(2020) 06 GAU CK 0045

In the Gauhati High Court

Case No : Writ Petition (C) No. 1900 Of 2020

Rsvcpl Akg Jv — APPELLANT

Vs

Union Of India And 3 Ors — RESPONDENT

Date of Decision : 03-06-2020

Acts Referred:

Citation : (2020) 06 GAU CK 0045

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : N Dutta

Final Decision : Disposed Off

Judgement

Bid Capacity,,

B,2212444453,

A,1505050194,

N,1.5,

Bid Capacity,2302706129,(2 * A * N â?" B)

13. As per the tender decision available in the records, the respondent authorities while calculating the bid capacity took the value of â??Aâ?? in",,

respect of the petitioner to be Rs. 25.19 Crore and the value of â??Bâ?? i.e. pending works to be Rs. 221.24 Crore.,,

14. Accordingly, the respondent authorities by applying the aforementioned formula arrived at the conclusion that the bid capacity of the petitioner was",,

(-) 145.67 Crore. Accordingly, it was concluded that the bid capacity of the petitioner was negative. In order to substantiate that the calculation as",,

regards the bid capacity of the petitioner made in the tender decision was correct, reliance have been placed on a statement pertaining to the details of",,

work executed and payments received during the current and last three financial years by taking into account the completed as well as works in,,

progress submitted by the petitioner along with the bid document and as certified by the Chartered Accountant, Shri Venkat Krishna, CO.",,

By taking the said statement verified by the Chartered Accountant, a conclusion was arrived was that the total payment received by the petitioners",,

during the four years was Rs.25,19,59,066 and accordingly, it was accepted to be Rs. 25.19 Crores. By referring the said statement made by the",,

Chartered Accountant, the respondent railways seeks to justify that in their tender decision referred above that they have rightly taken the figures in",,

respect of â??Aâ?? to be Rs. 25.19 Crore in order to calculate bid capacity by using the formula bid capacity is equal to (A X N X 2)-B.,,

15. It has been pointed out by Mr. N. Dutta, learned senior counsel for the petitioner that the certified statement of the Chartered Accountant referred",,

and taken into consideration by the respondent authorities, is in respect of only some of the works performed by the petitioner during the last four",,

years under consideration and therefore in the said statement, there was no indication of the amount received by the petitioner for the subsequent",,

years 2017-2018, 2018-19, 2019-20 and it had only been shown that the works were completed. Mr. N. Dutta, learned senior counsel raises the",,

contention that the certified statement of the Chartered Accountant referred by the railway authorities is not the complete set of certified statements,,

of the Chartered Accountant which were presented by the petitioner along with the tendered bid. According to the learned senior counsel several,,

other certified statements of the Chartered Accountant were also presented by the petitioner along with their tendered bids. The ready reference is,,

made to the balance sheet signed and certified by the Chartered Accountant which was also submitted along with the tendered bid which clearly,,

reflected the workout made by the Chartered Accountant as regards the bid capacity of the petitioner. The balance sheet clearly indicated the value,,

of â??Aâ?? to be Rs.1,50,50,50,194 i.e., Rs. 150.50 Crore. When the value of â??Aâ?? is Rs.150.50 Crore and the value of â??Bâ?? is Rs.221.24",,

Crore as accepted by the respondent railways, by applying the formula for bid capacity i.e. (A X N X 2)-B, the bid capacity of the petitioner would",, beRs.2,30,27,06,129 i.e. Rs.230.27 Crore. Accordingly, it is the contention that the bid capacity of the petitioner if correctly calculated by taking into",,

consideration the relevant documents and certified statements of the Chartered Accountant furnished by the petitioner along with the tendered bid, the",,

bid capacity would be 230.27 Crore and not Rs (-) 145.67 Crore as arrived at by the respondent railway.,,

