(2007) 08 GAU CK 0062

In the Gauhati High Court

Case No : Writ Petition (C) No. 63 of 2007

Smt. Sushila Devi Jhawar and Others APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Citation : AIR 2007 Guw 169 : (2008) 2 CTLJ 433

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : S. Talapatra and S. Deb Gupta, for the Appellant; T.D. Majumder, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—By means of this application, the petitioners have prayed for setting aside and quashing of the decision of the respondent-authority to cancel the tender submitted by the petitioners in respect of the particular work. Consequential prayer made, is for acceptance of the technical bid of the petitioners.

2. The facts material for the purpose of disposal of this writ petition are in a narrow compass:

By Annexure-1 tender notice dated 26-9-2006, the Director General of Police, Tripura invited sealed tenders comprising of two parts, i.e. technical and commercial bids from bona fide suppliers/manufacturers for supply of items of kits and uniform as indicated in the enclosed list. One of the conditions for validity of the tenders was submission of upto date sales tax clearance certificate from the competent authority. Such certificate was to be furnished along with the technical bid.

3. The petitioners in response to the said tender notice submitted their tender, admittedly without the sales tax clearance certificate.

4. In terms of the tender notice, the technical bids were opened on 7-11-2006 in presence of the parties as per the statements made in paragraph 4 of the writ petition. The petitioners were informed by letter dated 21-2-2007 that the tender submitted by them was rejected on ground of non-submission of sales tax clearance certificate along with the technical bid as per the terms and conditions of the NIT. According to the petitioners, they had submitted all the required documents except the sales tax clearance certificate and in lieu of the same, they had furnished a certificate issued by the Assistant Commissioner of Commercial Taxes and Public Relations, Govt. of West Bengal and a notification of the Directorate of Commercial Taxes, West Bengal showing that VAT clearance certificate in Form 83 or In Form 84 has been inoperative w.e.f. 1-8-2006. It is the further case of the petitioners that they had also submitted the Gazette Notification regarding the omission of Section 99 of the West Bengal Value Added Tax Act as published in the Kolkata Gazette, Extraordinary, issued on 31-7-2006.

5. It is the case of the petitioners that in view of the aforesaid position the petitioners'' Firm, which is registered under West Bengal Sales Tax Rules, 1995 and later on registered under West Bengal Value Added Tax Act, its all transactions are accounted for by the Commissioner of Commercial Taxes, Govt. of West Bengal.

6. Narrating the aforesaid position of the petitioners'' Firm and the provisions of the aforesaid Act and the Rules, it is the case of the petitioners that it was impossible on the part of the petitioners to furnish sales tax clearance certificate and since the same was duly explained by the petitioners, the respondent-authority ought not to have rejected the technical bid of the petitioners.

7. The respondents have filed their affidavit-in-opposition controverting the claim made in the writ petition. It is the stand of the respondents that since the petitioners failed to comply with the mandatory requirement of the NIT, there was no other option but to reject the technical bid of the petitioners. It has been contended that the VAT Act applicable in West Bengal is not applicable in the State of Tripura and any charge therein cannot change the tender condition of the issuing authority representing the State of Tripura.

8. The respondents in their affidavit have further stated that the petitioners in spite of being aware of the mandatory condition of requirement of furnishing the sales tax clearance certificate participated in the tender process without questioning the condition. But later on when its technical bid was rejected, objected to the same and thereby virtually has objected to the tender condition requiring furnishing of sales tax clearance certificate.

9. Further stand taken in the affidavit is that the technical bids were opened on 7-11-2006 in presence of all the parties. Technical pleas like non-joinder of necessary parties and involvement of disputed questions of fact have also been raised in the affidavit-in-opposition.

10. I have heard Mr. S. Talapatra, learned senior Counsel, assisted by Ms.

Section Deb (Gupta), learned Counsel for the petitioners as well as Mr. T.D. Majumder, learned Addl. Govt. Advocate representing the respondents. I have also perused the tender documents submitted by the petitioners.

11. Placing reliance on the decision of the Apex Court as reported in M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, , Mr. Talapatra, learned senior Counsel for the petitioners submits that in view of the facts and circumstances involved in the case, the requirement of furnishing the sales tax clearance certificate could have been suitably dealt with by the respondents instead of rejecting the tender submitted by the petitioners on that count. He has also submitted that the requirement of furnishing the sales tax clearance certificate in terms of the memorandum dated 5-3-1999, a copy of which has been annexed as Annexure-C to CM Application No. 157 of 2007 is not at all applicable to the instant case.

