(1997) 10 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6402 of 1997

Richardson and Cruddas (1972) Ltd. and Another — APPELLANT

Vs

Andhra Pradesh State Electricity Board and Others — RESPONDENT

Date of Decision : 24-10-1997

Acts Referred:

Citation : (1997) 6 ALT 309

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

Advocate : A. Krishna Murthy, for the Appellant; K.N. Jwala, SC for Respondent Nos. 1 to 3 and P. Kamalakar, for the Respondent

Final Decision : Dismissed

Judgement

T.N.C. Rangarajan, J.—This writ petition seeks a direction to the 1st respondent to consider the tender of the petitioner as eligible for acceptance.

2. The Government of India had taken a loan from the Overseas Economic Co-operation Fund of Japan (hereinafter referred to as the ''Fund'') towards execution of 400 KV Transmission Scheme from the Srisailam Left Bank Power House. The loan agreement dated 21-12-1992 provided that the Government shall authorise the Andhra Pradesh State Electricity Board (hereinafter referred to as the ''Board) to implement the project as the executing agency. Certain guidelines were spelt out for procurement and for employment of consultants in the agreement. Under Schedule IV, the procurement of all goods and services had to be in accordance with the procurement guidelines. The allocation of proceeds of loan was under five categories, Category ''A'' being foreign currency portion and Category ''B'' being local currency portion. With reference to Category ''B'', the agreement provided that with regard to any contract, the value of which is estimated to be not less than 500 million Japanese Yen, before sending a notice of award to the successful bidder, the Government shall submit to the Fund for its review and concurrence request for review of analysis of bids and proposal of award. When the Fund has no objection to the said request, the

Fund shall inform the Government accordingly.

3. Pursuant to this agreement, the Board published an invitation for bids in respect of two packages. In this case, we are concerned with the package ''B'' which was to design, fabricate, test and deliver 400 KV Single Circuit and Double Circuit Transmission line Towers with accessories at Vijayawada. The due date for the receipt of bids was given as 12-00 hrs on 16-9-1995 (sic. 16-1-1995) and bids were to be opened at 3-00 p.m. on the same day. One of the pre-qualifications was that the bidder should have designed, fabricated, galvanised, successfully tested and supplied at least 10,000 M.Ts of 220 K.V. and above Transmission line Towers during the last five years. The sale of the bid documents was to be closed on 31-12-1994. The Board reserved the right to accept or reject any or all of the bids received at its discretion without assigning any reason whatsoever.

4. Modern Malleables Limited purchased the tender documents stating that they will be submitting the bid as an authorised agent of a qualified manufacturer. The tender was thereafter made on behalf of M/s. Richardson & Cruddas (1972) Limited (a Government of India Undertaking). On 4-1-1995, they asked for extension of the closing date till 15-2-1995 and again on 13-2-1995, they asked for further extension till 31-3-1995. Eventually, the Board by letter dated 18-8-1995 revised the date for submission of tenders and opening of tenders to 31-8-1995 at 12-00 hrs and 15-00 hrs respectively. On that date, when the bids were opened, it was found that the petitioner''s tender was the lowest and the 4th respondent''s tender was the second lowest. In the record of bid opening results if: was noted MML + R&C bid was evaluated as the most responsive and lowest priced bid meeting all the qualifying requirements of the Board as per tender requirements. On 13-6-1996, the Board wrote to MML to state that the details of supply of 200 KV and above voltage towers has been furnished upto December, 1994 only and requested them to furnish details from January, 1995 to August, 1995. It was also mentioned that since M/s. Richardson & Cruddas had informed that they have come out of B.I.F.R., details of the rehabilitation package was to be supplied along with certain further qualifications. In its reply dated 24-6-1996, the petitioner stated that production data for the period January, 1995 to August, 1995 did not have any structural bearing on such a bid because they already fulfilled the qualifications as on the date of the tender notification on 11-11-1994 as well as the original date of opening of bids on 16-1-1995. They also clarified that the company had come out of B.I.F.R. coverage. Yet, by letter dated 4-11-1996, the Board informed the Fund that the bid of MML was not acceptable as it does not qualify the bid requirements and the company is under B.I.F.R. The Fund noted that the difference between the bid of MML and the second lowest of M/s. Kalpataru Power Transmission Ltd., was Rs. 4,826,624. The Central Electricity Authority, which was the consultant, had recommended the acceptance of the offer of MML on the argument that the qualifying requirement of supplying 10,000 MT of Towers in the last five years should be with reference to the original bid opening date on 16-1-1995. But the

Fund was of the view that since the date of tender opening was extended to 31-8-1995, the latter date should be taken for judging the qualifying criteria. After verifying this aspect, the Fund gave concurrence to the award of the contract to the second lowest acceptable bidder.

