Evaluation Report

83,17,656.84

87,13,480.11

Notional Loading of Bonus (If required by Law) @ 583.10 x 12 for 55 persons, as per Pink House-keeping Bid

3,84,846.00

Plus Service charges @ 1.25% if notional BONUS is loaded

4,810.57

87,07,313.41

87,13,480.11

11. A bare look at the chart would make it obvious that even if the bonus would have been added in the commercial bid of respondent No. 2, then also the bid of respondent No. 2 would have been lower than that of the petitioner. The issue, therefore, is clinched in as much as in any event the petitioner could not have been the lowest bidder.

12. That apart, the Supreme Court in Tata Cellular v. Union of India (1994) 6 SCC 651 and Asia Foundation and Construction Ltd. v. Trafalgar House Construction (I) Ltd. & Ors. (1997) 1 SCC 738 has decisively laid down the principles of judicial review in contractual matters namely that it is only intended to prevent arbitrariness or favouritism and could be resorted to only in larger public interest. What a court of law is required to see is whether the decision making authority committed any error so far as the extent of its powers are concerned or with respect to observance of natural justice and whether there has been any abuse of the governmental power. If a decision is fair and is not irrational, no interference is required.

13. There does not appear to be any irrationality or arbitrariness in accepting respondent No. 2 as the lowest bidder and awarding contract to it.

14. In Heinz India Pvt. Ltd. v. State of UP (2012) 5 SCC 443, the Supreme Court, while examining the legal dimensions of judicial review, quoted the following passage from Reid v. Secretary of State for Scotland (1999) 2AC 512:-

"68. ? "Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in a case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence. (Reid case [Reid v. Secy. of State for Scotland, (1999) 2 AC 512 : (1999) 2 WLR 28 : (1999) 1 All ER 481 (HL)] , AC pp. 541 F-H and 542 A)"

15. Thus finding that there is no illegality or irregularity in the decision making process and the consequent final allotment of contract to respondent No. 2, we do not wish to entertain the present petition any further.

16. The writ petition is dismissed without costs.

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1. In view of the petition having been dismissed, the application has become infructuous.

2. The application is disposed of accordingly.