16. Mr. N. Dutta, learned senior counsel also refers to the â??NOTE 19: Contract Revenueâ?? which is annexed to the additional affidavit of the",,

petitioner, which is also a statement signed and certified by the Chartered Accountant and was a part of the bid document that the bill revenue for the",,

year ending 31.03.2018 was Rs.1,040,828,621 i.e. Rs.104.08 Crore. Reference is also made to another Note 19: Contract Revenue also annexed to",,

the additional affidavit which is also a signed and certified statement of the Chartered Accountant providing that the bill revenue of the petitioner for,,

the year ending 31.03.2019 was Rs.52,48,53,955 i.e. Rs. 52.48 Crore. Further reference has also been made to the signed and certified statement by",,

the Chartered Accountant on the income from revenue from contract which is available at page-48 of the additional affidavit wherein, it is stated that",,

up to 31 March 2019 the income from revenue from contract for the financial year was Rs.150,50,50, 194. In the said statement it is also stated that",,

the accompanying notes are an integral part of the financial statement.,,

17. A categorical statement is made by Mr. N. Dutta, learned senior counsel that the aforesaid documents which are signed and certified statements",,

of the Chartered Accountant are a part of the statements submitted by the petitioner and are available on record but were not given a due,,

consideration by the respondent railway authorities while arriving at in their tender decision pertaining to the bid capacity of the petitioner.,,

18. We have gone through the records produced by the respondent railway. From the records we could not find any material which would indicate,,

that all the signed and certified statements of the Chartered Accountant which were a part of the bid document submitted by the petitioner were taken,,

into consideration while arriving at the tender decision as regards the bid capacity of the petitioner. In this respect we again refer to the Clause 4 of,,

the eligibility condition which provides that the tenderer shall submit certificates as regards the contractual payments received by them in the previous,, three financial years and the current financial year, which may be in the form of an attested certificate from the concerned department/client and or",,

the audited balance sheet duly certified by the Chartered Accountant etc. As the document submitted by the petitioner along with the tendered bid,,

contains the signed and certified certificate of the Chartered Accountant, which according to them would indicate the payment received by them in the",,

concerned four years, we are of the view that the bid capacity of the petitioner would have to be arrived at by the respondent railway by taking into",,

consideration all the signed/certified statements of the Chartered Accountant which were submitted along with the tendered bid and in doing so, the",,

respondent railways cannot take into consideration only some of such signed and certified statements of the Chartered Accountant while ignoring the,,

others. We have not come across any material available on record that the signed and certified statements referred by the petitioner as indicated,,

above were given due consideration. No material is also available to indicate that such signed and certified statements were considered but were,,

rejected for any reason.,,

19. In the aforesaid circumstance and on being satisfied that a prima facie case has been made out by the petitioner, we are of the view that instead",,

of issuing notice and staying the tender process in a matter where public interest requires speedy implementation of the work in question, ends of",,

justice would be better served, if the writ petition itself is disposed of by requiring the respondent railway to take into consideration all the relevant",,

signed and certified statements of the Chartered Accountant that the petitioner had submitted along with their tendered bid for arriving at the bid,,

capacity of the petitioner.,,

20. Accordingly, this petition stands disposed of by requiring the respondent railway authorities to take into consideration all such signed and certified",,

statements of the Chartered Accountant or any other document that the petitioner had submitted along with the tendered bid which may indicate the,,

value of the works performed by them during the last four years and thereafter arrive at the bid capacity of the petitioner. If the respondent railways,,

are of the view that any such signed and certified statement or documents are not required to be taken into consideration as per the terms and,,

condition of the tender process or which may otherwise be not relevant for the purpose, appropriate reasoned order be passed by the tender",,

committee as to why they think that such signed and certified statements or documents are not to be taken into consideration or are not relevant.,,

21. In order to facilitate a complete consideration of the tendered bid of the petitioner, the petitioner is required to submit an e-mail to the respondent",,

railway authorities indicating the relevant signed and certified statements of the Chartered Accountant or document that they had already submitted,,

and which are required to be taken into consideration by the authorities for arriving at the bid capacity. The e-mail be sent within a period of 3 days.,,

The railway authorities shall re-visit the calculation of the bid capacity of the petitioner and take into consideration all the relevant signed and certified,,

statements of the Chartered Accountant or documents submitted by the petitioner along with the bid document and arrive at a fresh conclusion as,,

regards the bid capacity within a period of 2 (two) weeks and pass a reasoned order thereof. Any reason order to be passed, a copy thereof be",,

provided to the petitioner through e-mail forthwith. The interim order dated 11.03.2020 in WP(C) 1900/2020 be continued for a period of another 7,,

days after the reasoned order is passed by the respondent railways and the copy thereof is served on the petitioner. After the expiry of 7 days from,,

the date of passing the reasoned order as indicated above and serving copy thereof to the petitioner, the interim order shall be no longer in force and",,

the respondent authorities would be at liberty to proceed ahead with the tender process.,,

22. Writ petition stands disposed of in the above terms.,,