5. After stating all these facts, a writ petition initially filed by the Richardson & Cruddas challenges rejection of its tender on the ground that the relevant date for pre-tender qualification was only the date of the notification of the invitation to tender, namely, 11-11-1994 and not any later date and that the petitioner had qualified itself on the relevant date and was, therefore, arbitrarily rejected. Since in the counter-affidavit it was stated that the tender documents were purchased by MML, the petition was amended by adding the MML also as the 2nd petitioner. In the counter-affidavit, it was contended that the petitioner did not qualify as an independent agency for having supplied 10,000 MT of Towers in the last five years whether the relevant date was taken as 16-1-1995 or 31-8-1995. Since the figures quoted in the counter- affidavit did not tally, an additional counter was filed to clarify this aspect. The 4th respondent also filed a counter-affidavit to support that stand. The petitioner filed a reply affidavit pointing out that the tender was accepted as a joint bid and that there was no power to extend the last date with a concomitant right to gather data relating to extended date. A rejoinder was filed by the respondents stating that the Fund is the final authority to accept the award of the contract and since it is not the Board or the Government of India which took the decision, the writ petition was not maintainable.

6. The learned Counsel for the petitioner submitted that the petitioner was never informed about the agreement between the Fund and the Government of India or any binding nature of the decision of the Fund over the Board, and hence, as far as the petitioner was concerned, it is the decision of the Board which was relevant and it was justiceable. It was submitted that on the date of the opening of the tenders itself, the petitioner was recognised as a joint bid duly qualified and the lowest. It was argued that the prima facie view could not be altered with reference to the irrelevant date. It was submitted that in the circumstances, there should be a direction to accept the tender of the petitioner.

7. On the other hand, the learned Counsel for the Board submitted that firstly under the terms of the loan agreement a contract cannot be awarded without the concurrence of the Fund and since the Fund had taken the actual opening date as a relevant date, the petitioner did not qualify. In the alternative, it was pointed out that even if November, 1994 was taken as a relevant date even according to the figures as furnished by the petitioner, it did not qualify. He also submitted that the petitioner had only recently come out of sick status under a revival package given by B.I.F.R. and therefore, the Board and the Fund were right in preferring the second lowest tender in the interest of successful completion of the project.

8. Certain interesting questions as to the validity of the condition regarding the

concurrence of the Fund with reference to the interference by the Court in public interest were argued as this case was heard along with the W.P. No. 10920/1997 which refers to the package ''A'' of the same tender notification. I have held by my order of even date in that case that contracts awarded in terms of the agreement of Government of India with the Overseas Economic Co-operation Fund cannot be challenged on the ground of arbitrariness. Those questions become academic in the present case because the challenge here was confined to the question whether the relevant date for pre-tender qualification was 16-1-1995 or 31-8-1995. Even if the petitioner is successful in pointing out that 31-8-1995 may not be the appropriate date for pre-tender qualification, and the relevant date has to be taken as 16-1-1995, I find that the figures furnished by the petitioners themselves indicate that the petitioner did not have adequate experience of designing, fabricating, galvanizing, successfully testing and supplying 10,000 MT of 220 KV and above transmission lines. The data supplied by the petitioner indicates that from January, 1990 to December, 1994, the total tonnage was only 9305. The petitioner, of course, supplied towers to an extent of 1184 in 1993-94 and 675 in 1994-95 in a contract with KECIL but they did not include designing. Similarly, other data supplied by the petitioner did not pertain to Transmission Lines, and hence, they were all excluded from the computation. Since the petitioner has not been able to establish that it has clearly qualified with reference to pre-tender qualifications as on the original date of bid even assuming that the revised date of bid was not relevant date, the petitioner''s bid is not eligible for acceptance. In this view of the matter, rejection of the bid was correct. I, therefore, decline to interfere in the matter.

Accordingly, the writ petition is dismissed. No Costs.