

(2013) 06 CAL CK 0053
In the Calcutta High Court
Case No : Writ Petition No. 16511 (W) of 2013

Shri Soumik Dutta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-06-2013

Acts Referred:

Citation : (2013) 5 CHN 392 : (2013) 3 WBLR 785

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Kishore Dutta and Sumita Shaw, for the Appellant; Santanu Kumar Mitra for the Union of India, Jayanta Banerjee and Subir Pal for the State and Jasobanta Rakshit for the P.F. Authority, for the Respondent

Judgement

Sanjib Banerjee, J.—Pursuant 10 the previous direction dated June 14, 2013, the Provident Fund Commissioner has caused a report to be filed indicating that the two lowest bidders for the data entry and verification work of the 70th round of the National Sample Survey have both been found to be ineligible on the ground that appropriate documents in support of their applications were not tendered. The tender documents stipulated certain eligibility criteria at paragraph 2 thereof. These criteria related to experience and infrastructure. Clause 2.5 specified that the employer reserved the right to disqualify such bidders who did not fulfil some or all of the criteria referred to in Clause 2 of the tender documents. Clause 3 of the tender documents required, inter alia, the tenderer's profile to be submitted. Clause 7 required certain documents to be furnished, including copies of the EPF Code and the ESI Code. In other words, bidders had to be registered both with the Provident Fund and with the Employers' State Insurance Authorities. Clause 17.6 of the bid documents provided as follows:

If all technical bid documents are complete as per requirement and acceptable by the TOC, then only financial bid should be opened.

2. At the time that the petitioner submitted the bid, the petitioner had not obtained an EPF Code though the petitioner appears to have duly applied

therefor. The petitioner says that it was due to the delay on the part of the respondent authorities that an EPF Code was not allotted to the petitioner and the petitioner was not really at fault.

3. At the time that the petitioner came to court, it was the petitioner's case that the petitioner had been orally informed by the employer that the petitioner's technical bid was found to be disqualified since the EPF Code had not been mentioned. At the initial stage, the respondent authorities were required to open the financial bids to ascertain whether the petitioner's financial bid came within the zone of consideration for the ground urged by the petitioner to be taken up for consideration only thereupon.

4. It appears that the petitioner's bid and the bid by the lowest bidder have both been found to be disqualified, though no written notices were issued to either. The respondent authorities say that it was only pursuant to the direction of this court issued on June 14, 2013, that the financial bids of all the bidders were opened, irrespective of whether such bidders had met the eligibility criteria or other parameters as indicated in the bid documents.

5. The petitioner says that the EPF Code has now been allotted to him and since the petitioner has met the eligibility criteria specified in Clause 2 of the tender documents and the EPF Code is available with the petitioner prior to the tender documents being finalised, there has been substantial compliance of the tender conditions by the petitioner and the petitioner's bid should now be considered on merits rather than being rejected on a minor technical ground. In support of such contention, a judgment reported at B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, is cited and paragraph 66 of the report placed.

6. It does not appear that the petitioner is entitled to have the petitioner's bid considered on merits in view of the petitioner not submitting the EPF Code at the time the bid was deposited. The tender documents did not provide for the eligibility criteria to be obtained subsequent to the bid being made. Though the petitioner seeks to make a distinction between the eligibility criteria enumerated in Clause 2 of the bid documents and the mandatory documents as indicated in Clause 7 thereof, the failure on the part of the petitioner to indicate an EPF Code and supply the appropriate document in support thereof at the time the bid has to be held against the petitioner; and, the petitioner obtaining the EPF Code subsequent thereto would not prompt the court to regard the petitioner's failure to submit the relevant document as a minor, transgression that ought to be condoned.

7. In matters of the present kind, where the eligibility criteria may be spread over several clauses spilling beyond the particular clause intitled as the eligibility clause, the court has to keep in mind the nameless, faceless absentees who may have read the tender documents and not applied on their understanding that they did not meet all the requirements that the tender documents demanded. Ordinarily, a court in exercise of its power of judicial

review in matters of the present kind would not be excited to condone minor transgressions on the court's perception of what may or may not have been an essential condition or an ancillary condition, since it is possible that many others who may have been similarly or better placed than the petitioner herein, but may not have met one or the other requirements specified in the tender documents, may not have applied only for such reason.

8. The principle of substantial compliance that the petitioner seeks to canvas and as has been recognised in paragraph 66(v) of the reported judgment cited by the petitioner does not apply to the facts of this case. The case that the Supreme Court intended to be covered was one where the tendering committee had considered a bid to have substantially complied with the conditions set therefor. The Supreme Court opined that if there was substantial compliance of the conditions and the tendering committee felt so, the court would be slow to interfere in the matter. The converse may not hold good. In the present case, the tendering committee did not consider the EPF Code not being obtained by the petitioner to be a minor matter. It was found to be a substantial ground for disqualifying the petitioner's bid. The court will not supplant its view for the tendering committee's and regard the matter to be a minor transgression by being oblivious to the several other possible applicants who may not have applied merely because they may not have had an EPF Code or not met certain other qualifications that the tender documents indicated.

9. W.P. 16511 (W) of 2013 is dismissed, notwithstanding it being evident that if the respondent authorities disregard the two lowest bids, the third-lowest bid is of a considerably higher amount. A matter as the present one has to be decided on a principle and it is irrelevant to take into consideration the fact that as a result of the two lowest bids being disqualified, the exchequer has to fork out more money for the same work to be done by another bidder. The sanctity of the process and its transparency demand so. There will be no order as to costs.