

(2005) 12 DEL CK 0059

In the Delhi High Court

Case No : Writ Petition (C) No's. 23305 and 23306 of 2005

Poorvanchal Caterers and Another

APPELLANT

Vs

Indian Railway Catering and Tourism Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 2 BC 547 : (2006) 126 DLT 674

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Brajesh Kumar, for the Appellant; V.K. Makhija and Akshay Makhija for respondents 1-3, Jayadeep Gupta and G. Prakash, for respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—Though the grievance of the petitioner is about the award of a contract for Train No. 4005-06 Lichchvi Express, it emanates from the grievance of the petitioner with respect to Train No. 2707-2708 Andhra Pradesh Sampark Kranti Express for which respondent No. 4 was the highest bidder but was allegedly wrongly awarded the contract by a letter dated 22/24.10.2005.

2. In terms of Clause 7.1 of the bid documents respondent No. 4 was required to deposit the annual license Fee in respect of Andhra Pradesh Sampark Kranti Express within a period of seven days time. Clause 7.1 and 7.2 of the bid documents read as under:-

7.1 Acceptance of award of license and submission of Security Deposit:

Successful parties would be given 7 (seven) days time, or less time as the case may be, from the date of issue of the letter of award of license for payment of the Security Deposit and the first Installment of license fee and to convey his acceptance of award of license. In case Licensee fails to accept the offer of award of license, Licensee shall be debarred from participating in the future projects of

IRCTC for a period of one year.

7.2 Submission of license fee/Security Deposit:

The Licensee shall deposit the license fee as intimated by IRCTC within the stipulated period and Licensee would be allowed 15 (fifteen) days or less time as advised by IRCTC, from the date of issue of letter for award of license, to provide on board and catering services in train.

3. It is submitted by learned counsel for the petitioner that the license Fee, which ought to have been deposited by respondent No. 4 on or about 27/31.10.2005 was not deposited in time. On the contrary, by a letter 8.11.2005 respondent No. 4 was given further time till 11.11.2005 to deposit the amount. It is submitted that this is in clear violation of Clause 7.1 and 7.2 of the bid documents mentioned above.

4. The contention of learned counsel for the petitioner is that as a result of this violation, respondent No. 4 is liable to be debarred from bidding in respect of future projects of the railways in view of Clause 5.5 of the bid documents which reads as follows:-

Debarment of the bidders: In case the successful bidders (highest financial aid) refuses to accept the offer of award of license, he will be debarred from participating in the bidding process of future projects of IRCTC for a period of one year.

5. In response it has been pointed out by learned counsel for respondent No. 1 the award of contract with regard to Train No. 2707-08 Andhra Pradesh Sampark Kranti Express was the subject matter of Writ Petition (C) No. 11013/2005 and Misc.Case No. 11005/2005 in the High Court of Orissa filed by Indian Railway Major & Minor Caterers Association v. Union of India and Ors. In that case respondent No. 4 was the highest bidder but on 6.10.2005 the High Court of Orissa had passed a status quo order which was extended from time to time on 7.11.2005, 16.11.2005, 17.11.2005 and 23.11.2005. It is now stated before us that the status quo order has been vacated only on 14.12.2005. It is submitted by learned counsel for respondent No. 1 that in view of the status quo order passed by the Orissa High Court, it was not possible to proceed further in granting the contract to respondent No. 4. It is stated additionally that the Railways themselves were not in a position to hand over the pantry car to respondent No. 4 because of the status quo order passed by the High Court of Orissa and under these circumstances, time was extended for making the deposit.

6. Having heard learned counsel for the parties, we are satisfied that there was sufficient reason for respondent No. 1 in granting extension of time to respondent No. 4 to make the deposit in respect of Andhra Pradesh Sampark Kranti Express. This extension was occasioned by the status quo order passed by the High Court of Orissa and it would have been highly improper for respondent No. 1 to have proceeded further in the matter and granted a contract to

respondent No. 4 in view of the status quo order passed by the High Court of Orissa.

7. Since we do not find any infirmity in respondent No. 1 having granted extension of time to respondent No. 4 to make the deposit in respect of Andhra Pradesh Sampark Kranti Express, hence, the petitioner has not made out a case for debarment of respondent No. 4 under Clause 5.5 of the bid documents.

8. In so far as the present writ petition is concerned, it pertains to grant of a contract in respect of Train No. 4005-06 Lichchvi Express. In so far as the bid in respect of this train is concerned, there is no dispute about the fact that respondent No. 4 had made payment within the time specified by respondent No. 1 i.e. within a period of 7 days. This is not disputed by learned counsel for the petitioner. Under these circumstances, we do not find any error in respondent No. 1 having granted the contract to respondent No. 4 in respect of Train No. 4005-06 Lichchvi Express.

9. In any event, this is not a fit case for exercise of our discretion in writ jurisdiction under Article 226 of the Constitution. Even though Clause 7.1 and 7.2 may appear to be mandatory, but in the facts and circumstances of this case, in view of the status quo order granted by the High Court of Orissa, respondent No. 1 was entitled to extend the time for depositing the license Fee by respondent No. 4.

10. The writ petition is dismissed.