

(2011) 05 GUJ CK 0017
In the Gujarat High Court

Case No : Special Civil Application No. 6210 of 2011

Relcon Infra Projects Limited

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Citation : (2011) 05 GUJ CK 0017

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Nirav C. Thakkar, for the Appellant; Nirag N. Pathak, AGP for Respondent Nos. 1 to 3, Mihir Thakore and Vimal M. Patel, for Respondent Nos. 4 - 5, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard Mr. Nirav C. Thakkar, learned Counsel for the Petitioner, Mr. Nirag N. Pathak, learned Assistant Government Pleader for Respondent Nos. 1 to 3 and Mr. Mihir Thakore, learned Senior Counsel assisted by Mr. Vimal M. Patel for Respondent Nos. 4 and 5.

2. The Respondent Nos. 1 to 3 invited a tenders for State Highway Development Project. The bids were invited for total 8 packages. As per the terms and conditions of the package, the bidders were required to have 25% financial capacity and 100% technical capacity. The tenders were opened by the Respondents on 17.02.2011 and bids of 8 persons were opened. But the financial bid of Respondent Nos. 4 and 5 was not opened on the ground that they had not qualified in the technical bid. Technical bids includes technical and financial capacity. When the bid of the Respondent Nos. 4 and 5 were not opened, the Respondent Nos. 4 and 5 made representation to Respondent Nos. 1 to 3 that their bids were illegally not opened though as per their technical bid, they were technically and financially qualified.

3. The Respondents thereafter constituted Review Committee of 7 members to

review the earlier decision taken by 5 member Committee. The 7 member Review Committee came to the conclusion that Respondent Nos. 4 and 5 were technically qualified as they had the technical and financial capacity and therefore, their financial bid with regard to package No. 5 was required to be opened. The decision was taken by Respondent Nos. 1 to 3 to open the financial bid of Respondent Nos. 4 and 5. This order which was communicated by fax to the Petitioner on 07.05.2011. It is this order which has been challenged in this petition.

4. Learned Counsel for the Petitioner has vehemently urged that there is no provision in the tender document that after the financial bids have been opened, any representation could be entertained by the Respondent Nos. 1 to 3 on behalf of any party whose technical bid has been rejected nor any representation was maintainable of the bidders who were found to be eligible in technical and financial bids. He has urged that the impugned decision taken by the Review Committee was without jurisdiction and without giving any opportunity of hearing to the Petitioner who was the lowest bidder.

5. The learned Counsel for the Respondents have supported the decision taken by them.

6. In matters of contract, the Apex Court in Siemens Public Communication Networks Private Limited and Anr. v. Union of India and Ors. (2008) 16 SCC 215 has held that the principles of natural justice and equity do not apply.

7. On the other hand, learned Counsel for the Petitioner has urged that in Tata Cellular Vs. Union of India, the Apex Court has taken the view that principles of natural justice apply in the matters of contract.

8. We are of the opinion that unless prejudice is shown by the Petitioner that what harm he will suffer if the bid of the Respondent Nos. 4 and 5 is opened, the principles of natural justice would not apply. It is not the case of the Petitioner that Respondent Nos. 4 and 5 submitted any fresh financial bid. The fact is that bid of Respondent Nos. 4 and 5 was illegally rejected by Respondent Nos. 1 to 3 under a mistake. Whatever the bids were submitted on the last date fixed by Respondent Nos. 1 to 3, on that day, the Petitioner as well as Respondent Nos. 4 and 5 had submitted their financial bid. Mere opening of the bid would not confer any right on Respondent Nos. 4 and 5 unless their bid is found to be lower than that of the Petitioner. Even if it found that Respondent Nos. 4 and 5 is the lowest bidder, even then the discretion is with Respondent Nos. 1 to 3 to decide that who will be the most suitable tendered to perform the work, obviously, in terms of the tender document.

9. The Apex Court in the case of Reliance Airport Developers Pvt. Ltd. Vs. Airports Authority of India and Others, , in paragraphs 24 and 25, has taken a view that the authority can take a decision in the right direction for making the whole decision-making process transparent by appointing committee for arriving at a proper decision, and such a discretion is available to the authority. It is

always open to the authority to modify the norms within the parameters of law.

10. For the aforesaid reasons, we do not find any merits in this petition. This writ petition fails and is accordingly dismissed. Interim relief stands vacated.