12. Mr. T.D. Majumder, learned State Counsel, on the other hand, submits that when the factum of non-furnishing the sales tax clearance certificate is an admitted one, the petitioners after participating in the tender process without furnishing the same cannot now turn around the same and question the validity of such a condition imposed in the tender notice, Mr. Majumder has placed reliance on two decisions, reported in M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, and 2003 (2) GLT 485 : AIR 2004 NOC 79 Bikash Bora v. State of Assam.

13. I have considered the submissions made by the learned Counsel for the parties and the materials on record. There is no dispute that the petitioners did not furnish the sales tax clearance certificate along with their tender documents. However, the plea taken is that in view of the prevailing statutory provisions in the State of West Bengal, it was not possible on the part of the petitioners to furnish the sales tax clearance certificate. According to the petitioners, since their tender documents accompanied the certificate issued by the competent authority of the Govt. of West Bengal in the Department of Tax along with the Gazette notification regarding omission of Section 99 of the West Bengal Value Added Tax Act, the respondents could have accept their tender as a valid one instead of rejecting the same on ground of non-furnishing the sales tax clearance certificate.

14. The authority, which had issued the tender notice, was within its competence, power and jurisdiction to impose conditions for validity of tenders. One of the conditions was the requirement of furnishing the up-to-date sales tax clearance certificate. The petitioners responded to the tender notice without questioning the validity of the condition and took a chance for favourable consideration. It is only after rejection of their tender they have approached this Court by filing the instant writ petition.

15. The tender documents (technical bid) were opened on 7-11-2006 in presence of the parties. Thereafter, the petitioners were also apprised of the fact of

rejection of their tender by letter dated 21-2-2007 (Annexure-2). Neither at the time of opening the technical bids on 17-11-2006 nor immediately after furnishing the information by the aforesaid letter dated 21-2-2007, the petitioners made any grievance against the same. The writ petition was filed on 23-5-2007, i.e. after expiry of three months from the impugned letter dated 21-2-2007 and after about six months of opening of the technical bids.

16. Mr. Majumder, learned Counsel for the State-respondents has placed reliance on the decision in Bikash Bora AIR 2004 NOC 79 (supra) to emphasize that non-submission of the sales tax clearance certificate by the petitioners was fatal to their tender. In that case, the Division Bench of this Court noticing that the appellant therein did not submit the loan clearance and sales tax clearance certificates as per the requirement of the NIT held that such non-submission was fatal. In M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, the Apex Court while restating the scope of judicial review in respect of tender process observed that deletion of the term of the tender after the players entered into the arena is like changing the rules of the game after it had begun. In the instant case also the condition of furnishing the sales tax clearance certificate was one of the mandatory conditions and all the tenderers accepting the same entered into the arena including the petitioners. The petitioners took a calculated chance and now after considerable delay have virtually questioned the mandatory requirement of furnishing the sales tax clearance certificate, which, in my view, is not at all tenable.

17. If the petitioners were not eligible to submit their tender in view of the aforesaid condition and were aggrieved by such condition, it was open for them to agitate their grievance before the respondent-authority and/or before the appropriate authority including institution of legal proceeding, instead they responded to the tender notice and submitted their tender. Although in paragraph 5 of the writ petition, the petitioners have stated about the certificate furnished in lieu of sales tax clearance certificate but as the respondents have contended in their affidavit, the relevant letter in this regard was obtained by the petitioner only after opening of the technical bids. Be that as it may, same may not be material for the purpose of a decision in this case. If the petitioners failed to conform to the requirement of the tender notice and in spite of that submitted their tender, same was at their own risk. The petitioners having not furnished the sales tax clearance certificate cannot place reliance on the provision of the Act, which is not applicable to the State of Tripura.

18. The decision on which Mr. Talapatra has place reliance namely, M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, is not at all applicable to the facts and circumstances of this case. That was a case relating to submission of cheque along with the tender. Such cheque was to be of State Bank of India and not Union Bank of India. The appellant submitted the cheque drawn on Union Bank of India. It was in that context the Apex Court observed that as a matter of general proposition it cannot be held that an authority

inviting tenders is bound to give effect to every terms mentioned in the notice in meticulous detail. A distinction was made between essential conditions and ancillary or subsidiary conditions.

19. In the aforesaid case, the required cheque was submitted by the appellant. However, the same was not drawn in the State Bank of India instead it was drawn in the Union Bank of India. For all practical purposes, the purpose for which the cheque was insisted upon was fulfilled. The same is not the case in hand. The particular essential condition relating to submission of sales tax clearance certificate having not been fulfilled by the petitioners, the respondents had no other opinion than to reject their tender, I do not find any infirmity in the decision-making process.

20. In view of the above, I do not find any merit in the writ petition and accordingly, it is dismissed, without, however, any order as to costs.

