
(2002) 03 DEL CK 0103

In the Delhi High Court

Case No : Civil Writ Petition No. 5523 and CM. 9481 of 2001

Sachin Enterprises

APPELLANT

Vs

Indian Oil Corp. Ltd. and Others

RESPONDENT

Date of Decision : 04-03-2002

Acts Referred:

Citation : (2002) 62 DRJ 744 : (2002) 3 RAJ 124

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Sunita Harish, for the Appellant; M.M. Kalra, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition is taken up for disposal.

2. Petitioner has filed this writ of certiorari, seeking quashing of the eligibility conditions of the lender for participating in the tender bid, as contained in tender No. LPG/PT/HLG/TKN/01/05. The challenge in the writ petition by the petitioner is particularly to the condition for possessing provident fund and ESI registration certificates (PF/ESI code numbers) for employees of the tenderers. Petitioner also question the forfeiture of Earnest Money deposit in the event of tenderer withdrawing the offer before its acceptance. Petitioner has also sought writ of mandamus to the respondent to entertain the price bid of the petitioner without PF/ESI Registration Certification (PF/ESI code numbers).

3. Learned counsel for the petitioner, Ms. Sunita Harish, has drawn my attention to the basic tender conditions, the relevant portion of which is being reproduced for the sake of reference:-

Basic Tender Conditions.

1. The firm should be registered.

2. The firm should have Provident Fund and ESI Registration Certificates (PF Code number)

3.....

4.....

5.....

NOTE: Tender will not be considered for opening of price bid without PF Code Number.

4. It is not disputed before me that the petitioner/tendered itself did not possess the PF or ESI Registration number and a such was not eligible to participate in the tender, based on the tender conditions. It is now well settled following the judgment of Tata Cellular Vs. Union of India, that the terms and conditions are well within the doman of the party inviting tender.

5. Learned counsel for the petitioner, while seeking to demonstrate the unfair manner of processing the tender, submitted that in fact strictly going by the tender conditions, only one tenderer out of 12 qualified while the respondents themselves had contemplated distribution of the work among 2 or 3 contractors.

6. Learned counsel also submitted that 5 or 6 tenderer did not meet the tender condition but their price bids were nevertheless considered.

7. Learned counsel for the respondent Mr. M.M. Kalra, submitted that the petitioner's own case was that these conditions, requiring PF/ESI code numbers be quashed and the petitioner itself can't have a grievance in this regard. He submitted that the tenderer, who has been awarded the contract was eligible and be possessed the PF/ESI Code numbers. A conjoint reading of the tender conditions shows that the tender is not at all to be considered for opening of price bid without PF code number. He submitted that while requirement for PF registration and code number is a pre- requisite condition for opening the tender, as is evident from the note, reproduced earlier, the ESI Registration could be produced later, depending upon the total number of employees, who are required to be engaged. He submits that the estimate of total number of persons to be engaged depends upon the work allocation. Be it may, he submits that the tenderer, who had been awarded the contract, was the lowest tenderer, possessed the PF number as well as ESI registration certificate, which has been produced by him.

In this view of the matter, I find no ground to interfere in the exercise of writ jurisdiction. The writ petition has no merit and is dismissed.

Learned counsel for the respondent assures that the petitioner's request for refund of earnest money would be duly considered and expeditiously dealt with.